

**THE CHILDREN'S CODE ACT, 2022**

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GOVERNMENT OF ZAMBIA

# ACT

No. 12 of 2022

Date of Assent: 9th August, 2022

**An Act to reform and consolidate the law relating to children; provide for parental responsibility, custody, maintenance, guardianship, foster care, adoption, care and protection of children; provide for the grant of legal aid to, and establish procedures for the treatment of, children in conflict with the law; provide for the making of social welfare reports in respect of a child in conflict with the law; establish diversion and alternative correctional programmes and promote the rehabilitation of a child in conflict with the law through programmes to facilitate restorative justice and compliance with laws; provide for the protection of a child victim and child witness in investigative and judicial processes; provide for the probation of a child in conflict with the law and provision of probation services; provide for the development of treatment programmes, early intervention services and programmes to combat crime and prevent further offending; limit the negative effects of confinement by minimising the impact of a finding of guilty on the family of a child in conflict with the law and facilitate the re-integration of the child in conflict with the law into society; provide for the establishment of child approved centres and child reformatory centres; provide for the regulation of child care facilities; provide for child safeguarding; domesticate the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child,**

**the Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption and the Convention on the Civil Aspects of International Child Abduction; repeal the Legitimacy Act, 1929, the Adoption Act, 1956, the Juveniles Act, 1956 and the Affiliation and Maintenance of Children Act, 1995 and provide for matters connected with, or incidental to, the foregoing.**

[ 11th August, 2022

Enactment ENACTED by the Parliament of Zambia.

## PART I

### PRELIMINARY PROVISIONS

- Short title **1.** This Act may be cited as the Children's Code Act, 2022.
- Interpretation **2.** In this Act, unless the context otherwise requires—
- “access order” means an order granted to a person to visit, periodically stay or have contact with a child as the court may determine;
- “administrative institution” means an authority, agency or any other body that applies a law affecting a child;
- “adoption order” means an adoption order made under Part XIV vesting parental responsibility on a person adopting a child;
- “adoption agency” means a local adoption agency accredited under Part XV;
- “adoptive parent” means a person who adopts a child under Part XIV;
- Cap. 1 “adult” has the meaning assigned to the word in the Constitution;
- “affiliation order” means an order declaring a man to be the biological or putative father of a child;
- “appropriate authority” means the Minister for the time being having responsibility for, or such public body having powers under any other written law over children;
- “assessment order” means an order requiring a child to be evaluated by a person appointed by the court to assist the court in determining a matter concerning the welfare and upbringing of the child;

“authorised officer” means a child development officer, child welfare inspector, a probation officer, a police officer or any other officer authorised by the Director of Child Development or Director of Social Welfare for the purposes of this Act;

“care order” means an order entrusting the care and protection of a child to a person who is not the parent, guardian, custodial parent or person having parental responsibility for a child;

“central authority” means—

(a) in relation to the Republic, the Director of Social Welfare; and

(b) a person, office or institution in a contracting State to the Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption and the Convention on the Civil Aspects of International Child Abduction;

“certificate of accreditation” means a certificate of accreditation issued to a diversion service provider or adoption agency issued under section 63 and 255, respectively;

“certificate of legal aid” means a certificate of legal aid issued under the Legal Aid Act, 2021;

Act No. 1 of  
2021

“Chief Inspector” means a Chief Inspector of Reformatories who supervises child reformatory centres;

“child” has the meaning assigned to the word in the Constitution;

Cap. 1

“child abuse” includes physical, sexual, psychological and mental injury of a child;

“child approved centre” means an approved school established by the Minister;

“child in conflict with the law” means a child in respect of whom court proceedings are contemplated or instituted under any written law;

“child of family” includes a child—

(a) adopted by a husband and wife, or by either of them with the consent of the other;

(b) of the husband and wife, born before the marriage;  
and

(c) of either party to a marriage, born before the  
marriage;

Cap. 1

“Children’s Court” means the division of the High Court  
established under the Constitution;

“child development officer” means the person appointed as a  
child development officer under section 30;

“child welfare inspector” means the person appointed as a  
child welfare inspector under section 33;

“child care facility” means a home or institution approved  
under section 268 and established for the care, protection,  
safety and rehabilitation of children, but does not include—

(a) a child reformatory centre;

(b) a child approved centre;

(c) an educational institution;

(d) a health facility; or

(e) a children’s day care centre, nursery or other similar  
establishment;

“child marriage” means marriage with a child or any  
arrangement made by a person for that marriage;

“child on the move” means a child who, voluntarily or  
involuntarily, moves within or outside the Republic with or  
without the child’s parent, guardian or person having  
parental responsibility for the child and whose movement  
places the child or could place the child at risk of economic  
or sexual exploitation, abuse, neglect or any other form of  
violence;

“child reformatory centre” means a child reformatory centre  
established under section 99;

“child transit centre” means a child transit centre established  
for the temporary custody of children under section 99;

Cap. 1

“Civil Service Commission” means the Civil Service  
Commission established under Article 222 in the  
Constitution;

“closed adoption” means an adoption which creates a  
permanent parent-child relationship with an adoptive parent  
and where a pre-existing parent-child relationship with the  
family of origin is terminated;

- “Court of Appeal” means the Court of Appeal established under the Constitution; Cap. 1
- “court” has the meaning assigned to the word in the Constitution; Cap. 1
- “corporal punishment” means the prohibited punishment in which physical force is used on a child;
- “custodial order” means an order to place a child in custody in a child reformatory centre on whom a finding of guilty is made by a juvenile court or Children’s Court;
- “custodial parent” means the person to whom custody of a child is awarded under a custody order;
- “custody order” means an order vesting custody of a child in one or more persons;
- “cyberbullying” means the use of electronic communication to bully a child;
- “decree” has the meaning assigned to the words in the Matrimonial Causes Act, 2007; Act No. 20 of 2007
- “defendant” in relation to a maintenance order or a related attachment of earnings order, means the person liable to make payments under that order;
- “Director of Child Development” means the Director of Child Development appointed under section 30;
- “Director of Social Welfare” means the Director of Social Welfare appointed under section 33;
- “disability” has the meaning assigned to the word in the Persons with Disabilities Act, 2012; Act No. 6 of 2012
- “diversion” means the referral of cases of children alleged to have committed offences away from the criminal justice system with or without conditions;
- “diversion programme” means a programme that provides for diversion;
- “diversion service provider” means a body that offers a diversion programme and includes a public body or non-governmental organisation;
- “domestic adoption” means the adoption of a child resident in the Republic by a prospective parent in the Republic;

- Act No. 35  
of 2021
- “drug” has the meaning assigned to the word in the Narcotic Drugs and Psychotropic Substances Act, 2021;
- “early intervention” means the provision of services, diversion programmes and other programmes aimed at preventing the need for a child in conflict with the law to be dealt with in terms of the formal court procedure;
- Act No. 23  
of 2011
- “education” has the meaning assigned to the word in the Education Act, 2011;
- Act No. 23  
of 2011
- “educational institution” has the meaning assigned to the words in the Education Act, 2011;
- Act No. 3 of  
2019
- “employer” has the meaning assigned to the word in the Employment Code Act, 2019;
- “exclusion order” means an order requiring a person who has used violence or threatened to use violence against a child, whether or not that person permanently resides with the child, to depart from the home in which the child is residing or to restrain the person from entering the home or a specified part of the home or from a specified area in which the home is included, or to restrain any other person from taking the child to the person against whom the child needs protection for a period that the court may specify;
- “family assistance order” means an order requiring a person appointed by the court to provide advice, counselling and guidance to a child, the child’s parents, custodial parent or a person who has care and control of the child or with whom the child is residing, as the court may specify;
- “family group conferencing” means a gathering convened by a probation officer as a diversion or sentencing option to devise a restorative justice response to the offence;
- “female genital mutilation” means the cutting and removal of part or all of the female genitalia, the practice of clitoridectomy, excision, infibulation or other practice involving the removal of part or all of the entire clitoris or labia minora of a female person;
- “financial arrangement” means a provision governing the rights and liabilities towards each other of the parties to a marriage, including a marriage which has been dissolved or annulled, in respect of the making or securing of payments or the disposition or use of any property, and any rights and liabilities with respect to the maintenance or education of a child, whether or not a child of the family;

“financial provision order” means an order for periodical or lump sum payment made under Part X;

“firearm” has the meaning assigned to the word in the Firearms Act;

Cap. 110

“fit person” means an adult who is of high moral character and integrity, who has mental capacity to look after a child and is able to provide a caring home for a child;

“foreign adoption body” means a body accredited to provide adoption services in a foreign State in accordance with the relevant laws of that State;

“foster care” means the placement of a child with a person who is not the child’s parent, guardian or person having parental responsibility who is willing to care for and maintain the child;

“foster child” means a child placed with a foster parent or foster family;

“foster family” means the placement of a child with a family that provides foster care;

“foster parent” means a person who receives and retains a child so as to care for and maintain the child except for a child’s parent, guardian or relative;

“gender-based violence” has the meaning assigned to the words in the Anti-Gender Based Violence Act, 2011;

Act No. 1 of 2011

“guardian” in relation to a child, means a person—

(a) who is a relative of a child;

(b) who has charge or control of the child; or

(c) appointed by will or deed by a parent of the child or by an order of the court to assume parental responsibility for the child on the death of that parent of the child, either alone or together with the surviving parent of the child;

“health facility” has the meaning assigned to the words in the Health Professions Act, 2009;

Act No. 24 of 2009

Act No. 24  
of 2009

“health practitioner” has the meaning assigned to the words in the Health Professions Act, 2009;

Cap. 1

“High Court” means the High Court for Zambia established under the Constitution;

“home” in relation to a child, means the place where the child’s parent, guardian, custodial parent, person having parental responsibility for the child or foster parent permanently resides, or if there is no parent, guardian, custodial parent or person having parental responsibility for the child living and the child has no foster parent, the child’s parent’s, guardian’s or custodial parent’s last permanent residence or the last permanent residence of a person having parental responsibility for the child, except that—

(a) in the case of a parent, guardian, custodial parent or person having parental responsibility having, or having had, more than one permanent place of residence, the parent, guardian, custodial parent or person having parental responsibility shall be presumed to be or to have been permanently resident at the place of that person’s principal permanent residence; and

(b) where the court is unable to determine the home of the child, the child shall be considered, for the purposes of this Act, to have the home in the area of jurisdiction of the local authority in whose area the child is found;

“interim maintenance order” means an interim maintenance order made under Part X;

“inter-country adoption” means the adoption of a child resident in the Republic by a prospective parent resident in a foreign country or the adoption of a child resident in a foreign State by a prospective parent resident in the Republic;

“intensive family support” means a home visitation social work service focused on working with family members, relatives and the community to improve the safety and wellbeing of a vulnerable child;

“juvenile court” means a Subordinate Court, sitting for the purposes of hearing a charge or matter involving a child,—

(a) of the First Class or Second Class; or

(b) in the case of a Subordinate Court of the Third Class, a Subordinate Court presided over by a Magistrate of not less than one year experience;

“law enforcement agency” means the Zambia Police Service and any other agency exercising law enforcement under any written law;

“law enforcement officer” means a police officer and includes an officer under any written law with powers of arrest;

“Legal Aid Board” means the Legal Aid Board established under the Legal Aid Act, 2021;

Act No. 1 of 2021

“legal custody” means the parental rights and duties in relation to possession of a child conferred on a person by a custody order;

“legal practitioner” has the meaning assigned to the word “practitioner” in the Legal Practitioners Act;

Cap. 30

“local authority” has the meaning assigned to the words in the Constitution;

Cap.1

“maintenance agreement” means an agreement, in writing, between the parties to a marriage, containing financial arrangements, whether made during the continuance, or after the dissolution or annulment, of the marriage;

“maintenance order” means an order for the maintenance of a child or other person, or both, made by a court under Part X;

“maltreatment” means all forms of child abuse resulting in actual or potential harm to the child’s health, survival or dignity of the child;

“mental capacity” has the meaning assigned to the words in the Mental Health Act, 2019;

Act No. 6 of 2019

“mental health facility” has the meaning assigned to the words in the Mental Health Act, 2019;

Act No. 6 of 2019

Act No. 6 of  
2019

“mental health practitioner” has the meaning assigned to the words in the Mental Health Act, 2019;

“mental patient” has the meaning assigned to the words in the Mental Health Act, 2019;

“National Coordinating Committee for Children” means the National Coordinating Committee for Children established under section 36;

“next friend” means a person who intervenes to assist a victim who is a child or a child who is a mental patient and brings an action on behalf of a child, and includes a child welfare inspector;

“online exploitation” includes grooming, live streaming, consuming child sexual abuse material, and coercing and black mailing a child for a sexual purpose;

“open adoption” means an adoption in which the parent-child relationship which existed before the adoption is not terminated but a new legal parent-child relationship between the child and the child’s adoptive parent is established and the adoptive parent has parental responsibility for the child;

“original court” in relation to an order under this Act, means the court by which the order was first made;

“parent” means the mother or father of a child and includes a custodial parent;

“parental responsibility” means the duties, rights, powers, responsibilities and authority which, by law or otherwise, a person has in relation to the child and the child’s property in a manner consistent with the evolving capacities of the child;

“personal protection order” means an order made by the court to stop threats or violence against the child who has reasonable fear for personal liberty and safety;

“periodic payments order” means a maintenance order for payments to be done by regular instalments made at defined intervals;

“petition” includes a cross-petition;

“place of safety” means a child care facility, a house or other suitable place, the occupier of which is willing to accept

the temporary care of a child, but excludes a child approved centre or a child reformatory centre;

“precursor chemicals” has the meaning assigned to the words in the Narcotic Drugs and Psychotropic Substances Act, 2021;

Act No. 35 of 2021

“private body” means a voluntary organisation, non-governmental organisation, political party, charitable institution, company, partnership, club or any other person or organisation which is not a public body;

“probation” means the release of a child in conflict with the law, subject to a period of good behaviour by the child in conflict with the law, from detention under supervision;

“probation officer” means a probation officer appointed under section 33;

“probation order” means an order made by a court under Part VIII placing a child under the supervision of a probation officer;

“probation period” means the period specified under a probation order;

“probationer” means a child in conflict with the law placed under supervision by a probation order;

“production order” means an order requiring a person who is harbouring, concealing or otherwise unlawfully detaining a child, or who intends to remove a child from the Republic or from the local limits of the jurisdiction of the court, to disclose any information regarding the whereabouts of the child or to produce the child before the court or restraining the person from removing the child from the jurisdiction of the court for a period that the court may specify;

“prospective parent” means a person who intends to adopt a child under Part XIV;

“public body” has the meaning assigned to the words in the Public Finance Management Act, 2018;

Act No. 1 of 2018

“public officer” has the meaning assigned to the words in the Constitution;

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“putative father” means a man alleged to be or regarded as the father of a non-marital child;

- “receiving State” means a country receiving an adopted child in an inter-country adoption;
- “Register” means a Register kept and maintained under this Act;
- Cap. 51 “register of births” means the register of births kept by the Registrar-General in accordance with the Births and Deaths Registration Act;
- Cap. 51 “Registrar-General” has the meaning assigned to the word in the Births and Deaths Registration Act;
- “relative” in relation to a child, means a person related to the child, by consanguinity or adoption;
- “repealed Acts” means the Legitimacy Act, 1929, the Adoption Act, 1956, the Juveniles Act, 1956, and the Affiliation and Maintenance Proceedings Act, 1995;
- “residence order” means an order granted to a person to reside with a child or other arrangements that the court may determine;
- “respondent” includes a petitioner against whom there is a cross-petition;
- “restorative justice” means the promotion of reconciliation and responsibility through the involvement of a child and the child’s parents, family members, victims and the communities concerned;
- “secured periodic payments order” means a maintenance order made by a court under Part X;
- “serious offence” means an offence which is punishable, without proof of previous conviction, with death, life imprisonment or a term of imprisonment of three years or more, with or without the option of a fine;
- “single man” includes a widower, a divorced man and a man on separation from the man’s wife;
- “single woman” includes a widow, a divorced woman and a woman on separation from the woman’s husband;
- “social welfare report” means a report made by a child welfare inspector regarding the physical, social, psychological and other circumstances, needs and deficiencies of a child for the purpose of assessing the appropriate action to be taken in respect of the child;

“State of origin” means a country in which a child to be adopted resides;

“supervising officer” means a child welfare inspector, probation officer, or a person delegated by the probation officer or child welfare inspector to act on behalf of that probation officer or child welfare inspector;

“wardship order” means an order requiring that a child be placed under the protection of the court; and

“young person” has the meaning assigned to the words in the Constitution.

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3. (1) A child's best interest is the primary consideration in a matter or action concerning the child, whether undertaken by a public or private body.

Best interest of child

(2) A court, an administrative institution or an authorised officer shall in determining the best interests of a child have regard to -

- (a) the ascertainable feelings and wishes of the child concerned, having regard to the age and understanding of the child;
- (b) the child's physical, emotional and educational needs and in particular, where the child has a disability, the ability of a person or institution to provide the special care or medical attention that may be required for the child;
- (c) the likely effect on the child of any change in the circumstances of the child;
- (d) the child's age, sex, religious persuasion, cultural background and any characteristics of a child which the court or an authorised officer considers necessary;
- (e) any harm which the child has suffered or is at risk of suffering;
- (f) the ability of a parent or a person having parental responsibility for the child to meet the child's needs;
- (g) the strength of the relationship between a child and the child's parent or a person having parental responsibility for the child;
- (h) where a child's parents have joint custody, the willingness of the parents to cooperate and co-parent;

- (i) the customs and practices of the community to which the child belongs except where the customs and practices are repugnant to justice and morality;
- (j) the child's exposure to, or use of, drugs or precursor chemicals and, in particular, whether the child is addicted to drugs or precursor chemicals, and the ability of a person or institution to provide special care or medical attention that may be required for the child; and
- (k) other matters that the court, an administrative institution or an authorised officer considers necessary.

(3) A court, an administrative institution, an authorised officer or a person acting in the name of an administrative institution, exercising a power conferred by this Act or any other written law in relation to a child, shall treat the best interests of the child as the first and paramount consideration to the extent that the—

- (a) best interests of the child safeguards and promotes the rights of the child;
- (b) best interests of the child conserves and promotes the welfare of the child; and
- (c) court, an administrative institution, an authorised officer or a person acting in the name of an administrative institution secures for the child guidance and correction as is necessary for the welfare of the child and in the public interest.

Principles in  
achieving  
children's  
rights

4. The following principles shall apply in matters relating to children:

- (a) devotion to the best interests of a child;
- (b) the observance of the right to life, survival and development of a child;
- (c) the observance of children's rights as an integral part of attaining equity and equality among children in all spheres of life;
- (d) non-discrimination of children; and
- (e) child participation and respect for the views of a child in all spheres of life.

PART II

THE RIGHTS AND RESPONSIBILITIES OF CHILD

5. A child has an inherent right to life, dignity and respect and it is the responsibility of the State and the family to ensure the survival and development of the child.

Right to survival and development

6. A child who is capable of forming that child's own views shall be informed of, and be accorded an opportunity to express that child's opinion in a decision or a matter of procedure affecting the child, and that opinion shall be taken into account, as may be appropriate, having regard to the age and maturity of the child and the nature of the decision.

Right to expression

7. (1) A person shall not discriminate against or punish a child on the basis of race, colour, sex, gender, age, language, political or other opinion, conscience, belief, tribe, pregnancy, health, ethnic or social origin, disability, property, birth, economic or other status.

Prohibition of discrimination against child

(2) A person shall not discriminate against or punish a child on the basis of the colour, sex, gender, age, language, political or other opinion, conscience, belief, tribe, pregnancy, health, ethnic or social origin, disability, property, birth, economic or other status of that child's parent, guardian, custodial parent or person having parental responsibility.

8. (1) A child has a right, from birth, to a name and nationality and where a child is deprived of that child's identity, the State shall provide appropriate assistance with a view to establishing that identity.

Right to name and nationality

(2) Subject to this Act, a child has a right to establish who that child's biological parents are, where practicable, if it is in the best interest of a child.

(3) A child shall be registered after birth in accordance with the Births and Deaths Registration Act.

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9. (1) A child has a right to live with, and to be protected and cared for by, the child's parents, or to appropriate alternative care if the child is separated from the parents.

Right to parental care

(2) A court or the Director of Social Welfare may separate a child from a parent where the court or the Director of Social Welfare determines that the child living with the parent would—

- (a) lead to significant harm to the child;
- (b) subject the child to serious neglect or abuse; or
- (c) not be in the best interests of the child.

(3) Subject to subsection (1), where a court or the Director of Social Welfare determines that it is in the best interests of a child to separate the child from a parent, the best alternative care available shall be provided for the child in accordance with this Act.

(4) Subject to this Act, the Ministry responsible for child welfare shall ensure that a child who is separated from a parent maintains personal relations and direct contact with that parent on a regular basis, except if it is contrary to the best interests of the child.

(5) Where a child is separated from the child's family without the leave of a court, the State shall provide assistance for the reunification of the child with the family in an expeditious manner.

Right to  
education  
Act No. 23  
of 2011

**10.** (1) A child's right to education provided under the Education Act, 2011, shall be directed at—

(a) developing the child's—

- (i) personality, talents, skills, and mental and physical abilities to the child's fullest potential;
- (ii) respect for human rights and fundamental freedoms enshrined in the Constitution;
- (iii) respect for the child's parents, cultural identity, language and values; and
- (iv) respect for the natural environment and ecosystem; and

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(b) preparing the child for responsible life in society, in the spirit of tolerance, peace, equality of sexes and friendship.

(2) A child has a right to religious education, subject to appropriate parental guidance.

(3) The State and the parents of a child shall ensure the education of the child.

Right to  
health care

**11.** A child has a right to health and medical care, the provision of which is the responsibility of the child's parents, a person having parental responsibility for a child and the State.

<p><b>12.</b> A child has a right to social protection and social services.</p>	Right to social protection and social services
<p><b>13.</b> (1) A person shall not subject a child to economic exploitation or any work that is hazardous or likely to interfere with the child's education, physical or mental health, spiritual, moral, emotional or social development.</p> <p>(2) The minimum age of a child for the purposes of admission to employment and the number of hours and conditions of employment of a child shall be in accordance with the Employment Code Act, 2019.</p>	Protection from child labour  Act No. 3 of 2019
<p><b>14.</b> (1) A child shall not take part in hostilities or be recruited in armed conflict.</p> <p>(2) The State shall provide protection, rehabilitation, care, recovery and re-integration into normal life for a child who becomes a victim of armed conflict.</p>	Protection from armed conflict
<p><b>15.</b> A child with a disability has the right to be treated with dignity and respect in accordance with the Persons with Disabilities Act, 2012.</p>	Child with disability Act No. 6 of 2012
<p><b>16.</b> A child on the move is entitled to appropriate protection and humanitarian assistance in accordance with the Anti-Human Trafficking Act, 2008, the Refugees Act, 2017 and any other relevant written law.</p>	Protection of child on move Act No. 11 of 2008 Act No. 1 of 2017
<p><b>17.</b> (1) A child is entitled to protection from maltreatment and any other form of exploitation, including sale, trafficking, abduction, cyber bullying or online exploitation by any person.</p> <p>(2) The Minister shall issue guidelines and put in place measures for the establishment of social and child protection programmes to provide necessary support for the child and for the prevention, counselling, identification, reporting, referral, investigation, treatment and follow up of instances of child maltreatment or other forms of exploitation.</p>	Protection from maltreatment and other forms of exploitation
<p><b>18.</b> (1) A person shall not subject a girl child to female genital mutilation.</p> <p>(2) A person shall not subject a child to—</p> <p>(a) child marriage; or</p> <p>(b) cultural rites, and religious or traditional practices, that are likely to negatively affect the child's life, health, social welfare, dignity, and physical or psychological development.</p>	Protection from female genital mutilation, child marriage, etc.

Protection  
from sexual  
exploitation

- 19.** A person shall not—
- (a) subject a child to sexual abuse or sexual exploitation;
  - (b) use a child in prostitution;
  - (c) induce or coerce a child to engage in sexual activity; or
  - (d) expose a child to obscene or pornographic material.

Protection  
from  
hallucinogens,  
alcohol,  
tobacco  
products,  
drugs and  
precursor  
chemicals

**20.** A person shall not subject a child to the use, production, trafficking or distribution of hallucinogens, alcohol, tobacco products, drugs or precursor chemicals.

Right to  
leisure and  
recreation

**21.** A child is entitled to rest, leisure, play and participation in cultural and artistic activities appropriate to the age of that child.

Protection  
from  
corporal  
punishment

**22.** A person shall not impose corporal punishment as a form of punishment on a child.

Protection  
from torture  
and  
deprivation  
of liberty

**23.** (1) A person shall not subject a child to torture, cruel treatment or punishment, **unlawful arrest or deprivation of liberty.**

(2) Despite any other written law, a person shall not subject a child to capital punishment or life imprisonment.

(3) A child shall not be incarcerated on account of the imprisonment of a child's parent except where special circumstances exist as provided under the Zambia Correctional Services Act, 2021.

Act No. 37  
of 2021

Right to  
privacy

**24.** A child has the right to privacy appropriate to the age and maturity of that child.

Rights of  
child witness  
or child  
victim

**25.** (1) A child that is giving evidence to a law enforcement officer or other authorised officer shall be questioned—

- (a) in the presence of the child's parents, guardian or relative, a person having parental responsibility for the child or a child welfare inspector;
- (b) in a manner that avoids any harm being occasioned to the child;
- (c) in a manner that promotes the well-being of the child; and
- (d) having regard to the age, maturity and cognitive abilities of the child, through a child welfare inspector or other authorised officer acting for the child.

(2) A child witness or child victim giving evidence to a law enforcement officer or other authorised officer shall not come into contact with an alleged perpetrator of a crime or be made to confront the alleged perpetrator of a crime.

(3) The identity of a child witness or child victim is confidential and shall not be published under any circumstance.

**26.** (1) Subject to the Constitution and the provisions of this Act, a parent, guardian or person having parental responsibility for a child shall inculcate the following duties and responsibilities on a child:

Duties and responsibilities of child  
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- (a) the duty and responsibility to contribute to the cohesion of the family;
- (b) the duty and responsibility to respect a parent, a guardian, a person having parental responsibility for the child, and an elder at all times and assist them in case of need;
- (c) the duty and responsibility to serve the community through the child's physical and intellectual abilities;
- (d) the duty and responsibility to preserve and strengthen social and national solidarity; and
- (e) the duty and responsibility to preserve and strengthen the positive cultural values of the community in the child's relations with other members of that community.

(2) When taking into account the duty and responsibility of a child, a person shall have due regard to the age, maturity and ability of that child, and to limitations that are contained in this Act.

**27.** Except as otherwise provided in any other written law, a person who wilfully or negligently infringes a right of a child specified in this Act commits an offence and is liable, on conviction—

Sanction for infringement of rights of child

- (a) to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both; or
- (b) depending on the facts of the case, to community service.

**28.** A person who alleges that a provision of this Act is being or is likely to be contravened in relation to a child, may petition the Children's Court for redress, on behalf of the child, without prejudice to any other action with respect to the same matter which is lawfully available.

Enforcement of rights of child

PART III  
ADMINISTRATIONChild  
Development  
Department

29. (1) The Child Development Department in the ministry responsible for child development and welfare is responsible for the promotion and advancement of the rights and development of a child under the general direction of the Permanent Secretary of the ministry responsible for child development and welfare.

(2) Despite the generality of subsection (1), the functions of the Child Development Department are to—

- (a) ensure compliance to child rights standards;
- (b) design and formulate policy on—
  - (i) child development activities; and
  - (ii) the reintegration of children in need of care and protection;
- (c) promote and develop awareness among members of the public including children on matters relating to the rights of children;
- (d) facilitate measures and strategies designed to prevent, respond and end violence against children and abuse;
- (e) provide technical guidance on promotion of child rights, child participation and child protection;
- (f) request data from State and non-state actors on the rights and welfare of children in the Republic and facilitate preparation of national, regional and international reports;
- (g) request *ad hoc* thematic information and data from State and non-state actors for purposes of reporting on issues related to the rights and development of a child;
- (h) disseminate recommendations from regional and international child rights bodies and oversee the implementation of the recommendations by responsible State and non-state actors;
- (i) collaborate with relevant institutions and ministries to exchange information relating to child development; and
- (j) conduct research on matters relating to the promotion and advancement of child rights and development.

(3) The Child Development Department may carry out its functions under this Act on its own or jointly with other ministries, departments, Government agencies, local authorities or public and private bodies.

**30.** (1) The Civil Service Commission shall appoint as a public officer, the Director of Child Development who is responsible for the administration of the functions of the Child Development Department.

Director of Child Development, child development officers and other staff

(2) The Civil Service Commission shall appoint as public officers, child development officers and other staff of the Child Development Department.

(3) The Director of Child Development may, in writing, delegate the exercise of any of the functions conferred on the Director of Child Development by this Act to a child development officer or other authorised officer that the Director of Child Development considers necessary.

(4) The Director of Child Development may, in writing, revoke or vary the delegation of function conferred by the Director of Child Development under subsection (3).

**31.** The Director of Child Development shall, despite the generality of section 30(1)—

Functions of Director of Child Development

- (a) promote child rights and development;
- (b) recommend effective measures to an appropriate authority to prevent violence against children and child rights abuse;
- (c) promote awareness on the provision of legal aid for the advancement of the rights of a child; and
- (d) inspect a child approved centre, child reformatory centre, place of custody and child care facility with a view to assessing the conditions of children held in those places and make recommendations to redress existing challenges.

**32.** (1) The Social Welfare Department in the ministry responsible for child development and welfare is responsible for the administration of this Act and to supervise and exercise control over the planning, financing and coordination of welfare activities relating to children under the general direction of the Permanent Secretary of the ministry responsible for child development and welfare.

Social Welfare Department

(2) Despite the generality of subsection (1), the functions of the Social Welfare Department are to—

- (a) determine priorities in the field of child welfare in relation to the socio-economic policies of the State;
- (b) provide assistance to vulnerable children, including children with disabilities, orphaned and destitute children, children who abuse drugs, children who are sexually abused and children affected by domestic violence;
- (c) establish programmes to alleviate the hardships affecting children;
- (d) regulate child care facilities;**
- (e) support child and family welfare activities;
- (f) promote the provision of social services essential to the welfare of children in addition to the welfare of families;
- (g) oversee fostering and adoption, and ensure compliance with the provisions relating to fostering and adoption under this Act;
- (h) regulate and supervise the activities of an adoption agency;
- (i) cooperate with foreign central authorities in inter-country adoptions and international child abduction;
- (j) provide technical and other support services to agencies carrying out child welfare programmes;
- (k) provide welfare services to a—
  - (i) circumstantial child and the circumstantial child's family;
  - (ii) child in conflict with the law;
  - (iii) child in need of care and protection;
  - (iv) child that is a victim of gender-based violence and human trafficking; and
  - (v) child with disabilities;
- (l) provide shelter to a child under paragraph (k);
- (m) establish a panel of persons from whom a guardian *ad litem* may be selected by a court; and
- (n) maintain a register of perpetrators of child sexual violence for the protection of a child, except that the register shall not include information relating to a child in conflict with the law.

(3) The Social Welfare Department may carry out its functions under this Act on its own or jointly with other ministries, departments, Government agencies, local authorities or public and private bodies.

**33.** (1) The Civil Service Commission, shall appoint as a public officer, the Director of Social Welfare who is responsible for the administration of the functions of the Social Welfare Department.

Director of Social Welfare, child welfare inspectors and probation officers

(2) The Civil Service Commission shall appoint as public officers, child welfare inspectors, probation officers and other staff of the Social Welfare Department.

(3) The Director of Social Welfare may, in writing, delegate the exercise of any of the functions conferred on the Director of Social Welfare by this Act to a child welfare inspector, probation officer or other authorised officer that the Director of Social Welfare considers necessary.

(4) The Director of Social Welfare may, in writing, revoke or vary the delegation of function conferred by the Director of Social Welfare under subsection (3).

**34.** The Director of Social Welfare shall, despite the generality of section 33(1)—

Functions of Director of Social Welfare

- (a) assist in the establishment, promotion, coordination and supervision of services and facilities designed to advance the wellbeing of children;
- (b) provide reports and assessments as may be required by a court or for the enforcement of an order made by a court under this Act;
- (c) ensure the enforcement of court orders in relation to a child which requires supportive, social and administrative arrangements;
- (d) safeguard the welfare of a child in all sectors, including a child in foster care or under care by virtue of a care order or an interim care order;
- (e) trace the parents, guardian or relative of a lost or abandoned child, or return a lost or abandoned child to the child's lawful place of residence;
- (f) provide guidance and other assistance and treatment for children who are arrested or remanded in police custody or a child transit centre; and
- (g) assist children through court proceedings and children's hearings.

Powers of  
child  
development  
officer and  
child welfare  
inspector

35. (1) A child development officer and child welfare inspector shall ensure compliance with this Act.

(2) A child development officer and child welfare inspector shall be provided with a certificate of appointment, in the prescribed form, which shall be *prima facie* evidence of the child development officer and child welfare inspector's appointment.

(3) A child development officer and child welfare inspector shall, in performing a function under this Act—

(a) be in possession of the certificate of appointment referred to under subsection (2); and

(b) show the certificate of appointment to any person who requests to see it or is subject to an inspection or investigation under this Act.

(4) A child development officer and child welfare inspector may, without a warrant, at any reasonable time—

(a) enter and search any premises occupied by an institution or any other premises, including a private dwelling, where information or documents which may be relevant to an inspection may be kept;

(b) search any person on the premises if there are reasonable grounds for believing that the person has possession of a document or article that has a bearing on the inspection, except that a person shall only be searched by a person of the same sex;

(c) examine any document or article found on the premises that has a bearing on the inspection;

(d) require information to be given about any document or article by—

(i) the owner of the premises;

(ii) the person in control of the premises;

(iii) any person who has control of the document or article; or

(iv) any other person who may have the information;

(e) take extracts from, or make copies of, any book or document found on the premises that has a bearing on the investigation;

- (f) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to—
  - (i) search any data contained in, or available to the computer system;
  - (ii) reproduce any record from the data; or
  - (iii) seize an output from the computer for examination and copying;
- (g) attach and, if necessary, remove from the premises for examination and safeguarding a document or article that appears to have a bearing on the inspection; and
- (h) enter an institution, a dwelling place of a person or a child care facility to examine a child or foster child who is placed in the custody of the institution, dwelling place of a person or child care facility.

(5) A child development officer and child welfare inspector who removes a document or article from any premises under subsection (4) (g) shall—

- (a) issue a receipt for the document or article to the owner of, or person in control of, the premises; and
- (b) return the document or article as soon as practicable after achieving the purpose for which it was removed.

(6) A person shall not—

- (a) delay or obstruct a child development officer and child welfare inspector in the performance of the child development officer and child welfare inspector's functions under this Act;
- (b) refuse to give a child development officer and child welfare inspector reasonable assistance that the child development officer or child welfare inspector may require for the purpose of exercising the child development officer or child welfare inspector's powers under this Act;
- (c) fail to produce a report or record, or conceal a facility within a child care facility; or
- (d) give a child development officer or child welfare inspector false or misleading information in answer to an inquiry made by the child development officer or child welfare inspector.

(7) A person who contravenes subsection (6) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(8) A child development officer shall furnish the Director of Child Development with a written report and any other information relating to an inspection as the Director of Child Development may require.

(9) A child welfare inspector shall furnish the Director of Social Welfare with a written report and any other information relating to an inspection as the Director of Social Welfare may require.

(10) Nothing in this section requires a person to disclose or produce information or a document, if the person would in an action in a court be entitled to refuse to disclose or produce the information or document.

National  
Coordination  
Committee  
for Children

**36.** (1) There is established the National Coordinating Committee for Children which is responsible for the coordination of child development and welfare matters in the ministry responsible for child development and welfare.

(2) The composition, functions and proceedings of the National Coordinating Committee for Children shall be prescribed.

(3) The National Coordinating Committee for Children may establish sub-committees in the provinces and districts as prescribed.

Immunity

**37.** An action shall not lie against the Director of Child Development, the Director of Social Welfare, a child development officer, child welfare inspector, probation officer or other staff of the Child Development Department or Social Welfare Department in respect of an act done in good faith and without negligence in the execution of the powers vested in them under this Act.

#### PART IV

##### PARENTAL RESPONSIBILITY

Parental  
Responsibility

**38.** (1) Except where a parent has surrendered that parent's parental responsibilities in accordance with this Act or any other written law, a parent of a child has—

(a) the duty to maintain the child, and in particular to provide the child with—

(i) food;

(ii) shelter;

- (iii) clothing;
  - (iv) medical care, including immunisation;
  - (v) education and guidance; and
  - (vi) general care and assurance of the child's survival and development;
- (b) the duty to protect the child from neglect, discrimination, violence and abuse;
- (c) the right to—
- (i) give parental guidance in religious, moral, social, cultural and other values;
  - (ii) determine the name of the child;
  - (iii) appoint a guardian in respect of the child;
  - (iv) receive, recover, administer and otherwise deal with the property of the child for the benefit and in the best interests of the child;
  - (v) arrange or restrict the emigration of the child from the Republic; and
  - (vi) on the death of the child, arrange for the burial or cremation of the child.
- (2) A parent shall ensure that in the absence of that parent, the child is cared for by a competent person.
- (3) The fact that a person has or does not have parental responsibility shall not affect—
- (a) any obligation which the person may have in relation to the child; or
  - (b) any rights which in the event of the child's death or injury, that person may have in relation to the child's property.
- (4) Subject to the provisions of this Act, a person who does not have parental responsibility for a particular child, but has care and control of the child may act in a manner that is reasonable in the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.

**39.** (1) A child's mother and father, whether married to each other or not, have a duty to protect and provide for the child.

Persons with  
parental  
responsibility

(2) Where a child's father and mother were not married to each other at the time of the child's birth and have not subsequently married each other, the—

(a) mother shall have parental responsibility at the first instance; and

(b) father shall acquire parental responsibility for the child in accordance with section 40.

(3) Except where a person has surrendered the parental responsibilities in accordance with this Act or any other written law, a person who has parental responsibility for a child at any time shall not—

(a) cease to have that parental responsibility for the child; and

(b) surrender or transfer any part of that parental responsibility to another person but may arrange for some or all of the parental responsibility to be met by one or more persons acting on that person's behalf.

(4) A person with whom the arrangement under subsection (3)(b) is made may be a person who already has parental responsibility for the child and the arrangement shall not affect any liability of the person making the arrangement which may arise from any failure by that person to meet any part of the parental responsibility for the child.

(5) Where more than one person has parental responsibility for a child, each of them may act on their own and without the other or others in that responsibility, but nothing in this Part shall be taken to affect the operation of any relevant written law which requires the consent of more than one person in a matter affecting a child.

(6) A person who has parental responsibility for a child shall not act in a manner that contravenes any order made with respect to the child under this Act.

Acquisition  
of parental  
responsibility  
by father

**40.** (1) Where a child's father and mother are not married at the time of the child's birth —

(a) a court may, on an application by the father, order that the father shall have parental responsibility for the child;

(b) the father and mother may, by a parental responsibility agreement, provide for the father's parental responsibility for the child; or

(c) the father shall acquire parental responsibility for the child if that father acknowledges paternity of the child or maintains the child.

(2) Where a child's mother loses parental responsibility under any written law that mother may—

(a) apply to the court for restoration of parental responsibility; or

(b) enter into a parental responsibility agreement to provide for parental responsibility of the child.

**41.** (1) A parental responsibility agreement shall be made in the prescribed manner and form.

Parental responsibility agreement

(2) A parental responsibility agreement shall be terminated by an order of a court made on application by a—

(a) person who has parental responsibility for the child; or

(b) child, with the leave of the court.

(3) A court shall only grant leave under subsection (2) (b), if the court is satisfied that the child has sufficient understanding to make the proposed application.

**42.** (1) Where the mother and father of a child are married to each other at the time of the birth of the child or subsequently marry each other after the birth of the child and the—

Transmission of parental responsibility

(a) mother dies, the father shall exercise parental responsibility for the child either alone or together with any guardian appointed by the mother; or

(b) father dies, the mother shall exercise parental responsibility for the child either alone or together with any guardian appointed by the father.

(2) Where the father and mother of the child were not married at the time of the birth of the child and have not subsequently married each other after the birth of the child and the—

(a) mother dies, the father shall have parental responsibility for the child either alone or with any guardian appointed by the mother or the relatives of the mother if the father has acquired parental responsibility; or

(b) father who has acquired parental responsibility dies, the mother shall exercise parental responsibility in respect of the child either alone or with any guardian appointed by the father or the relatives of the father.

(3) A surviving parent of a child may object to any guardian appointed under subsection (1) or (2) and may apply to a court for the revocation of the appointment of the guardian.

(4) The relatives of the deceased mother or father of the child, may, if the relatives of the deceased mother or father of the child consider the surviving father or mother of the child to be unfit to exercise parental responsibility for the child, apply to a court to make an appropriate order to safeguard the best interests of the child.

(5) Where the mother and the father of the child are deceased or are incapable of exercising parental responsibility due to illness or are mental patients, parental responsibility shall be exercised by—

(a) a guardian;

(b) a relative of the child; or

(c) a person named in a residence order, if a residence order relating to a child is in force or is subsequently made.

(6) A child's next friend shall, where the child's next friend considers the person appointed under subsection (5) to be unfit to exercise parental responsibility, apply to a court to make an appropriate order to safeguard the best interests of the child.

Extension of  
parental  
responsibility  
beyond  
nineteenth  
birthday

**43.** (1) A court may, on an application, extend parental responsibility in respect of a child beyond the date of the child's nineteenth birthday if the court is satisfied that special circumstances exist relating to the welfare of the child that would necessitate that extension being made.

(2) An application under subsection (1) may be made after the child's nineteenth birthday by—

(a) a parent or guardian;

(b) a person having parental responsibility for the child;

(c) the Director of Social Welfare; or

(d) the child.

Failure to  
exercise  
parental  
responsibility

**44.** A person who wilfully fails or refuses to exercise parental responsibility in accordance with this Part commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

## PART V

### ARREST, BAIL AND DEPRIVATION OF A CHILD'S LIBERTY

Age of  
criminal  
responsibility  
of child  
Cap. 87

**45.** A child is not criminally liable for an act or omission except as provided under the Penal Code.

Rights of  
child during  
apprehension

**46.** (1) A child has a right to privacy and protection of the child's identity from exposure by the media—

(a) during an apprehension or arrest;

(b) during an investigation of an offence or court proceedings;

(c) while serving an order of the court; and

(d) whilst in custody.

(2) A child has the right to remain silent during an apprehension, arrest, an investigation of an offence or court proceedings, or whilst in custody and shall be informed of the right to remain silent when apprehended or arrested.

(3) A person shall not release any information for publication that is likely to lead to the identification of a child in the course of an apprehension or arrest while in custody, during an investigation of an offence or court proceedings, and while serving an order of the court.

(4) A person who contravenes subsection (3) commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

47. (1) A law enforcement officer or other person shall, in apprehending a child, touch or confine the child to be apprehended if the child does not submit to the apprehension by word or action.

Apprehension  
of child

(2) A law enforcement officer shall not be in uniform or carry a firearm when apprehending a child at that child's dwelling home.

(3) Despite subsection (2), a law enforcement officer shall—

(a) wear a uniform and carry a firearm where—

(i) the child or a person at a child's dwelling home poses a danger to the law enforcement officer, the child or any other person at the child's dwelling home; or

(ii) the law enforcement officer is aware that there is an imminent threat at the child's dwelling home and the wearing of a uniform and the possession of a firearm is necessary for the protection and safety of persons within the vicinity of the child's dwelling home; and

(b) on request by a child, parent, guardian or person having parental responsibility for the child, provide an identification and which shall be *prima facie* evidence that the person is a law enforcement officer.

(4) A law enforcement officer or other person may, where a child forcibly resists an apprehension or attempts to evade the apprehension, use reasonable means to effect the apprehension.

48. (1) Subject to section 45 and the Criminal Procedure Code, a person may, without warrant, apprehend a child who, in the presence of that person, commits an offence or the child is reasonably suspected to have committed an offence.

Apprehension  
by person  
Cap. 88

(2) A person who apprehends a child shall immediately hand over the child to the nearest police station.

49. (1) A law enforcement officer may apprehend a child with or without a warrant.

Apprehension  
and arrest by  
law  
enforcement  
officer

(2) A law enforcement officer may apprehend a child, without a warrant, if the law enforcement officer has reasonable grounds to suspect that the child—

(a) has committed an offence;

(b) is about to commit an offence where—

(i) there is no other way of preventing the commission of the offence; or

(ii) the surroundings indicate that an offence is likely to be committed.

(c) commits an offence in the presence of the law enforcement officer;

(d) obstructs the law enforcement officer in the execution of law enforcement duties;

(e) escapes or attempts to escape from lawful custody; or

(f) is in possession of an implement adapted or intended to be used for the unlawful entry into a building without reasonable explanation for the possession of that implement.

(3) An arrest of a child by a law enforcement officer shall be made with due regard to the dignity and well-being of the child and in the presence of a parent, guardian, close relative of the child, person having parental responsibility for the child or a child welfare inspector

Information  
of arrest of  
child

**50.** (1) A child welfare inspector shall, within forty-eight hours, where an arrest of a child is made in the presence of a child welfare inspector as provided under section 49 (3) and the child's parent, guardian, close relative of the child or person having parental responsibility for the child cannot be found, trace the parent, guardian or close relative of the child or the person having parental responsibility for the child.

(2) A child welfare inspector shall, where a child welfare inspector cannot trace the parent, guardian, close relative of the child or the person having parental responsibility for the child, take responsibility of the child and place the child in a place of safety.

Issuance of  
warrant of  
arrest  
Cap. 88

**51.** A warrant for the arrest of a child shall be issued in accordance with the Criminal Procedure Code.

**52.** (1) A law enforcement officer effecting an arrest of a child shall, having regard to the age and maturity of the child, inform the child of the reason for the arrest.

Notification of reason for arrest or substance of warrant

(2) A law enforcement officer acting under the authority of the warrant shall, where an arrest is made under warrant and having regard to the age and maturity of the child, notify the child of the content of the warrant and exhibit a copy of the warrant to the child.

**53.** (1) A child may, where a child is arrested under section 48, be searched by a law enforcement officer in the presence of a child welfare inspector.

Search of arrested child

(2) A child shall be searched by a law enforcement officer of the same sex, and where a law enforcement officer of the same sex is not available, an adult of the same sex authorised by the law enforcement officer shall conduct the search.

(3) A law enforcement officer to whom the child is handed over to may take the articles of the child, other than clothing into safe custody.

(4) A search of a child shall be made with decency.

(5) The right to search shall not include the right to examine the private parts of the child, except where the circumstances of the offence warrant the examination of the private parts of the child, and that examination shall be carried out by a health practitioner.

(6) The examination referred to under subsection (5) shall be carried out in the presence of the child's parents, guardian or close relative, a person having parental responsibility for the child or a child welfare inspector, unless the child decides otherwise.

(7) Where a child is released on recognisance or on police bond, a law enforcement officer shall search the child or any suspected premises if the law enforcement officer has reasonable grounds to believe that the child is in possession of—

(a) stolen articles;

(b) instruments of violence;

(c) tools connected with the kind of offence the child is alleged to have committed and is charged with; or

(d) other articles which may provide evidence against the child with regard to the offence that the child is alleged to have committed.

Caution by  
law  
enforcement  
officer

**54.** (1) A law enforcement officer may, where it is in the best interests of the child, give an informal caution for a minor offence instead of arresting a child.

(2) An informal caution shall be a verbal warning of which no record shall be required to be kept.

(3) A law enforcement officer may give a formal caution to a child, with or without conditions, on the recommendation of a child welfare inspector.

(4) A formal caution to a child shall be given in private in the presence of a parent, guardian, close relative of the child or person having parental responsibility for the child.

(5) A law enforcement officer shall give a formal caution to a child in the presence of a child welfare inspector if the parent, guardian, close relative of the child or the person having parental responsibility for the child is absent or cannot be found by the law enforcement officer.

(6) A law enforcement agency shall cause a record of formal cautions to be kept in a register for the purpose of that law enforcement agency.

(7) A register of formal cautions referred to in subsection (6) shall be made available to a child welfare inspector for the purposes of this Act.

(8) A record of a formal caution shall be expunged after a period of five years from the date on which the caution was entered in the register.

Interview of  
child

**55.** (1) A child shall only be questioned or interviewed by a law enforcement officer in relation to an alleged offence if a parent, guardian, child welfare inspector, legal representative, close relative of the child or the person having parental responsibility for the child is present at the questioning or interview.

(2) A law enforcement officer shall, if the law enforcement officer fails to contact a child's parent, guardian, legal representative, close relative of the child or the person having parental responsibility for the child to be present at the questioning or interview of the child, request the presence of a child welfare inspector.

(3) Despite subsection (1), where the law enforcement officer considers that it is not in the best interests of a child for the child's parent, guardian, legal representative, close relative of the child or the person having parental responsibility for the child to be present, the law enforcement officer shall arrange for a child welfare inspector to be present at the interview.

56. (1) A child under arrest shall be released by a law enforcement officer on the child's own recognisance or a recognisance entered into by the child's parent, guardian, close relative of the child or the person having parental responsibility for the child, unless the offence which the child is accused of is a serious offence. Recognisance

(2) A law enforcement officer shall, where a child is not released on recognisance, seek an order from a court to place the child in a place of safety.

(3) A court shall make an order to place a child in a place of safety within forty-eight hours after the arrest of the child.

57. (1) A child shall not be taken into custody— Custody of child

(a) except as a measure of last resort; or

**(b) for a period of more than forty-eight hours.**

(2) A child in custody at a police station has a right to—

(a) food;

(b) medical attention, if required;

(c) reasonable visits from the child's parent, guardian, legal representative, close relative of the child or the person having parental responsibility for the child; and

(d) any other condition reasonably required for the welfare of the child.

(3) A law enforcement officer shall, where a child is not released on recognisance under section 56 or within forty-eight hours after the child is arrested, make arrangements to place the child in custody in a part of a police station designated for children or in a part of a police station which is separate from the area where adults are detained.

(4) A child shall not be allowed to associate with a person other than the child's parent, guardian, close relative of the child, child welfare inspector, legal representative, the person having parental responsibility for the child or a police officer while in custody at a police station or while being transported to a child transit centre or place of safety.

(5) A child shall be under the care of an adult of the same sex while in custody in a police station or while being transported to a child transit centre or place of safety.

(6) Male children in custody shall be held separately from female children.

## PART VI

## DIVERSION OPTIONS

Diversion  
options

**58.** (1) Where a child is in conflict with the law, diversion shall be applied as a measure of first resort.

(2) The following diversion options shall apply:

- (a) an informal reprimand by a law enforcement officer;
- (b) a formal and recorded caution made by a law enforcement officer in the presence of a child's parent, guardian, close relative of the child or person having parental responsibility for the child;
- (c) taking the child through a diversion programme;
- (d) mediation;
- (e) family group conferencing; or
- (f) restitution.

(3) In determining the diversion option to be applied to a child, the following factors shall be considered:

- (a) the nature and circumstances of the offence;
- (b) the degree of harm caused by the child;
- (c) the culpability of the child;
- (d) the extent of the child's involvement in the offence;
- (e) the child's age and developmental needs;
- (f) whether the child is a repeat offender;
- (g) whether the child committed the offence with an adult;
- (h) the extent of remorse of the child;
- (i) the child's cooperation with the relevant authorities;
- (j) the child's vulnerability;
- (k) whether the child targeted the victim or vice-versa;
- (l) the child's cultural, religious and linguistic background;
- (m) the child's level of education;
- (n) the child's domestic and environmental circumstances;
- (o) the child's cognitive ability;
- (p) the interests of society; and
- (q) whether the child failed to respond to a previous diversion option applied.

(4) A child has equal access to a diversion option and shall not be discriminated against in the selection of a diversion option.

59. A child may be diverted from the formal criminal justice system if—

Conditions for diversion

- (a) there is a likelihood of a *prima facie* case against the child;
- (b) the child acknowledges responsibility for the offence;
- (c) the child and the child's parent, guardian or person having parental responsibility for the child consents to the nature, content and duration of a diversion option; and
- (d) the child and the child's parent, guardian or person having parental responsibility for the child understand the consequences of a failure to comply with a diversion option as specified under section 60(4).

60. (1) A child welfare inspector or probation officer shall, where a child fails to comply with a diversion option, apply to a juvenile court or Children's Court for a warrant to apprehend the child or move a juvenile court or Children's Court to issue summons for the child to appear before a juvenile court or Children's Court.

Failure to comply with diversion option

(2) A juvenile court or Children's Court shall inquire into the reasons for the failure to comply with a diversion option and determine whether or not the failure is due to the child's fault or the fault of the child's parent, guardian or person having parental responsibility for the child.

(3) A juvenile court or Children's Court may, where a juvenile court or Children's Court finds that the failure is not due to the child's fault or the fault of the child's parent, guardian or person having parental responsibility for the child—

- (a) continue with the diversion option, with or without altered conditions;
- (b) apply a different diversion option; or
- (c) make an appropriate order which shall assist the child and the child's family to comply with the recommended diversion option.

(4) A juvenile court or Children's Court may, where the juvenile court or Children's Court finds that the failure is due to the child's fault or the fault of the child's parent, guardian or person having parental responsibility for the child—

- (a) order that the recommended diversion option should continue, with or without altered conditions, on recognisance being given by the child or the child's parent, guardian or person having parental responsibility for the child;
- (b) apply a different diversion option;
- (c) make an appropriate order which will assist the child and the child's family to comply with the recommended diversion option; or
- (d) order trial of the child to proceed.
- 61.** A diversion programme shall—
- (a) promote the dignity and well-being of a child;
- (b) promote the development of a child's self-esteem and a child's ability to contribute to society;
- (c) not be exploitative, harmful or hazardous to the physical and mental health of a child;
- (d) be appropriate to the age and maturity of a child;
- (e) not interfere with the education of a child; and
- (f) give useful skills to a child, where possible.
- 62.** (1) A diversion service provider shall not offer a diversion programme if that diversion service provider is not accredited in accordance with this Act.
- (2) A diversion service provider who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.
- 63.** (1) A diversion service provider that intends to offer a diversion programme shall apply to the Director of Social Welfare for accreditation as a diversion service provider in the prescribed manner and form on payment of a prescribed fee.
- (2) The Director of Social Welfare shall, within thirty days of receipt of an application under subsection (1)—
- (a) grant accreditation if the diversion programme that the diversion service provider seeks to offer meets the requirements under section 61; or
- (b) reject accreditation if the diversion programme that the diversion service provider seeks to offer does not meet the requirements under section 61.

Requirements  
for diversion  
programme

Prohibition  
of provision  
of diversion  
programme  
without  
accreditation

Application  
for  
accreditation  
of diversion  
programme

(3) The Director of Social Welfare shall, where the Director of Social Welfare rejects the accreditation of a diversion service provider under subsection (2)(b), inform the diversion service provider of the reasons for the rejection.

(4) The Director of Social Welfare shall, where the Director of Social Welfare grants the accreditation of a diversion service provider in accordance with subsection (2)(a), issue a diversion service provider with a certificate of accreditation within fourteen days of the grant of accreditation.

**64.** (1) The Director of Social Welfare may suspend or revoke the accreditation of a diversion service provider if the diversion service provider—

Suspension  
or revocation  
of  
accreditation  
of diversion  
programme

(a) obtained the accreditation through fraud or misrepresentation of a material fact;

(b) does not comply with a term or condition of the accreditation; or

(c) operates in contravention of this Act or any other written law.

(2) The Director of Social Welfare shall, before suspending or revoking the accreditation of a diversion service provider, notify the diversion service provider of the intention to suspend or revoke the accreditation and shall—

(a) give reasons for the intended suspension or revocation; and

(b) require the diversion service provider to—

(i) show cause, within a reasonable time that the Director of Social Welfare may specify in the notice, why the accreditation should not be suspended or revoked; or

(ii) remedy the default.

(3) The Director of Social Welfare shall not suspend or revoke the accreditation of a diversion service provider if the diversion service provider takes remedial measures to the satisfaction of the Director of Social Welfare within the period specified under subsection (2).

(4) The Director of Social Welfare shall, in making the final determination on the suspension or revocation of the accreditation of a diversion service provider consider the remedial measures made by the diversion service provider in accordance with subsection (2).

(5) The Director of Social Welfare shall suspend or revoke the accreditation of a diversion service provider if the diversion service provider does not take remedial measures to the satisfaction of the Director of Social Welfare in accordance with subsection (2), and notify the diversion service provider of the suspension or revocation of accreditation.

## PART VII

## COURT PROCEEDINGS

Constitution  
of juvenile  
court

**65.** A subordinate court sitting for the purposes of hearing a charge against a child or for any other purpose relating to a child shall constitute itself as a juvenile court.

Jurisdiction  
of juvenile  
court

**66.** (1) A juvenile court shall—

(a) conduct civil proceedings on matters set out under Parts IV, VI, IX, X, XI and XII;

(b) hear any charge against a child, other than a charge—

(i) of murder or treason;

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(ii) of a class of offences specified under the Criminal Procedure Code to be tried by the High Court;  
or

(iii) in which the child is charged together with an adult; and

(c) exercise any other jurisdiction conferred by this Act or any other written law.

(2) A juvenile court shall, where on the trial of a person the question of age of the accused person arises, at the instance of the defence or otherwise, inquire into and determine the question as soon as it arises.

(3) An appeal against the decision of a juvenile court shall lie with the Children's Court.

Jurisdiction  
of Children's  
Court

**67.** (1) A Children's Court shall—

(a) hear a charge against a child—

(i) of murder or treason;

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(ii) of a class of offences specified under the Criminal Procedure Code to be tried by the High Court;

(iii) in which the child is charged together with an adult;

- (b) hear an appeal against a decision of a juvenile court;
- (c) conduct civil proceedings on matters set out under Parts XIII and XIV; and
- (d) exercise any other jurisdiction conferred by this Act or any other written law.

(2) A charge against a child for an offence which if committed by an adult would be punishable by death shall be heard by a Children's Court.

(3) An appeal against the decision of the Children's Court shall lie with the Court of Appeal.

(4) Where any conviction or sentence made or passed by a court, other than a juvenile court, is appealed against or is brought before a Children's Court for confirmation or revision and it appears that the person convicted was at the time of the commission of the offence a child, the Children's Court may substitute for the conviction, a finding of guilty and substitute for the sentence, an order.

**68.** (1) A juvenile court or Children's Court shall sit in a different building or room from that in which sittings of other courts are held, or at different times or dates from those on which sittings of other courts are held.

Sittings of  
juvenile court  
or Children's  
Court

(2) A person shall not be present at a sitting of a juvenile court or Children's Court, except—

- (a) a member or officer of the juvenile court or Children's Court;
- (b) a party to the case before the juvenile court or Children's Court;
- (c) a party's legal representative;
- (d) a witness;
- (e) a parent, guardian or person having parental responsibility for the child;
- (f) a person that the juvenile court or Children's Court may authorise to be present; and
- (g) any other person directly concerned with the case.

(3) Subject to section 78 (4) (d), the juvenile court or Children's Court may, where in any proceedings in relation to an offence against or by a child, or any conduct contrary to decency or morality, a person who, in the opinion of a juvenile court or Children's Court, is a child and is called as a witness, direct that all or any persons, who are not members or officers of the juvenile court or Children's Court, or parties to the case or the parties legal representatives, be excluded from the juvenile court or Children's Court.

(4) Proceedings in a juvenile court or Children's Court shall be informal and a law enforcement officer shall not be in uniform or carry a firearm.

(5) A restraint shall only be used on a child if there are exceptional circumstances which warrant the use of the restraint for the safety of any person.

Prohibition  
of other  
courts  
hearing  
charge or  
matter  
against child

**69.** (1) A court, other than a juvenile court or Children's Court, shall not hear any charge against a child or dispose of any matter which affects a person who appears to the court to be a child if it determines that—

(a) the charge or matter is one in which jurisdiction is conferred on the juvenile court or Children's Court; or

(b) a juvenile court or Children's Court is constituted for the place, district or area concerned.

(2) A court shall, where the court makes a determination under subsection (1), make an order transferring the charge or matter to a juvenile court or Children's court.

(3) Despite subsection (1), where a juvenile court or Children's Court is not constituted for a place, district or area concerned, a court of competent jurisdiction may deal with an application for bail concerning a child if it is in the best interests of the child to do so.

(4) A court shall, where it refuses to grant bail, record the reasons for the refusal and inform the applicant of the right to apply for bail to—

(a) the Children's Court where bail is denied in a juvenile court; or

(b) the Court of Appeal where bail is denied in the Children's Court.

(5) A court shall, where the court, other than a juvenile court or Children's Court, hears a charge against a child, apply the provisions of this Act relating to the safeguards to be accorded to a child in conflict with the law.

**70.** (1) Where a child appears before a court of competent jurisdiction, other than the Children's Court, on a charge made jointly against the child and an adult, that court shall remit the case to the Children's Court for hearing and determination.

Remission of  
child to  
Children's  
Court

(2) A court by which an order remitting a case to the Children's Court is made under this section—

(a) may give direction that the court considers necessary with respect to the custody of the child or for the release of the child on bail until the child can be brought before the Children's Court; and

(b) shall cause to be transmitted to the registrar of the Children's Court a certificate setting out the nature of the offence.

**71.** (1) Where a person, whether charged with an offence or not, is brought before a court and it appears to the court that the person is a child or the person alleges that the person is a child, the court shall make an inquiry as to the age of that person.

Presumption  
and  
determination  
of age

(2) In the absence of a birth certificate or an affidavit sworn for the purpose of certifying a person's date of birth, a certificate signed by a health practitioner as to the age of a person below nineteen years of age shall be evidence of that age before a court without proof of signature, unless the court directs otherwise.

(3) An order of a court shall not be invalidated by any subsequent proof that the age of the child has not been correctly stated to the court and the age presumed or declared by the court to be the age of the child shall be deemed to be the true age for the purpose of any proceeding under this Act.

(4) Despite subsections (3), a court may vary its order under this section on subsequent proof that the age of the child has not been correctly stated to the court.

**72.** (1) A child in conflict with the law shall—

(a) be informed promptly and directly of the charges against that child;

(b) have the matter determined without delay;

(c) not be compelled to give testimony or to confess guilt;

(d) have free assistance of an interpreter if the child cannot understand or speak the language used;

Rights of  
child in  
conflict with  
the law

- (e) if a finding of guilty is made, have the decision and any measures imposed in consequence thereof reviewed by a higher court;
- (f) have the child's privacy fully respected at all stages of the proceedings; and
- (g) if that child has a disability, be given special care and be treated with the same dignity as a child without disability.

(2) A child in conflict with the law before a court is entitled to legal representation.

(3) The Legal Aid Board shall provide legal aid services where a child cannot afford legal representation of choice.

(4) A court may, where a child is brought before the court in proceedings under this Act or any other written law and the child is not represented, cause the issuance of a certificate of legal aid or cause the child to be assisted by a child welfare inspector.

(5) Any expenses incurred in relation to the legal representation of a child under subsection (3) shall be defrayed out of monies appropriated by Parliament.

Appearance  
of child in  
juvenile  
court or  
Children's  
Court and  
bail

**73.** (1) A juvenile court or Children's Court shall, at the commencement of proceedings in a juvenile court or Children's Court inform the child in a language that the child understands of the following rights:

- (a) the right to have the child's parent, guardian, probation officer or child welfare inspector or the person having parental responsibility for the child present at the proceedings;
- (b) the right to legal representation; and
- (c) the right to legal aid.

(2) Where a child appears before a juvenile court or Children's Court charged with an offence, the court shall enquire into the case and, unless there is a serious danger to the child or the community, release the child on bail.

(3) A child granted bail shall be released from custody after giving security or accepting specified conditions.

(4) A juvenile court or Children's Court may grant bail on the child's own undertaking or with sureties from the child's parent, guardian or person having parental responsibility for the child.

(5) The amount of the bail shall be fixed with due regard to the circumstances of the case and shall not be unreasonable or excessive.

**74.** (1) A charge sheet or information shall be translated in a language that a child in conflict with the law understands.

Procedure in court

(2) A juvenile court or Children's Court shall request a child in conflict with the law to indicate to the juvenile court or Children's Court whether or not the child admits the offence in the charge sheet or information.

(3) A charge may be withdrawn at any stage of the proceedings and—

(a) if the charge is withdrawn before the child is put on defence, the child shall be discharged; or

(b) if the charge is withdrawn after the child has made a defence, that child shall be acquitted.

(4) The discharge of a child under subsection (3)(a) shall not be a bar to subsequent proceedings against the child on the same facts.

(5) If it appears to the court that a *prima facie* case is established, the evidence of any witness for the defence shall be heard and the child shall have a right to remain silent or be allowed to give evidence or make a statement.

(6) A child shall, where a court is satisfied that the offence is proven against a child, request the child to say anything in mitigation of the penalty or otherwise before sentencing.

(7) Subject to subsection (6), a court shall before deciding on how to deal with the child, where practicable, obtain information in relation to the child's general conduct, home surroundings, school record, and medical history that may assist the court to deal with the case in the best interests of the child, and the court may ask the child any question arising out of the information obtained.

**75.** (1) A juvenile court or Children's Court may, where a child is not released on bail, make an order to remand the child to a child transit centre situated within a reasonable distance from a juvenile court or Children's Court.

Remand of apprehended child during trial

(2) An order for remand made under subsection (1) shall be delivered with the child to the person who is vested with the care of the child and shall be sufficient authority for the detention of the child by that person.

(3) A child under a remand order shall be deemed to be in legal custody while on remand and while being conveyed to or from the child transit centre, and if the child escapes, the child may be apprehended without warrant.

(4) The maximum period of a remand warrant shall be seven days, and the remand warrant shall not be renewed without the appearance of the child at the hearing.

(5) The total period of remand of a child shall not exceed ninety days except in the case of an offence punishable by death, where the period of remand shall not exceed one hundred and eighty days.

(6) A child shall not be placed on remand in an adult prison or correctional centre.

(7) A female child shall not be remanded in the same child transit centre at the same time with a male child.

(8) A child on remand shall be supervised only by a person of the same sex as the child.

(9) A child on remand who is ill, or who complains of illness, shall be examined and treated promptly by a health practitioner.

(10) A police officer or probation officer shall be responsible for transporting a child between a juvenile court or Children's Court and the child transit centre, and that police officer or probation officer shall be of the same sex as the child.

Social  
welfare  
report of  
child

**76.** (1) A juvenile court or Children's Court shall, where a child is charged with an offence, order a child welfare inspector to submit a social welfare report to the juvenile court or Children's Court and that juvenile court or Children's Court shall take the social welfare report into account in the making of an order.

(2) A child welfare inspector shall, in preparing the social welfare report under subsection (1), visit the home of the child.

(3) A social welfare report shall include particulars on the background of the child, the present circumstances of the child, the conditions under which the offence was committed and recommendations for an order.

(4) A social welfare report may include a recommendation that the matter before a juvenile court or Children's Court be dealt with under the diversion procedures under Part VI.

(5) The social welfare report referred to in this section is confidential and shall not be accessed by any other person except an officer of the juvenile court or Children's Court.

(6) A juvenile court or Children's Court shall—

(a) inform the child in relation to whom a social welfare report is made about the contents of the social welfare report; and

(b) avail a copy of the social welfare report to the child in respect of whom it is made or the child's legal representative.

(7) A juvenile court or Children's Court may request an oral report from a child welfare inspector in addition to a social welfare report.

(8) A juvenile court or Children's Court shall, where it rejects the recommendations given in a social welfare report, give written reasons for the rejection and make an alternative order as the juvenile court or Children's Court considers necessary in the best interests of the child.

77. (1) A juvenile court or Children's Court may, where a child is charged with an offence, order the child's parent, guardian or the person having parental responsibility for the child to give security to the juvenile court or Children's Court for the good behaviour of the child.

Parent,  
guardian to  
give security

(2) Where a juvenile court or Children's Court determines that a charge against a child is proved, it may make an order against the child's parent, guardian or person having parental responsibility for the child for the payment of damages or costs, or require the parent, guardian or person having parental responsibility for the child to give security for good behaviour, without proceeding to make an order against the child.

(3) A juvenile court or Children's Court may make an order under subsection (2) against a child's parent, guardian or person having parental responsibility for the child who has been asked to attend the juvenile court or Children's Court but has failed to do so, but shall not make the order without giving the parent, guardian or person having parental responsibility for the child an opportunity to be heard.

(4) Any sums imposed and ordered to be paid under this section by the parent, guardian or person having parental responsibility for the child may be recovered by distress.

(5) A juvenile court or Children's Court shall not exercise the powers conferred under this section in a discriminatory manner.

(6) A parent, guardian or person having parental responsibility for the child may appeal against an order made under this section.

Evidence of  
Child

**78.** (1) Where, in any criminal or civil proceedings against a person, a child is called as a witness, the juvenile court or Children's Court shall receive the evidence, on oath, of the child if, in the opinion of the juvenile court or Children's Court, the child possesses sufficient intelligence to justify the reception of the child's evidence, on oath, and understands the duty of speaking the truth.

(2) If, in the opinion of the juvenile court or Children's Court, the child does not possess sufficient intelligence to justify the reception of the child's evidence, on oath, and does not understand the duty of speaking the truth, the child may give—

(a) unsworn evidence that may be received as evidence in a juvenile court or Children's Court; or

(b) evidence through a child welfare inspector responsible for the child's case.

(3) A child required to give evidence in a juvenile court or Children's Court shall be prepared to testify by a child welfare inspector or any other authorised officer.

(4) A child that is giving evidence in a court shall—

(a) be questioned in an environment that is child friendly;

(b) be questioned in camera;

(c) be questioned in a manner that is proportional to the child's age and maturity of the child;

(d) not interact or be in the same room with a person the child is testifying against; and

(e) not be questioned more than twice.

(5) Subject to subsection (4) (d), a person the child is testifying against or that person's legal practitioner shall cross examine a child witness through—

- (a) a child welfare inspector, an authorised officer or a child's next friend, acting as an intermediary; or
  - (b) the use of a video link.
- (6) The juvenile court or Children's Court shall—
- (a) permit recorded pre-trial interviews with a child to be presented as evidence *in lieu* of a live testimony by a child; or
  - (b) request a report from a child welfare inspector or other authorised officer who has interviewed a child to be used as evidence.
- (7) Information about the previous sexual history of a child witness or child victim, or a delay between the alleged commission of the offence and the reporting of the offence shall not be presented as evidence before a juvenile court or Children's Court.
- (8) A child witness shall be protected from threats, intimidation, reprisal or any other form of victimisation prior to and when giving evidence before a juvenile court or Children's Court.
- (9) A juvenile court or Children's Court may, having regard to the nature and circumstances of the offence in question, require evidence presented before the juvenile court or Children's Court to be corroborated by some other material evidence.

79. (1) A juvenile court or Children's Court may deal with a child in one or more of the following ways:

- (a) dismiss the case against the child or discharge the child;
- (b) make a probation order in respect of the child;
- (c) send the child to a child approved centre or child reformatory centre;
- (d) commit the child to the care of a fit person or child care facility;
- (e) in the case of a child who is a young person, order the young person to pay a fine, damages or costs;
- (f) order the child's parent, guardian or person having parental responsibility for the child to pay a fine, damages or cost;
- (g) order the child's parent, guardian or person having parental responsibility for the child to give security for the good behaviour of the child;
- (h) make a restorative justice order in accordance with programmes established under section 84; or
- (i) in any other manner that the juvenile court or Children's Court determines in the administration of justice.

Methods of dealing with child in conflict with law

(2) A juvenile court or Children's Court shall, in making an order under subsection (1), take into consideration the ability of the young person, child's parent, guardian or a person having parental responsibility for the child to pay the fine, damages or costs before the order is made.

(3) A child below the age of sixteen shall not be given a custodial order by a court.

(4) A child who is aged sixteen to eighteen shall not be given a custodial order if the child can be suitably dealt with in any other manner.

(5) A juvenile court or Children's Court shall not pronounce or record an order of death against a child.

(6) A juvenile court or Children's Court shall not use the words "conviction" and "sentence" in relation to a child before the court and a reference in any written law to "conviction" and "sentence" shall not apply but the words "finding of guilty" or "order" shall be used.

(7) A juvenile court or Children's Court shall expeditiously deal with the case of a child and if the case is not completed within six months of the child's first appearance before the court, the juvenile court or Children's Court may discharge the child immediately.

(8) Nothing in this section shall be construed as restricting the power of a juvenile court or Children's Court to pass any order or a combination of orders which it is empowered to pass under this Act or any other written law in relation to a child.

Payment of  
fine by  
parent,  
guardian or  
person  
having  
parental  
responsibility

**80.** (1) A juvenile court or Children's Court may, when dealing with a child on whom a fine, damages or costs may be imposed, order that the fine, damages or costs awarded be paid by the child's parent or guardian or person having parental responsibility for the child instead of the child, unless the juvenile court or Children's Court is satisfied that the child's parent or guardian or person having parental responsibility for the child—

(a) cannot be found; or

(b) has not contributed to the commission of the offence by neglecting to exercise due care for the child.

(2) A juvenile court or Children's Court may exercise the power conferred under subsection (1) without imposing any other punishment.

**81.** (1) Subject to section 4, where a juvenile court or Children's Court is considering whether or not to make one or more orders under this Act with respect to a child, the juvenile court or the Children's Court shall only make the order or orders if it considers that doing so would be more beneficial to the welfare of the child than not making an order at all.

General principles with regard to proceedings in juvenile court or Children's Court

(2) A juvenile court or Children's Court shall, in any proceedings in which the issue of the upbringing of a child arises, have regard to the general principle that any delay in determining the question is likely to be prejudicial to the welfare of the child.

(3) A juvenile court or Children's Court shall, in considering whether or not to make an order with regard to a child, have regard to the best interests of a child referred to under section 3.

(4) A juvenile court or Children's Court may, if it considers necessary for the determination of any matter in issue before it, of its own motion or on application, call any expert witness that it considers appropriate to provide assistance to the juvenile court or Children's Court, and the expense of that expert witness shall be determined by the juvenile court or Children's Court and shall be defrayed out of moneys appropriated by Parliament.

(5) In any proceedings concerning a child, whether instituted under this Act or any other written law, a child's name, identity, home, last place of residence, school or the particulars of the child's parents, photograph, depiction or caricature of the child shall not be published or revealed in any publication, report or otherwise.

(6) In this section, "report" includes a law report.

(7) A person who contravenes subsection (5) commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

**82.** A juvenile court or Children's Court shall ensure that a child welfare inspector or any other authorised officer is present at all stages of the proceedings in a juvenile court or Children's Court to safe guard the interests of the child.

Presence of child welfare inspector or authorised officer

**83.** (1) A juvenile court or Children's Court may, in considering a question with respect to a child under this Act, require a report to be presented to it, either oral or written as the juvenile court or the Children's Court may direct, by a person designated by that juvenile court or Children's Court on matters relating to the child that the juvenile court or Children's Court considers necessary.

Reports

(2) A juvenile court or Children's Court may, in considering a report under this section, take into account—

- (a) any statement contained in the report, or
- (b) any evidence given in respect of the matters referred to in the report which is relevant to the question before the juvenile court or Children's Court.

## PART VIII

### PROBATION OF CHILDREN

#### Division 1 - Administration

Programmes for combating crime and rendering probation services

**84.** The Minister may for purposes of this Act, establish or cause to be established a programme or service aimed at—

- (a) the prevention and combating of crime involving a child;
- (b) the assessment, care, treatment, support, referral for, and provision of, counselling in respect of a child who is a victim of crime;
- (c) the observation, treatment, counselling and supervision of a child who is a probationer and has been released from a child approved centre or a child reformatory centre or who is placed in the custody of any person in accordance with any written law;
- (d) the rendering of assistance to the family of a child-
  - (i) referred to under paragraph (c); or
  - (ii) placed in custody in a child approved centre or a child reformatory centre;
- (e) the establishment and financing of a child approved centre;
- (f) the adaptation of children under paragraph (c) to the community and their families;
- (g) early intervention, including family group conferencing; and
- (h) restorative justice and diversion options, including the compensation of victims of crime.

Functions of probation officer

**85.** A probation officer shall, subject to the direction of a juvenile court or Children's Court—

- (a) investigate the circumstances of a child and prepare a report to the juvenile court or Children's Court on the treatment and committal of the probationer to an institution, and to render assistance to the probationer's family;
- (b) assist probationers in complying with the probation conditions in order to improve probationer social functioning;
- (c) advise and assist the probationer and, where possible, endeavour to find the probationer suitable employment;
- (d) report to a juvenile court or Children's Court if a probationer does not comply with, or breaches the probation conditions;
- (e) report to a juvenile court or Children's Court, in a manner and at a time that a juvenile court or Children's Court may determine, on the progress and supervision of, and the compliance with the probation conditions by, a probationer;
- (f) plan and implement the programmes referred to in section 84 in general or in respect of particular children;
- (g) provide psychosocial counselling;
- (h) receive, assess and refer children and render early intervention services and programmes, including mediation and family group conferencing;
- (i) monitor a child subject to home-based supervision;
- (j) monitor persons subject to supervision;
- (k) conduct family tracing; and
- (l) gather information for assessment by the probation officer.

**86.** (1) A probation officer shall, apply to a juvenile court or Children's Court for a warrant for the apprehension of the probationer, if a probationer breaches any condition of the probation order.

Powers of  
probation  
officers

(2) A law enforcement officer shall, where a warrant under subsection (1) is issued by a juvenile court or Children's Court, apprehend the probationer concerned, and where the probationer is found guilty, an order for the original offence shall be made.

(3) A person who obstructs, delays, assaults or hinders a probation officer in the exercise of any powers or the performance of the probation officer's duties or functions under this Act commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

### **Division 2 - Probation Orders**

Probation  
order

**87.** (1) A juvenile court or Children's Court may, where the juvenile court or Children's Court before which a child is charged with an offence determines that the charge is proved and it considers it necessary to do so, make a probation order requiring the Director of Social Welfare to place the child under the supervision of a probation officer for a period specified in the probation order.

(2) A juvenile court or Children's Court shall, in making the probation order under subsection (1), have regard to the age, character, antecedents, home surroundings, health or mental condition of the child, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed.

(3) A female probationer shall be placed under the supervision of a female probation officer, and a male probationer shall be placed under the supervision of a male probation officer, unless it is not practical to do so.

(4) A probation order shall have effect for a period of not less than six months and not more than one year from the date of the probation order.

(5) A juvenile court or Children's Court shall explain the effect of the probation order to the child in a language that the child understands.

(6) A juvenile court or Children's Court shall, before making a probation order, satisfy itself that the child understands the effect of the probation order, including any additional requirements proposed to be specified in the probation order under section 88 (2) and (4), and that if the child fails to comply with the probation order during the probation period, the child shall be found guilty and an order for the original offence shall be made.

88. (1) A probation order shall name the district in which the probationer resides or will reside, and the probationer shall notify the probation officer responsible for the probationer's supervision of any change of residence.

(2) A probation order may require the probationer to comply during the whole or any part of the probation period with requirements that a juvenile court or Children's Court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the probationer or for preventing a repetition of the same offence by the probationer or the commission of other offences.

(3) Without prejudice to the powers of the juvenile court and Children's Court to make an order for the payment of sums by way of costs, damages or compensation, the payment of those sums shall not be included among the requirements of a probation order.

(4) Despite the generality of subsection (1), a probation order may include requirements relating to the residence of the probationer, except that—

(a) before making an order containing those requirements, the juvenile court or Children's Court shall consider the home surroundings of the probationer; and

(b) where the order requires the probationer to reside in a child care facility, the name of the child care facility and the period for which the probationer is so required to reside shall be specified in the order, and that period shall not exceed twelve months from the date of the order.

(5) A juvenile court or Children's Court shall, at the time of making the order, where a probation order requires the probationer to reside in a child care facility, give notice of the terms of the order to a probation officer.

(6) A juvenile court or Children's Court shall, where the district named in a probation order as the district in which the probationer resides or shall reside is not the district in which the probation order is made, transmit to the juvenile court or Children's Court for the district named in all the documents and information relating to the case, and the last-mentioned juvenile court or Children's Court shall be considered for all the purposes of this Act to be the juvenile court or Children's Court by which the probation order was made.

Submission  
of child to  
treatment of  
mental  
condition

**89.** (1) Where a juvenile court or Children's Court is satisfied, on the evidence of a mental health practitioner that a child requires treatment but does not qualify the child being declared as a mental patient, the juvenile court or Children's Court may, if it makes a probation order, include a requirement that the child shall be provided for a period that may be specified in the probation order, not exceeding twelve months from the date of the order, treatment by, or under, the direction of a mental health practitioner in order to improve the child's mental condition.

(2) A probation order may specify any one of the following treatments:

(a) treatment as a resident patient in a mental health facility or place prescribed for the purpose of this section as may be specified in the order;

(b) treatment as a non-resident patient at a mental health facility or place as may be specified in the order; or

(c) treatment by, or under the direction of, a mental health practitioner as may be specified in the order.

(3) Despite subsection (1), the nature of the treatment shall not be specified in the probation order.

(4) A juvenile court or Children's Court shall make a probation order containing the requirements under subsection (2) if it is satisfied that arrangements are or shall be made for the treatment, and, if the child is to be treated as a resident patient, for the child's reception at the specified mental health facility or place.

(5) A probation officer responsible for the probationer's supervision shall, where a probationer is under treatment as a resident patient in accordance with subsection (4), carry out the supervision to an extent only that may be necessary for the purpose of the discharge of the probation order.

(6) A mental health practitioner may, where the mental health practitioner by whom or under whose direction a probationer is being treated for a mental condition in accordance with a probation order is of the opinion that part of the treatment can be better or more conveniently given by or under, the direction of a mental health practitioner in, or at, a mental health facility or place not specified in the order, make arrangements, with the consent of the probation officer, for the probationer to be treated accordingly, and to receive part of the treatment as a resident patient in that mental health facility or place.

**90.** A juvenile court or Children's Court by which a probation order is made or which makes an order amending or discharging a probation order, shall furnish copies of the probation order to the probationer or the probationer's parent, guardian or person having parental responsibility for the probationer, the probation officer responsible for the supervision of the probationer and to the person in charge of the child care facility, if any, in which the probationer is to reside or is residing.

Copies of orders

**91.** (1) Subject to subsection (2), at any time during the probation period and on a report by a probationer's parent, guardian, person having parental responsibility for the probationer, probation officer or child welfare inspector that the probationer is not complying with the conditions of a probation order, a juvenile court or Children's Court may issue summons to the probationer requiring the probationer to appear at the place and time specified in the summons or may issue a warrant for the arrest of the probationer.

Failure of probationer to comply with probation order

(2) A juvenile court or Children's Court shall not issue a summons or warrant except on information on oath.

(3) A juvenile court or Children's Court may, if it is proved to the satisfaction of a juvenile court or Children's Court by which the probation order was made that the probationer has failed to comply with any of the provisions of the probation order—

(a) without prejudice to the continuance in force of the probation order, impose a fine not exceeding three hundred penalty units; or

(b) make any order in respect of the original offence in respect of which the probation order was made, which it could have made if the probationer had been found guilty of that offence.

(4) Where a juvenile court or Children's Court has, under subsection (3)(a) imposed a fine on the probationer, a subsequent order made in respect of the probationer under this section shall take into account the imposition of the fine in determining the nature of a subsequent order.

**92.** (1) Subject to Part V, where a juvenile court or Children's Court finds a probationer guilty of an offence committed during the probation period, the juvenile court or Children's Court may commit the probationer to custody or release the probationer on bail, with or without sureties, until the probationer can be brought or appear before the juvenile court or Children's Court which made the probation order.

Commission of further offences by probationer

(2) Where a juvenile court or Children's Court commits a probationer to custody or releases the probationer on bail under subsection (1), the juvenile court or Children's Court shall transmit to the juvenile court or Children's Court which made the probation order—

- (a) particulars of the case that the juvenile court or Children's Court considers necessary; and
- (b) a signed certificate of the finding of guilty for an offence committed during the probation period.

(3) A certificate issued under subsection (2) shall be admissible, in a juvenile court or Children's Court which made the probation order, as evidence of a finding of guilty for an offence committed by a probationer during the probation period.

(4) Where it is proved to the satisfaction of the juvenile court or Children's Court which made the probation order that the probationer has been found guilty of an offence committed during the probation period, the juvenile court or Children's Court may make an order in respect of the offence which the juvenile court or Children's Court would have been likely to make if the probationer had just been found guilty of that offence before that juvenile court or Children's Court.

Effect of  
finding of  
guilty where  
probation  
order made

**93.** (1) Subject to this section, a finding of guilty for an offence for which a probation order is made shall be considered not to be a finding of guilty for any purpose other than the purposes of the proceedings in which the probation order is made and of any subsequent proceedings which may be taken against the child under the other provisions of this Act, except that where an order is subsequently made against a child under this Act, the provisions of this subsection shall cease to apply to the finding of guilty.

(2) Without prejudice to subsection (1), a finding of guilty in respect of a child in conflict with the law who is placed on probation shall be disregarded for the purposes of any law which imposes a disqualification or disability on convicted persons, or authorises or requires the imposition of a disqualification or disability.

(3) This section shall not affect—

- (a) a right of the child to appeal against the finding of guilty, or to rely on the findings in bar of any subsequent proceedings for the same offence; or
- (b) the re-vesting or restoration of any property in consequence of the finding of guilty in respect of the child.

**94.** (1) Subject to the other provisions of this section, where, on the application of a probationer or the probation officer responsible for the supervision of the probationer, the juvenile court or Children's Court which made the probation order is satisfied that the provisions of the probation order should be varied, or that any provision should be inserted or cancelled, the court may, by order, amend the probation order accordingly.

Amendment  
of probation  
order

(2) A juvenile court or Children's Court shall, if it is satisfied on the application of the probation officer responsible for the supervision of the probationer that the probationer has changed, or is about to change, the residence from the district named in the probation order to another district—

(a) by order, vary the probation order by substituting for the reference to the district named in the order a reference to the district where the probationer is residing or about to reside; and

(b) transmit to the juvenile court or Children's Court for the new district all documents and information relating to the case, and the last-mentioned court shall be deemed for all the purposes of this Act to be the juvenile court or Children's Court which made the probation order.

(3) Where an application is made under this section by the probation officer responsible for the supervision of the probationer, the juvenile court or Children's Court shall summon the probationer to appear before the court and the juvenile court or Children's Court shall amend the probation order if the probationer expresses willingness to comply with the requirements of the order as amended.

(4) Where an order is made under this section for the variation, insertion or cancellation of a provision requiring a probationer to reside in a mental health facility, the juvenile court or Children's Court shall give notice of the terms of the order to a probation officer.

**95.** A juvenile court or Children's Court may, on an application by a probation officer, discharge a probation order if the juvenile court or Children's Court is satisfied that the discharge is in the best interests of the probationer.

Discharge of  
probation  
orders

Reformatory  
children

**96.** (1) A juvenile court or Children's Court may, where a parent, guardian or person having parental responsibility for a child proves to a juvenile court or Children's Court that the parent, guardian or person having parental responsibility for the child is unable to control a child, order that the child be—

- (a) placed under the supervision of a probation officer in accordance with this Act for a period not exceeding three years;
- (b) sent to a child approved centre; or
- (c) committed to the care of a fit person, whether that person is related to the child or not, who is willing to care for the child.

(2) A juvenile court or Children's Court shall exercise the powers under subsection (1) where the juvenile court or Children's Court is satisfied that it is necessary to do so and the parent, guardian or the person having parental responsibility for the child understands the results which will follow an order being made and consents to the making of the order.

Probation  
Committee

**97.** (1) The Minister may, by statutory instrument, establish a Probation Committee to advise the Minister on matters of policy relating to the probation of children in conflict with the law and the development of the probation system in the Republic.

(2) The composition, functions, procedures and allowances of the Probation Committee shall be prescribed.

## PART IX

### CHILD APPROVED CENTRE ORDER AND CHILD REFORMATORY CENTRE ORDER

Establishment  
of child  
approved  
centre

**98.** (1) The Minister may, by statutory instrument, establish child approved centres for the reception, maintenance and training of a child sent to a child approved centre under this Act or any other written law.

(2) A child approved centre established under subsection (1) shall be under the supervision of the Director of Social Welfare.

(3) The management of a child approved centre established under subsection (1) shall be prescribed.

(4) A child approved centre shall be classified according to the discipline and training required by a child placed in custody in the child approved centre.

99. (1) The Minister responsible for correctional centres may, by statutory instrument, establish—
- (a) child reformatory centres where children may be placed in custody; and
  - (b) child transit centres where children may be temporarily kept.
- (2) A child reformatory centre established under subsection (1) shall be under the supervision of the Chief Inspector who shall be assisted by reformatory boards established by the minister responsible for correctional centres for each province, as prescribed.
- (3) The management and maintenance of a child reformatory centre and transit centre shall be as prescribed.
- (4) A child below the age of sixteen years shall not be sent to a child reformatory centre.
100. (1) Where a finding of guilty is made against a child and the period of an order is for six months or more without the option of a fine and where it is in the best interests of the child, the juvenile court or Children's Court may—
- (a) make an order for the correction of the child at a child approved centre; or
  - (b) having regard to the child's character, previous conduct and the circumstances of the offence, require the child to undergo a period of training in a child reformatory centre.
- (2) The juvenile court or Children's Court may, where a juvenile court or Children's Court makes an order under subsection (1)(a), direct that a child in respect of whom the order is made be placed in the custody of a parent, guardian, person having parental responsibility for the child, or fit person, or be placed in a place of safety while awaiting conveyance to a child approved centre.
- (3) A juvenile court or Children's Court may, where a juvenile court or Children's Court makes an order under subsection (1)(b), direct that a child in respect of whom the child reformatory centre order is made be placed in the custody of a parent, guardian, person having parental responsibility or fit person, or be placed in a child transit centre while awaiting conveyance to a child reformatory centre.
- (4) A directive of a juvenile court or Children's Court under subsections (2) and (3) shall not extend beyond twenty-one days but if at the expiration of twenty-one days the juvenile court or Children's Court considers it necessary to do so, the juvenile court or Children's Court may extend its directive beyond twenty-one days.

Child  
reformatory  
centre and  
child transit  
centre

Child  
approved  
centre order  
and child  
reformatory  
centre order

(5) An order made by a juvenile court or Children's Court under this section shall cease to have effect when the child attains the age of nineteen years.

Contents of  
child  
approved  
centre order  
and child  
reformatory  
centre order

**101.** (1) A juvenile court or Children's Court shall, in making an order under this Part, state the reasons for the imposition of the order on a child.

(2) An order made under this Part shall specify the—

(a) age or ascertained age of the child;

(b) sex of the child;

(c) religion of the child;

(d) child approved centre or child reformatory centre to which the child is being sent; and

(e) time frame within which a child shall be conveyed to a child approved centre or child reformatory centre.

(3) The age specified under subsection (2)(a) shall, until the contrary is proved, be presumed to be the true age of the child and a child approved centre order or child reformatory centre order shall not be invalidated by any subsequent proof that the age of the child has not been correctly specified in the order.

(4) If for any reason a child in respect of whom a child approved centre order or child reformatory centre order is made cannot be received into the child approved centre or child reformatory centre specified in the order, another child approved centre or child reformatory centre may be specified by an endorsement or further endorsement on the order by the court.

Conveyance  
to child  
approved  
centre or  
child  
reformatory  
centre

**102.** (1) A person responsible for conveying the child to a child approved centre or a child reformatory centre shall deliver the following documents to the person in-charge of a child approved centre or a child reformatory centre:

(a) the juvenile court or Children's Court order and any endorsement;

(b) the social welfare report; and

(c) any other additional information on the child.

(2) The Director of Social Welfare may cause a child to be transferred from one child approved centre to another if the Director of Social Welfare considers it in the best interests of the child to do so.

(3) The Chief Inspector may cause a child to be transferred from one child reformatory centre to another if it is in the best interests of the child to do so.

(4) Except as otherwise provided in this Part, a child who is transferred under subsections (2) and (3) shall, on transfer, be kept in custody in the child approved centre or child reformatory centre for the unexpired period of the term specified in the child approved centre order or child reformatory centre order.

**103.** (1) Where a juvenile court or Children's Court makes a child approved centre order or child reformatory centre order, the period of custody shall not exceed three years.

Duration of custody in child approved centre or child reformatory centre

(2) Where a child has been remanded in custody before the making of an order under this Part, the period spent in remand shall be taken into consideration when making a child approved centre order or child reformatory centre order.

(3) A child shall not be kept in custody in an adult prison or correctional centre.

**104.** (1) The Director of Social Welfare may, if the Director of Social Welfare determines that it is in the best interests of a child to be in custody in a child approved centre for a further period, recommend to a juvenile court or Children's Court to extend the period of custody in a child approved centre.

Extension of period of custody in child approved centre or child reformatory centre

(2) The Chief Inspector may, if the Chief Inspector determines that it is in the best interests of a child to be in custody in a child reformatory centre for a further period, recommend to a juvenile court or Children's Court to extend the period of custody in a child reformatory centre.

(3) The Director of Social Welfare or Chief Inspector shall, in making a recommendation under subsection (1) or (2), cause a social welfare report to be prepared and submitted to the juvenile court or Children's Court that made the child approved centre order or child reformatory centre order.

(4) The juvenile court or Children's Court shall on receipt of a social welfare report under subsection (3), issue a warrant to extend the period of custody of a child in a child approved centre or child reformatory centre if the juvenile court or Children's Court is satisfied that an extension of the period is warranted.

(5) A warrant issued under subsection (4), to keep a child in custody at a child approved centre or child reformatory centre for a further term, shall not exceed one year, except that that child shall not be kept in custody beyond the date on which that child attains the age of nineteen years.

Harbouring  
or concealing  
child

**105.** (1) A person who harbours or conceals a child who has been ordered, under this Part, to be sent to a child approved centre, child reformatory centre, child transit home or place of safety is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

(2) A person who knowingly prevents a child from returning to a child approved centre, child reformatory centre, child transit home or place of safety when the child is required to do so, commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

Penalty for  
escape or  
absence  
from child  
approved  
centre, child  
reformatory  
centre, child  
transit  
centre or  
place of  
safety

**106.** (1) A child who having been ordered to be placed in custody in a child approved centre, child reformatory centre, child transit centre or place of safety may be arrested without warrant and brought before a juvenile court or Children's Court if the child-

- (a) escapes from the child approved centre, child reformatory centre, child transit centre or place of safety;
- (b) escapes from the custody of the person in whose charge the child has been placed pending conveyance or transfer in accordance with the provisions of this Part;
- (c) being absent from a child approved centre or child reformatory centre, on temporary leave of absence or on permit, escapes from the person in whose charge the child has been placed or fails to return to the child approved centre or child reformatory centre, on the expiration of the leave or on the revocation of the permit; or
- (d) being absent from a child approved centre or child reformatory centre, under supervision fails to return to the child approved centre or child reformatory centre, when recalled.

(2) A juvenile court or Children's Court may, if a child escapes from the care of a fit person and that person is not willing to take the child back, make an order which is in the best interests of the child after the submission of a social welfare report.

**107.** (1) Despite anything in this Part, where a child in custody at a child approved centre or child reformatory centre, is incorrigible or a bad influence on the other children at the child approved centre or child reformatory centre, the person in-charge of the child approved centre or child reformatory centre, shall cause the child to be separated from the rest of the children for the unexpired period of the term of custody, except that the period of separation shall not exceed the residue of the unexpired term for which the child would have been in custody for the commission of an offence.

Separation  
of  
incorrigibles

(2) A separation by a person in-charge under subsection (1) shall be made having regard to the best interests of the child, and the child shall be placed in a child friendly environment with access to the necessary amenities.

**108.** (1) The Director of Social Welfare may discharge a child from a child approved centre on condition that the child is placed under the supervision of a probation officer.

Power to  
release on  
permit

(2) The Chief Inspector may discharge a child from a child reformatory centre on condition that the child is placed under the supervision of a probation officer.

(3) The Director of Social Welfare or Chief Inspector shall issue a permit under subsection (1) or (2), if the Director of Social Welfare or Chief Inspector determines that there is reasonable probability that the child will abstain from crime and lead a useful and industrious life.

(4) A permit shall not be issued under this section within six months from the commencement of a term of custody of a child with respect to whom it is issued.

(5) A permit under this section shall continue in force until the expiration of the term for which the child should have been kept in custody, unless earlier revoked or forfeited under section 109.

**109.** (1) A permit issued under section 108 may be revoked at any time by the Director of Social Welfare or the Chief Inspector.

Revocation or  
forfeiture of  
permit

(2) Where a permit is revoked under subsection (1), the child discharged on the permit shall return to the child approved centre or child reformatory centre and if the child fails to return to the child approved centre or child reformatory centre, the child shall be apprehended without warrant and taken to the child approved centre or child reformatory centre concerned.

(3) A child who returns to the child approved centre or child reformatory centre in accordance with subsection (2) may be kept in custody in the child approved centre or child reformatory centre for a period not exceeding three months, but may, at any time after the revocation, be placed on permit.

(4) A child discharged on permit forfeits the permit if the child—

(a) escapes from the supervision of a probation officer or other child welfare inspector responsible for that child;

(b) commits an offence; or

(c) breaches a condition of the permit.

(5) A juvenile court or Children's Court may, where a permit is forfeited under subsection (4)—

(a) issue a warrant for the apprehension of the child concerned; and

(b) commit the child to a place of safety or child transit centre until it is convenient for the child to be moved to the child approved centre or child reformatory centre concerned.

(6) Despite section 108, a child released on permit shall return to a child approved centre or child reformatory centre if the person who granted the permit determines that the return is necessary for the protection of the child and, as soon as may be practicable, but not later than three months from the date of return, the child in custody shall again be placed on permit, and no child in these circumstances shall be kept in custody after the expiration of one year's supervision provided for in section 110.

(7) The time during which a child is absent from a child approved centre or child reformatory centre on permit shall be treated as part of the time of custody at the child approved centre or child reformatory centre.

(8) Where a child fails to return to a child approved centre or child reformatory centre after revocation or forfeiture of a permit, the time which elapses after the failure to return to a child approved centre or child reformatory centre shall be excluded in computing the time of custody at the child approved centre or child reformatory centre.

Supervision  
after  
expiration of  
period of  
custody

**110.** (1) A person in charge of a child approved centre or child reformatory centre shall submit a written report to the Director of Social Welfare or Chief Inspector on children kept in custody in a child approved centre or child reformatory centre respectively, including any extended period of custody.

(2) A child shall remain under the supervision of a probation officer for one year from the date of expiration of the custody.

**111.** (1) Where a juvenile court or Children's Court makes an order for the custody of a child in a child approved centre or child reformatory centre, the juvenile court or Children's Court may further order that the parent, guardian or other person responsible for the child pays a contribution towards the cost of maintaining the child in the child approved centre or child reformatory centre during the period of custody that the juvenile court or Children's Court considers reasonable after due inquiry and having regard to the means of the parent, guardian or other person.

Contributions for maintenance of child

(2) An order made under subsection (1) shall provide for the payment of the contribution at a time and in a manner that the juvenile court or Children's Court may direct, including any period when the child may be on permit or under supervision.

(3) The Director of Social Welfare or Chief Inspector may, where a juvenile court or Children's Court does not make a contribution order, apply to the juvenile court or Children's Court which made the child approved centre order or child reformatory centre order for an order for the payment of the contribution referred to in subsection (1), if it appears to the Director of Social Welfare or the Chief Inspector at any time during the period of the custody that the parent, guardian or person having parental responsibility for the child is able to contribute towards the cost of maintenance of the child in the child approved centre or child reformatory centre.

(4) A person against whom an order to contribute is made under this section may apply for a variation of the order to the juvenile court or Children's Court which made the order.

(5) A juvenile court or Children's Court shall only make an order against a person under this section if it-

(a) gives the person an opportunity to be heard; and

(b) determines that, where the order is made in that person's absence, the person has received notice of the intention to make the order, but failed to attend the proceedings before the juvenile court or Children's Court.

(6) A payment which a person is ordered to make under this section may be recovered from the person as a civil debt.

**112.** (1) A juvenile court or Children's Court shall issue summons requiring a person named in the summons to attend before the juvenile court or Children's Court on a date specified in the summons and produce the child where the juvenile court or Children's Court is satisfied by information on oath that—

Production of child

- (a) a person authorised to convey a child to a child approved centre, child reformatory centre, child transit centre or place of safety does not know the whereabouts of the child to be taken into custody but is aware that another person is able to produce the child; or
- (b) there is reasonable ground to believe that a serious offence has been committed by a child and that someone is able to produce the child.

(2) A person who is summoned under subsection (1) and who, without reasonable excuse, fails to attend before the juvenile court or Children's Court as required in the summons to produce the child commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

Expunge of  
record of  
finding of  
guilty and  
order

**113.** (1) A record of finding of guilty and order made in respect of a child shall be expunged after—

- (a) a period of five years, where—
  - (i) a non-residential order was made by the juvenile court or Children's Court;
  - (ii) the child has complied with the order; and
  - (iii) the child has not been found guilty of an offence during the five year period; or
- (b) a period of ten years, where—
  - (i) a residential order committing the child to a child approved centre or child reformatory centre has been made by the juvenile court or Children's Court;
  - (ii) the child has complied with the order; and
  - (iii) the child has not been found guilty of an offence during the ten year period.

(2) A record of finding of guilty and custodial order made in respect of a child shall not be expunged where the finding of guilty and custodial order was in respect of murder, rape, defilement, indecent assault and aggravated robbery.

114. (1) The Minister may enter into an agreement with another State or territory on terms and conditions that the Minister may consider just, where a child who has been ordered by a juvenile court or Children's Court under the provisions of this Act to be sent to the child approved centre or child reformatory centre or other institution, or committed to the care of a fit person, may be received into that State or territory and then placed in a child approved centre or child reformatory centre or other institution approved under the relevant legislation of that State or territory or received into the care of, or returned to, the child's parent, guardian, person having parental responsibility for the child or a fit person.

International  
reciprocity

(2) A child who is ordered, under the provisions of this Act, to be placed in a child approved centre or child reformatory centre may, while still subject to that order, by warrant signed by the Minister, be removed from custody of a child approved centre or child reformatory centre into any other State or territory with which an agreement has been concluded under subsection (1), and placed in a child approved centre or child reformatory centre or other institution, or placed in the care of a parent, guardian, person having parental responsibility for the child or fit person in accordance with the law in force in the State or territory authorising such placement, until the expiration of the order or until that child is sooner released according to law.

(3) An order of a court of a State or territory with whom an agreement has been entered into in accordance with subsection (1), which would be lawfully made by a court in the Republic if the person had been within its jurisdiction, shall on the person being received in the Republic, have the same effect and be enforceable as if the order had been made by a juvenile court or Children's Court.

Appeal  
against child  
approved  
centre order  
or child  
reformatory  
centre order

**115.** (1) A court shall, where an order is made under this Part, explain to a child and a child's parent, guardian or person having parental responsibility for the child, the right to appeal.

(2) A child, child's parent, guardian or person having parental responsibility for the child may lodge an appeal.

(3) Despite subsection (2), where a child objects to an appeal being made by a parent, guardian or person having parental responsibility for the child, the court shall consider the views of the child having regard to the age and maturity of the child concerned.

## PART X

### AFFILIATION, STATUS OF CHILD, MAINTENANCE AND CUSTODY

#### Division 1 - Affiliation Orders

Application  
by child's  
mother

**116.** A court may make an affiliation order on the application of a child's mother at any time after giving birth to a child, or on proof that the biological or putative father of the child has paid money for the child's maintenance.

Application  
by party to  
void marriage

**117.** A court may, on the application of a child's mother who has given birth to a child, make an affiliation order on proof that before the birth, the child's mother was a party to a marriage which would have been valid except for the fact that the child's mother or the other party were under the age at which either party might have legally contracted a marriage.

Application  
by child

**118.** A court may, on the application of a child, made through the child's next friend, make an affiliation order, subject to the limitations contained in this Act.

Corroboration  
of evidence

**119.** (1) A court shall, on the hearing of an application for an affiliation order, hear—

(a) the evidence of the mother; and

(b) any evidence tendered by or on behalf of the biological or putative father.

(2) A court shall not make an affiliation order unless the evidence of the mother or any other party is corroborated in some material particular by other evidence.

**120.** Where a court makes an affiliation order, it may include in the order that either party to the proceedings is unfit to have the custody of a child.

Order of unfitness for custody

(2) Where an order is made under this section and the party to whom the order relates is a parent of a child, that party shall not, on the death of the other parent, be entitled as of right to the custody or the guardianship of that child, except with the leave of the court.

(3) A court may vary or discharge an order made under this section or suspend any provision of the order temporarily and revive the operation of any provision so suspended.

**Division 2 - Family Status of a Child**

**121.** A child born to a mother and father, whether married to each other or not, shall have equal rights and privileges as a child born in a marriage.

Equal status of children

**122.** (1) Subject to subsections (2) and (3), a child born to a woman during the woman's marriage, or within ten months after the marriage has been dissolved by death or otherwise, shall, in the absence of evidence to the contrary, be presumed to be the child of that woman and the husband, or former husband.

Presumption of parenthood of child born during marriage

(2) Subsection (1) shall not apply if, during the whole of the time within which the child must have been conceived, the mother and the husband were living apart under an oral or written agreement for separation, a decree or order of separation, or a *decree nisi* of divorce made by a competent court or authority in the Republic or elsewhere.

(3) Subsection (1) shall not apply where a child is born after ten months after the dissolution of the marriage by death or otherwise, and after the child's mother has re-married, and there

shall be no presumption as between the mother's former husband or the husband of the mother, respectively, that either the former husband or the husband of the mother is the father of the child, and the question shall be determined on a balance of probabilities in each case.

Recognition  
of paternity  
in case of  
succession

**123.** (1) The relationship of father and child, and any other relationship traced in any degree through that relationship shall, for any purpose related to testate succession to property or to the construction of a will or other testamentary disposition or of an instrument creating a trust, be recognised only if paternity has been admitted by, or established during the lifetime of, the father.

(2) If the purpose of recognition of paternity is for the benefit of the father, there shall be the additional requirement that paternity has been admitted or established during the lifetime of the child or prior to the child's birth.

(3) Where in a matter relating to testate succession to property or to the construction of a will or other testamentary disposition or of an instrument creating a trust, the relationship of father and child is not recognised for that purpose at the time the child is born, the occurrence of any act, event or conduct which enables the relationship of the father and child, and any other relationship traced in any degree through the relationship of the father and child, to be recognised, shall not affect any estate, right or interest in any real or personal property to which any person has become absolutely entitled, whether beneficially or otherwise, before the act, event or conduct occurred.

Evidence and  
proof of  
paternity  
Cap. 51

**124.** (1) Where, in accordance with the Births and Deaths Registration Act, the name of the father of the child to whom an entry relates has been entered in the register of births, a certified copy of the entry signed by the Registrar-General shall be *prima facie* evidence that the person named as the father is the father of the child.

(2) An instrument signed by the mother of a child and by any person acknowledging that the person is the father of the child shall be *prima facie* evidence that the person named as the father is the biological or putative father of the child if executed—

(a) as a deed; or

(b) in the presence of a legal practitioner, a magistrate, judge, health practitioner, minister of religion or a person authorised to solemnise a marriage.

(3) An affiliation order shall be *prima facie* evidence of paternity in any subsequent proceedings.

(4) Subject to section 123, a declaration of paternity made by a court shall, unless the contrary is proved, be conclusive proof of the matters contained in it.

(5) An order made in any State outside the Republic declaring a person to be the biological or putative father of a child, being an order to which this Act applies, shall be *prima facie* evidence that the person declared as the biological or putative father is the father of the child.

(6) The Minister responsible for home affairs may, by statutory order, declare that subsection (5) applies with respect to orders made by a court or public authority in any specified State outside the Republic or by any specified court or public authority in that State.

**125.** (1) An instrument of acknowledgement of parentage or a duplicate or attested copy of that instrument may be filed in the office of the Registrar-General in the prescribed manner and form on payment of a prescribed fee.

Filing of  
instruments of  
acknowledgement

(2) Where a court makes a declaration of paternity under this Act or makes an affiliation order, the Registrar or the clerk of court shall notify the Director of Social Welfare and forward a copy of the declaration or order, as applicable, to the Registrar-General for filing.

Use of  
paternity  
test

**126.** (1) A court may, in any civil proceedings in which the paternity of a child is to be determined, on an application by a party to the proceedings, issue an order for—

(a) the use of a paternity test to ascertain whether that test shows that a party to the proceedings is, or is not thereby excluded from being, the father of the child in respect of whom the paternity is to be determined; and

(b) the taking of samples within a period specified in the order.

(2) A court may, in the interests of justice, revoke or vary an order previously given by it under this section.

(3) The person responsible for carrying out a paternity test for the purpose of giving effect to an order of a court under this section shall make to the court by which the order was given a report which shall state the results of the test.

Consent to  
taking of  
samples

**127.** (1) Subject to subsection (3), a sample which is required to be taken from a person for the purpose of giving effect to an order by a court under section 126 shall not be taken without that person's consent.

(2) A person shall not unreasonably withhold consent to take samples for the purpose of giving effect to an order by a court.

(3) A court may, where a person whose consent is required under this section unreasonably withholds the consent, on an application being made to the court by a party to the proceedings, order that a sample be taken.

(4) A person seeking to take a sample shall explain, to the person from whom the sample is sought, the consequences of giving the sample.

(5) A sample may be taken from a child who has attained the age of sixteen years with that child's consent.

(6) A sample shall not be taken from a child who is under the age of sixteen years, without the consent of a person who has a care order or a person having parental responsibility for the child.

(7) A sample may be taken from a mental patient who is incapable of understanding the nature and purposes of the test if the person who has the care and control of that person consents and a mental health practitioner has certified that the taking of a

sample from the mental patient shall not be prejudicial to the mental patients proper care and treatment.

**128.** (1) A person shall not, with intent to falsify the result of a paternity test—

Impersonating another person for purposes of paternity test

- (a) provide a wrong sample for a test required to give effect to an order by a court;
- (b) impersonate a person required to provide a sample to give effect to an order of the court; or
- (c) procure another person or a child to take a test, knowing that the person or child is not the person named in the order.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

**Division 3 - Maintenance of Affiliated Children**

**129.** The following presumptions apply with regard to the maintenance of a child, unless a court otherwise directs:

Presumptions regarding maintenance of children

- (a) where the parents of a child were married to each other at the time of the birth of the child and are both living, the duty to maintain the child shall be their joint responsibility;
- (b) where the mother and father of a child were not married to each other at the time of the birth of the child and have not subsequently married, it shall be the joint responsibility of the mother and father of the child to maintain that child;
- (c) where two or more guardians of a child have been appointed, the duty to maintain the child shall be the joint responsibility of the guardians, whether acting in conjunction with the parents of the child or not;
- (d) where two or more persons have been granted custody of a child, it shall be the joint responsibility of those persons to maintain the child; and
- (e) where an order is made in favour of more than one person in respect of a child, it shall be the duty of those persons to jointly maintain the child.

Maintenance  
of affiliated  
child

**130.** A court may, at the time of making an affiliation order or on subsequent application for a maintenance order, make a maintenance order in respect of the child concerned.

Types of  
maintenance  
orders

**131.** (1) A maintenance order under section 130 may take any of the following forms:

- (a) an order that the defendant shall, for the benefit of a child make periodic payments for a specific term; or
- (b) an order that the defendant shall, pay to a person or to the child a lump sum for any expenses reasonably incurred for the care of the child at the time the maintenance order is made.

(2) A court may, where it makes an order under subsection (1) for the payment of a lump sum and directs that payment of the lump sum be deferred or paid by instalments, order that the amount deferred or the instalments carry interest at a rate specified by the order from a specified date, not being a date earlier than the date of the order, until the date when payment of the lump sum is effected.

Matters for  
consideration  
when making  
maintenance  
order

**132.** (1) A court shall, before making a maintenance order, have regard to the best interests of the child and all the circumstances of the child concerned.

(2) Despite the generality of subsection (1), a court shall have regard to the following matters:

- (a) the welfare of the child, including any preliminary expenses, and the financial needs of the child;
- (b) the income, earning capacity, property and other financial resources which each interested person has, or is likely to have, in the foreseeable future, including, in the case of earning capacity, any increase in that capacity which it would, in the opinion of the court, be reasonable to expect a person to take steps to acquire;
- (c) the financial needs, obligations and responsibilities which each interested party has or is likely to have in the foreseeable future;
- (d) the age of the child and of each interested party;
- (e) any physical or mental health of the child;
- (f) the contributions which each person has made or is likely in the foreseeable future to make to the welfare of the

child, including any contribution made or to be made by caring for the child; and

(g) the manner in which the child's parents expect the child to be, educated or trained.

**133.** (1) A court may order financial provision to be made by a step-parent of a child who is accepted as a child of the family.

Financial provision by step-parent of child

(2) A court shall, in making an order under this section, take into account the following matters:

(a) the income or earning capacity, property and other financial resources which the parties or any other person in whose favour the court proposes to make the order, has or is likely to have in the foreseeable future;

(b) the financial needs, obligations or responsibilities which each party has or is likely to have in the foreseeable future;

(c) the financial needs of the child and the child's current circumstances;

(d) the mental health or medical condition of the child;

(e) the manner in which the child is expected to be educated or trained;

(f) the circumstances of any of the child's siblings who are children of the family;

(g) whether the defendant has assumed responsibility for the maintenance of the child and if so, the extent to which and the basis on which the defendant has assumed that responsibility and the length of the period during which the defendant has met that responsibility;

(h) whether the defendant assumed responsibility for the maintenance of the child knowing the child was not the defendant's child, or knowing that the defendant was not legally married to the mother of the child;

(i) the liability of any other person to maintain the child; and

(j) the liability of that person to maintain other children.

**134.** (1) Subject to subsection (3), a maintenance order shall not be made in favour of a person who has attained the age of nineteen.

Duration of maintenance order

(2) The term to be specified in any periodic payment or secured periodic payments order in favour of a child may begin on a date specified in the order and shall not extend beyond the date of the child's nineteenth birthday.

(3) Subsections (1) and (2) shall not apply if it appears to a court that—

(a) the child is or shall receive instructions in some profession or vocation, whether or not the child is or shall be in gainful employment;

(b) the person in respect of whom the maintenance order is made is or shall be involved in education and training which shall extend beyond the child's nineteenth birthday;

(c) the child has a disability and requires specialised care which extends beyond the child's nineteenth birthday;

(d) the child is suffering from an illness or ailment which requires medical care extending beyond the child's nineteenth birthday; or

(e) there are special circumstances which justify the making of an order in the best interests of the child.

(4) Subsection (3)(a) and (b) shall not extend beyond the person's twenty-fifth birthday.

(5) A periodic payment order in favour of a child shall, despite anything in the order, cease to have effect on the death of the child in respect of whom the order is made, except in relation to arrears due under the order on the date of the death.

Variation or discharge of maintenance order

**135.** (1) A court may vary or discharge a maintenance order or suspend a provision of the maintenance order temporarily, and may revive the operation of a provision so suspended.

(2) A court shall, in exercising its power under this section, take into account the matters that it is required to take into account when making a maintenance order under section 132.

Persons to whom payments may be made

**136.** (1) Subject to the other provisions of this Act, a person entitled to receive payment under a maintenance order on behalf of a child is the child's mother, father, guardian or custodial parent.

(2) A court may, when making or varying a maintenance order, order that the money be paid into court and thereafter paid to the mother, father, guardian or custodial parent in a manner and subject to conditions that the court may direct.

**Division 4 - Maintenance of Child of Family**

**137.** (1) The court may make a maintenance order in respect of a child of the family on granting a decree of divorce, nullity of marriage or judicial separation, or any other time thereafter.

Maintenance  
of child of  
family

(2) In the case of a decree of divorce, nullity of marriage or judicial separation, the order may be made whether or not the decree has been made absolute.

(3) A court shall make the following orders in respect of a child of the family on granting a decree of divorce, nullity of marriage or judicial separation:

- (a) order that a party to the marriage shall make to a person as the court may specify in the order for the benefit of a child of the family, or to the child, periodic payment, for a specified period;
- (b) order that a party to the marriage shall secure to a person as the court may specify in the order for the benefit of a child of the family, or to the child, periodic payments for a specified period; or
- (c) order that a party to the marriage shall pay to a person as the court may specify in the order for the benefit of a child of the family, or to the child, a lump sum as may be specified in the order.

(4) The power of the court to make orders under subsection (1) shall not be made for a child who has attained the age of nineteen years unless the court is of the opinion that the circumstances specified under section 138(2) justify the making of the order.

(5) Subject to subsection (4), the court may make an order under subsection (3)—

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before granting a decree; and
- (b) where the proceedings are dismissed after the beginning of the trial, either immediately or within a reasonable period after the dismissal.

(6) An order under this section for the payment of a lump sum to or for the benefit of a child of the family may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this section.

(7) An order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of an amount as the court may specify in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

Application  
for  
maintenance  
order

**138.** (1) A guardian or custodial parent of the child may apply to the court to determine a matter relating to the maintenance of the child and to make an order that a specified person make periodic payments for the maintenance of a child.

(2) A person who has attained the age of nineteen years may, with the leave of the court, apply to the court for a maintenance order to be made in the person's favour in the following circumstances:

- (a) the person is or shall be involved in education and training which extends beyond the person's nineteenth birthday;
- (b) the person is disabled and requires specialised care which extends beyond the person's nineteenth birthday;
- (c) the person is suffering from an illness or ailment and requires medical care which extends beyond the person's nineteenth birthday; or
- (d) other special circumstances exist which would justify the making of the order.

Other  
maintenance  
provisions

**139.** Despite section 137, a court may make an order regarding the provision of education, medical care, housing, clothing and any other area of need for a child of the family.

Order for  
payments to  
person other  
than  
applicant

**140.** (1) A court may, at the time of making a maintenance order or at any time thereafter, appoint a person whom the court considers fit and responsible to receive and administer any maintenance monies required to be paid under the maintenance order, or order the person required to make a payment of the maintenance monies under this section to secure the whole or any part of the monies by vesting the sums or any other property in trust for the child.

(2) A court may appoint a person under subsection (1) on being satisfied that the person in whose favour the maintenance order was made—

- (a) is not a fit person to receive any payment specified in the maintenance order in respect of a child;

- (b) has left the Republic for an indefinite period, is dead, incapacitated or imprisoned, is a mental patient or is declared bankrupt; or
- (c) misappropriates, misapplies or mismanages maintenance monies to that person for the benefit of the child.

**Division 5 - Custody of Children**

- 141.** (1) A custody order may be made in respect of a— Custody order
- (a) child;
  - (b) person who at the date of the order is under the age of twenty-five and is receiving instruction at an educational institution or undergoing training for a trade, profession or vocation, whether or not the person is in gainful employment; and
  - (c) person the court considers to have special circumstances which is desirable, in the interest of that person, that this section should apply to.
- (2) Custody of a child or person may be granted to a—
- (a) parent of the child;
  - (b) guardian;
  - (c) person who applies, with the consent of a parent or guardian of the child and has actual custody of the child for three months preceding the making of the application; or
  - (d) person who, while not falling within paragraphs (a), (b) or (c), can show cause why an order should be made awarding that person custody of the child.
- (3) A court has jurisdiction to hear and determine a matter by a party domiciled outside the Republic.

**142.** (1) Where an application for a custody order in respect of a child is made by an applicant, a person shall not be entitled, without the leave of the court and the consent of the applicant, to remove the child from the applicant's custody. Restriction on removal of child

(2) A court may order a person who has removed a child from the custody of the applicant, without the leave of the court and the consent of the applicant, to return the child to the applicant and where the child has been removed from the jurisdiction of the court or the Republic, make a wardship order or a production order on conditions that the court may consider appropriate in the circumstances.

(3) A court may, on an application being made that another person is intending to remove a child from the applicant's custody in breach of subsection (1), order the other person not to remove the child from the applicant's custody.

(4) Where a court is satisfied by information on oath that there are reasonable grounds to believe that a child to whom an order under subsection (1) relates is in the premises specified in the information, the court may issue a search warrant authorising a law enforcement officer to search the premises and if the law enforcement officer finds the child, the law enforcement officer shall return the child to the person who applied for the order.

(5) A law enforcement officer referred to in subsection (4) shall be accompanied by a child welfare inspector.

Custody and  
access

**143.** (1) A court may make an order relating to the custody of a child and the right of access to the child of either parent.

(2) An appointment of a custodial parent under this section may be made on the application of—

- (a) the Director of Social Welfare or of any person authorised in that behalf by the Director of Social Welfare in writing either generally or specifically;
- (b) the father or mother; or
- (c) a person with sufficient interest in a child.

(3) A court may, at the time of making a custody order or at any time thereafter, appoint another person, other than a mother or father, to be a custodial parent if the court is satisfied that—

- (a) the mother or father of a child is not a fit person to have custody of the child;
- (b) the mother or father of a child is dead, is a mental patient or is serving a term of imprisonment of more than six months without the option of a fine; or
- (c) there are exceptional circumstances making it impracticable for the child to be entrusted to the custody of either of the child's parents.

(4) Where the court makes an order placing a child in the custody of a person, other than a parent of the child, it may include in the order provisions that the court considers necessary for access to the child by the parent of the child.

(5) A custodial parent appointed under this section or the Director of Social Welfare may apply to the court for the revocation of an order made with regard to custody and access to a child.

(6) A court may, where a court revokes an order under subsection (5), appoint another person as a custodial parent.

(7) An order in relation to access or maintenance in respect of a child who is the subject of a custody order shall not cease to have effect on the revocation of the custody order, unless otherwise directed by the court.

(8) A custody order made in respect of a child, and any order in respect of access or maintenance of a child who is the subject of a custody order, shall cease to have effect when the child attains the age of nineteen years.

**144.** (1) A court may request a report from a child welfare inspector or from some other suitable person appointed for that purpose by the court, on matters relevant to the proceedings that the court considers desirable and the court may receive the report in evidence.

Factors  
taken into  
consideration  
in making  
custody  
order

(2) A court shall, in determining whether or not a custody order should be made in respect of a child in favour of the applicant, have regard to —

- (a) the best interests of the child;
- (b) the ascertainable wishes of the child;
- (c) the conduct and wishes of the parent or guardian of the child;
- (d) the ascertainable wishes of the relatives of the child;
- (e) the ascertainable wishes of any person having parental responsibility for the child;
- (f) the ascertainable wishes of any foster parent or any person who has had custody of the child and under whom the child has made a home in the last three years preceding the application;
- (g) whether the child has suffered any harm or is likely to suffer any harm if the custody order is not made;
- (h) the customs of the community to which the child belongs;
- (i) the religion of the child;

(j) whether a care order, supervision order, personal protection order or an exclusion order is made in relation to the child concerned and whether those orders are in force; and

(k) the circumstances of any sibling of the child concerned and of any other children of the home, if any.

(4) The court may order that a person who is not awarded custody shall have any rights and duties in relation to a child, other than the right of possession, jointly with the person who is given custody of a child where a custody order gives custody of a child—

(a) to one party to a marriage;

(b) in the case of joint guardians, to one guardian, or

(c) in the case of a child of the family, to one of the parents.

Supervision  
of child in  
custody

**145.** (1) Where a court makes an order for the custody of a child and it appears to the court that there are exceptional circumstances making it desirable that the custody of the child should be supervised by an independent person, the court may, for any period during which the child is committed to the custody of a person, order that the custody of the child be supervised by a child welfare inspector for a period not exceeding three months.

(2) A child welfare inspector shall at the expiration of three months under subsection (1) submit a report to the court and the Director of Social Welfare.

(3) Where the court determines, after the expiration of three months, that a person—

(a) is not a fit person to have custody of the child, the court may appoint another person as custodial parent of the child; or

(b) is a fit person to have custody of the child, the court shall confirm the order for custody of the child.

Disputes  
between  
joint  
custodial  
parents

**146.** Where two persons having parental responsibility vested in them jointly by a custody order disagree on the exercise or performance of the joint custody order, either person appointed in the order may apply to the court, and the court may refer the matter to mediation or make an order regarding the exercise of the parental responsibility where mediation fails.

Interim  
custody  
order

**147.** A court may make an interim custody order and may review, suspend or vary the order.

**148.** (1) A father and mother of a child may enter into a custody agreement in respect of the child. Custody agreement

(2) A court shall not enforce a custody agreement if the court considers that the agreement is not in the best interests of the child.

**149.** A court may, on varying or discharging a custody order, on the court's own motion, order the maintenance of a child. Maintenance order where custody order made

### **Division 6 - Registration and Enforcement of Maintenance Orders**

**150.** (1) A person entitled to receive payments under a maintenance order granted by the High Court may apply to the original court for the registration of the maintenance order in a subordinate court, and the subordinate court may, if it thinks fit, grant the application. Registration of High Court order

(2) Where an application for the registration of a maintenance order is granted—

(a) no proceedings shall begin, and no writ, warrant or other process shall be issued, for the enforcement of the order before registration of the order or before the expiry of the prescribed registration period from the grant of the application, whichever occurs first; and

(b) the original court shall, on being satisfied within the registration period by the person who made the application that no proceedings or process begun or issued before the grant of the application remain pending or in force, cause a certified copy of the maintenance order to be sent to the clerk of a subordinate court within whose area of jurisdiction the defendant appears to be.

(3) If at the expiration of the registration period the original court is not satisfied as referred to under subsection (1) (b), the grant of the application shall become void.

(4) A proper officer of the court of registration shall, on receipt of a certified copy of an order sent to the officer under this section, cause the order to be registered in that court.

**151.** (1) A person entitled to receive payments under a maintenance order granted by the subordinate court who considers that the maintenance order could be more effectively enforced if it were registered in the High Court or another subordinate court,

may apply to the original court for the registration of the maintenance order, and the court shall grant the application on being satisfied that, at the time when the application was made, the amount due under the first-mentioned maintenance order was unpaid.

(2) Where an application for the registration of a maintenance order granted by the subordinate court is granted—

(a) an enforcement order or warrant or other process in relation to an application for an enforcement order shall not be undertaken before the registration of that order;

(b) any warrant of commitment issued for the enforcement of the order shall cease to have effect if the person in possession of the warrant is informed of the grant of the application, unless the defendant has already been detained in pursuance of the warrant; and

(c) the original court shall, on being satisfied that no process for the enforcement of the order issued before the grant of the application remains in force, cause a certified copy of the order to be sent to the proper officer of the court of registration.

(3) A proper officer of a court of registration shall, on receipt of a certified copy of an order sent to the officer under this section, cause the order to be registered in that court.

Effect of  
registration

**152.** (1) Where a maintenance order is registered in any court under this Part—

(a) any provisions of the order by virtue of which sums payable under that order are required to be paid through or to any officer or person on behalf of the person entitled to them shall be of no effect so long as the order is registered in that court; and

(b) the court shall, unless it is satisfied that it is undesirable to do so order that all payments to be made under the maintenance order, including any arrears accrued before the date of the registration, shall be made through the proper officer of the court of registration.

(2) A maintenance order registered under subsection (1)(b) may be varied or revoked by a subsequent order.

(3) Where, by virtue of the provisions of this section or a maintenance order registered under this section, payments under a

maintenance order cease or become payable through or to an officer or person, the person liable to make the payments shall, until that person is given the prescribed notice to that effect, be considered to comply with the maintenance order if the person makes payments in accordance with the maintenance order and any order under this section of which that person has received notice.

**153.** Subject to this Part, a maintenance order which is registered in a court shall not be registered in any other court.

Prohibition of multiple registration

**154.** (1) Subject to the provisions of this section, a registered order is enforceable as if it had been made by the court of registration and as if that court had jurisdiction to make the order, and proceedings for or with respect to the enforcement of a registered order may be taken accordingly.

Enforcement of registered order

(2) Where an order remains or becomes registered after the discharge of the order, no proceedings shall be taken by virtue of that registration except in respect of arrears which were due under the order at the time of the discharge and have not been remitted.

**155.** (1) The provisions of this section shall have effect with respect to the variation of orders registered in subordinate court, and references in this section to registered orders shall be construed accordingly.

Variation of orders registered in subordinate court

(2) A court of registration may exercise the same jurisdiction to vary any rate of payments specified by a registered order as the original court, other than jurisdiction in a case where a party to the order is not present in the Republic when the application for variation is made.

(3) A rate of payment specified by a registered order shall not be varied except by the court of registration.

(4) A rate of payment specified by a registered order shall not be varied by virtue of subsection (2) so as to exceed the rate of payments specified by the order as made or last varied by the original court.

(5) If it appears to the court to which an application is made by virtue of subsection (2) or (3) for the variation of a rate of payment specified by a registered order that, by reason of limitations imposed on the court's jurisdiction by subsection (4) or for any other reason, it is appropriate to remit the application to the original court, the first-mentioned court shall so remit the application, and the original court shall deal with the application as if the order were not registered.

(6) Nothing in this section shall affect the jurisdiction of the original court to vary a rate of payment specified by a registered order if an application for the variation of that rate is made to that court—

(a) in proceedings for a variation of provisions of the order which do not specify a rate of payment; or

(b) at a time when a party to the order is not present in the Republic.

(7) An application for variation of a registered order shall not be made to any court while proceedings for a variation of the order are pending in any other court.

(8) Where a subordinate court, in exercise of the jurisdiction conferred by this section, varies or refuses to vary a registered order, an appeal of the variation or refusal to vary shall lie to the High Court.

Cancellation  
of  
registration

**156.** (1) A person entitled to receive payments under a registered order who desires the registration to be cancelled shall give notice under this section.

(2) Where the original court varies or discharges an order registered in a subordinate court, the original court may, if the court considers necessary, give notice under this section.

(3) Where a subordinate court discharges an order registered in the High Court and it appears to the subordinate court, whether by reason of the remission of arrears by that court or otherwise, that no arrears under the order remain to be recovered, the subordinate court shall give notice under this section.

(4) A notice under this section shall be given to the court of registration, and where that notice is given—

(a) no proceedings for the enforcement of the registered order shall be commenced before the cancellation of the registration and no rit, warrant or other process for the enforcement thereof shall be issued in consequence of the proceedings begun before the giving of the notice;

(b) and the order is registered in a subordinate court, any warrant of commitment issued for the enforcement of the order shall cease to have effect when the person in possession of the warrant is informed of the giving of the notice, unless the defendant has already been detained in pursuance of the warrant; and

(c) the court of registration shall cancel the registration on being satisfied in the prescribed manner—

(i) that no process for the enforcement of the registered order issued before the giving of the notice remains in force; and

(ii) in the case of an order registered in a subordinate court, that no proceedings for the variation of the order are pending in a subordinate court.

(5) On the cancellation of the registration of an order, any order made in relation to the court under section 152(1)(b) shall cease to have effect, except that, until the defendant receives the prescribed notice of the cancellation, the defendant shall be deemed to comply with the order if the defendant makes payments in accordance with any order under that paragraph which was in force immediately before the cancellation of which the defendant has notice.

**157.** A person, including a child in whose favour a maintenance order has been made, may apply to a court for the enforcement of the order in accordance with the relevant written law.

Enforcement of maintenance order

PART XI  
GUARDIANSHIP

**158.** (1) Subject to the provisions of this Act, the surviving parent shall, on the death of a parent of a child, be the guardian of the child.

Rights of surviving parent to guardianship and power of court

(2) The surviving parent shall, where a guardian is appointed by the deceased parent in accordance with section 160, act jointly with the appointed guardian.

(3) Despite subsection (1), where a guardian has not been appointed by the deceased parent under subsection (2) or the guardian appointed by the deceased parent is dead or refuses to act, the court may appoint a guardian to act jointly with the surviving parent.

**159.** (1) A guardian may be appointed in respect of a child who is resident in the Republic, whether or not a child is a citizen.

Appointment of guardian

(2) A guardian appointed under this Act need not be a citizen or resident in the Republic.

(3) A guardian may be appointed in respect of the child or the estate of a child, or both.

(4) A guardian appointed only in respect of the estate of a child need not have custody of a child, but have the—

- (a) power and responsibility to administer the estate of the child and to receive, recover and invest the property of the child for the benefit of the child;
- (b) duty to take all reasonable steps to safeguard the estate of the child from loss or damage;
- (c) duty to produce and avail accounts in respect of the child's estate to the parent or custodial parent of the child or to another person that the court may direct, or to the court on every anniversary of the date of the guardian's appointment; and
- (d) duty to produce an account or inventory in respect of the child's estate when required to do so by the court.

Appointment  
of  
testamentary  
guardian

**160.** (1) A parent of a child may, by will or deed, appoint any person to be the guardian of the child after that parent's death.

(2) A guardian of a child may, by will or deed, appoint another person to take the guardian's place as the guardian of the child in the event of the guardian's death.

(3) An appointment made under subsection (1) or (2) shall only have effect if—

- (a) in the case of an appointment by deed, the deed is dated and is signed by the person making the appointment and in the presence of two witnesses; and
- (b) in the case of an appointment made by a written or oral will, it is made or executed and attested, respectively, in accordance with the Wills and Administration of Testate Estates Act.

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(4) A guardian appointed under this section shall act jointly with the surviving parent of the child, unless the parent objects to the guardian so acting.

(5) If the surviving parent of a child objects to joint guardianship, or if the guardian appointed considers that the parent is unfit to have legal custody of the child, the guardian or parent of the child may apply to a court and that court may —

- (a) refuse to make an order, in which case the parent shall remain the sole guardian;

- (b) make an order that the guardian shall act jointly with the parent;
  - (c) make an order appointing a relative of the child or a person who is willing to so act, as guardian of the child, to act jointly with the parent or guardian or both of them; or
  - (d) make an order that the guardian shall be the sole guardian of the child.
- (6) A court may, where it makes an order under subsection (5)(d), having regard to the welfare of the child—
- (a) make an order regarding the custody of the child and the rights of access to the child by the child's parent and relatives, as the court may consider necessary; and
  - (b) order that the parent shall pay the guardian a financial provision towards the maintenance of the child having regard to the means of the parent, as the court may consider reasonable.
- (7) A court shall only appoint a person who is not a relative of the child as the sole guardian for the child if the appointment is in the best interest of the child.
- (8) Where guardians are appointed by both parents, the appointed guardians shall, after the death of the surviving parent, act jointly.
- (9) If a guardian is appointed by the court under subsection (5) to act jointly with the surviving parent, the guardian shall continue to act as guardian after the death of the parent, but if the surviving parent has appointed a guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the parent.
- (10) The court shall consider the views of the child when making an order under this section having regard to the age and maturity of the child concerned.

**161.** A court may, in addition to the court's powers to appoint a guardian under section 160(5), appoint a guardian in the following circumstances:

Appointment  
of guardian by  
court

- (a) on the application of a person, where the child's parents are dead or cannot be found and the child has no guardian or another person with parental responsibility for the child; and

(b) on the application of a person, where the child is in need of care and protection within the meaning of section 167.

Guardian's  
revocation  
and  
disclaimer

Cap. 60

**162.** (1) An appointment of a testamentary guardian in a will or codicil may be revoked in accordance with the Wills and Administration of Testate Estates Act.

(2) An appointment under section 160 is revoked if the will or codicil is revoked.

(3) A person who is appointed as a guardian of a child under section 160 or 161 may disclaim the appointment by an instrument signed by that person and made within a reasonable time of that person first knowing that the appointment has taken effect.

(4) An appointment of a guardian may be revoked at any time by an order of the court on the court's own motion or on an application by—

(a) a parent or guardian of the child;

(b) the child concerned, with leave of the court; or

(c) a relative of the child.

(5) A court shall, before revoking an appointment of a guardian, ascertain who shall have guardianship or legal custody of the child if, on the revocation of the appointment of the guardian, no further order was made.

Duration of  
appointment  
of guardian

**163.** (1) Subject to subsection (2), the appointment of a guardian shall cease on the child attaining the age of nineteen years.

(2) A court may make an order extending the appointment of a guardian beyond the child's nineteenth birthday if—

(a) the child is a mental patient and is incapable of maintaining oneself, or of managing the child's own affairs and the property of the child without the assistance of a guardian; or

(b) any circumstance regarding the child warrants the making of an order under this section in the best interest of the child.

(3) An order for the extension of the appointment of a guardian shall be made prior to the child's nineteenth birthday and may be made on an application by—

(a) the child;

- (b) the parent or guardian of the child;
- (c) a relative of the child; or
- (d) the Director of Social Welfare.

(4) An order for the extension of the appointment of a guardian shall not be made without the consent of the child if the child is capable of giving that consent, and of the guardian whose appointment is required to be extended.

(5) A court making an order under this section may attach conditions that the court considers necessary.

(6) A court may vary, modify or revoke an order made under this section after the child's nineteenth birthday on the application of any of the persons named in subsection (3), or the child's spouse, where the child marries after the child's nineteenth birthday.

**164.** (1) Where two or more persons act as joint guardians to a child, or where the surviving parent and a guardian act jointly and they are unable to agree on any question affecting the welfare of the child, any one of the guardians may apply to a court for the court's direction, and the court may make any order regarding the matter of difference as the court may consider necessary.

Dispute  
between  
guardians

(2) A child, a relative of the child, the Director of Social Welfare, a person who has parental responsibility for the child or a person authorised to act jointly with a guardian under sections 160 and 161 may, with the leave of the court, apply to the court for its directions or settlement of any question affecting the welfare of the child arising from, or connected with, the exercise of the guardian's parental responsibility with respect to the child, and the court may make an order regarding the matters in contention that the court may consider necessary.

(3) A court may, before making an order under this section, request for a social welfare report from a child welfare inspector that the court shall take into consideration when making an order under this section.

**165.** A guardian appointed under section 159 has the same powers over a child as a guardian appointed by deed or will under section 160 or otherwise appointed under the Intestate Succession Act.

Powers of  
guardian  
Cap. 59

**166.** (1) A guardian of a child commits an offence if that guardian –

Offences by  
guardian

(a) wilfully fails to produce to the court, or the parent or guardian of the child, an account required under section 159; or

(b) wilfully or recklessly produces an account which is false in any material particular.

(2) A person who contravenes subsection (1) is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

## PART XII

### CHILD IN NEED OF CARE AND PROTECTION

Child in  
need of care  
and  
protection

**167.** (1) For the purposes of this Act, a child is in need of care and protection if that child—

(a) has no parent or guardian or is abandoned by the parent or guardian;

(b) is destitute, found begging or receiving alms;

(c) has a parent whose movement is restricted under any written law or the parent is imprisoned and the child is destitute;

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of 2021

(d) is a circumstantial child as provided under the Zambia Correctional Services Act, 2021;

(e) has a parent or guardian who is unable or unfit to exercise proper care or guardianship;

(f) frequents the company of a criminal or offender, is truant, is falling into bad association or is exposed to moral or physical danger;

(g) is prevented from receiving education or basic services;

(h) being a female, is subjected or is likely to be subjected to female genital mutilation;

(i) is likely to be subjected to child marriage or to customs and practices prejudicial to the child's life, education and health;

(j) is being kept in any premises which are unsanitary or dangerous and prejudicial to the child's life and health;

(k) is exposed to gender-based violence or a serious offence has been committed against the child;

- 
- (l) is pregnant;
  - (m) is born to a child;
  - (n) is terminally ill or the child's parent is terminally ill and either the child or the child's parent is not receiving any care;
  - (o) is being unlawfully confined or ill-treated;
  - (p) has a disability and is being unlawfully confined or ill-treated;
  - (q) is sexually abused or is likely to be exposed to sexual abuse and exploitation, prostitution or pornography;
  - (r) is engaged in any work likely to harm the child's health, education, mental or moral development;
  - (s) is displaced as a consequence of war, civil disturbance or disaster;
  - (t) is exposed to any circumstances likely to interfere with the child's physical, mental or social development;
  - (u) is an unaccompanied child on the move or refugee;
  - (v) is a member of the same household as a child against whom any serious offence is committed, or is a member of the same household as a person who is convicted of a serious offence against a child;
  - (w) is a victim of human trafficking;
  - (x) is engaged in the use, or trafficking, of drugs or any other harmful substance;
  - (y) is in conflict with the law; or
  - (z) is in need of care and protection as determined by the Director of Social Welfare.

(2) Despite subsection (1), for the purposes of evidence before a court, a child is considered to be exposed to danger where the child is found—

- (a) destitute;
- (b) wandering or loitering, without any fixed place of abode and without visible means of subsistence; or
- (c) begging or receiving alms.

Conveyance  
to place of  
safety

**168.** (1) A child in need of care and protection shall, as a measure of first resort, remain in the child's birth family if it is in the best interests of the child to remain in the child's birth family.

(2) Where it is not in the best interests of a child to remain in the child's birth family, a child shall be placed into kinship care or emergency foster care.

(3) Subject to subsections (1) and (2), a child in need of care and protection may, as a measure of last resort, be placed or take refuge in a place of safety until the child is brought before a court in accordance with section 169.

(4) A person who, or an institution that, has reasonable grounds to believe that a child is in need of care and protection shall report the matter to an authorised officer.

(5) A child who is or believes that another child is in need of protective services as a result of any ground under section 167 may report that fact to the nearest authorised officer.

(6) An authorised officer shall, on receipt of a report under subsection (4) or (5), take the child in need of care and protection to a place of safety and the child shall be accommodated at the place of safety until the child is brought before a court in accordance with section 169.

(7) An authorised officer who has reasonable grounds to believe that a child is in need of care and protection may take into custody the child and accommodate the child at a place of safety until the child is brought before a court in accordance with section 169.

(8) An authorised officer shall ensure that a child is examined and treated at a health facility where it appears to an authorised officer that the child taken into custody requires medical attention prior to the child being brought before a court in accordance with section 169.

Proceedings  
in respect of  
child in need  
of care and  
protection

**169.** (1) An authorised officer shall apply to a court, within forty-eight hours of a child being taken to a place of safety, to determine whether a child is in need of care and protection.

(2) A court may, where an application is made under subsection (1), issue summons requiring the child to be brought before the court and the court may make an interim order for the temporary accommodation of the child in a place of safety or for the child's temporary committal to the care of another person.

(3) An authorised officer shall, before making an application under subsection (1), notify the Director of Social Welfare of the name and address of the child and the date and hour when, and the nature of the grounds on which, the child is to be brought before the court.

(4) The Director of Social Welfare shall, on receipt of a notice under subsection (3), investigate and submit to the court information relating to the home, circumstances, age, health, character and general antecedents of the child as may be necessary to assist the court.

(5) A court may, where it makes an order under subsection (2), make other orders that the court considers necessary for the establishment of contact between the child and the child's parent, or between the child and any person having parental responsibility for the child including the enforcement of the order.

(6) A child's parent, guardian or person having parental responsibility for the child may, where a child is taken to a place of safety by an authorised officer prior to an application under subsection (1), apply to the Director of Social Welfare for the release of the child from the place of safety into the care of the parent, guardian or person having parental responsibility.

(7) The Director of Social Welfare shall—

- (a) grant or reject the application under subsection (6); and
- (b) where the Director of Social Welfare rejects the application under subsection (6), notify the applicant, in writing, of the decision and the reasons for that decision.

(8) An applicant who is aggrieved by the decision of the Director of Social Welfare under subsection (7) may apply to the court for the discharge of the child from the place of safety concerned into the care of that applicant.

**170.** (1) A court shall, if the court considers that it is in the best interests of the child, make the following orders where a child in need of care and protection is brought before the court:

- (a) that the child be returned to the child's parent, guardian, or person having parental responsibility for the child;
- (b) that the child's parent, guardian or person having parental responsibility for the child executes a bond with or without sureties to exercise proper care and guardianship;

Powers of  
court

- (c) place a child under foster care;
- (d) commit the child to a place of safety;
- (e) where the child is a victim of armed conflict, civil disturbance or a disaster, an order requiring the Director of Social Welfare to take the necessary steps to ensure that the child is provided with care, and where possible, is re-united with the child's family;
- (f) where a child is in a place of safety, an order requiring the Director of Social Welfare to take the necessary steps to ensure that the child is provided with care commensurate with the child's special needs, if the child has a disability;
- (g) if the child is subjected to child marriage, an order rendering the marriage void and requiring the child to undergo education in an educational institution and be placed in a place of safety or under care, having regard to the age of the child; or
- (h) where it is satisfied that the child is engaged in drug abuse, commit the child to a treatment and rehabilitation centre for treatment or order that the child be accorded professional counselling.

(2) A parent who is ordered to exercise proper care and guardianship under subsection (1)(b) shall also be required to seek the assistance of a professional counsellor.

(3) Despite subsection (1)(d), the court shall order that a child be committed to a place of safety as a measure of last resort and prior to the making of that order, a child welfare inspector shall conduct family group conferencing to ascertain the suitability of the child being returned to the child's parent, guardian or person having parental responsibility for the child.

(4) Where the court orders that a child be committed to a place of safety under subsection (1)(d), efforts shall be made to ensure the child is—

- (a) returned to that child's parent, guardian or person having parental responsibility for the child; or
- (b) placed under foster care where it is not in the best interest of the child to be returned to the child's parent, guardian or person having parental responsibility for the child.

**171.** (1) The ministry responsible for social welfare shall provide a place of safety for a child in need of care and protection.

Intervention  
by ministry  
or place of  
safety

(2) Where it appears to an officer employed at a place of safety that a child in the area where that place of safety is located is in need of care and protection and that the officer's intervention is necessary, the child shall be kept at that place of safety.

(3) A place of safety which takes a child into its care under subsection (2) shall—

(a) notify the Director of Social Welfare within twenty-four hours of receiving the child into its care; and

(b) render a monthly report to the Director of Social Welfare of the children received and held under its care.

(4) The Director of Social Welfare shall, where the Director of Social Welfare receives a notification under subsection (3), investigate the circumstances of the child held under the care of a place of safety, and cause a child welfare inspector to apply within forty-eight hours of the date of a child being taken to a place of safety, to a court to determine whether a child is in need of care and protection.

(5) A place of safety which receives a child into its care under this section may recover the cost of maintenance of that child from the child's parent, guardian or person having parental responsibility for the child except where that child's parent, guardian or the person having parental responsibility for the child has no ability to bear the cost of the maintenance of the child in a place of safety.

(6) A place of safety that receives a child into its care shall not be held liable for wrongfully taking a child into its care if the child was received in good faith.

**172.** (1) An officer responsible for a place of safety or an authorised officer shall, if it appears that a child in a place of safety is in need of medical care, take the child to a health facility for appropriate treatment and care of the child.

Medical care

(2) Where a child is accommodated in a health facility for in-patient care, an officer responsible for a place of safety or an authorised officer who took the child to the health facility under subsection (1) shall immediately notify the child's parent or guardian or person having parental responsibility for the child or the Director of Social Welfare.

(3) Where it appears to a health facility or health practitioner that a serious offence is committed against a child, the health facility or health practitioner shall immediately—

(a) report this fact to an authorised officer; and

(b) take measures that shall be necessary to record and preserve any information with regard to the condition of the child.

(4) Any expenses incurred in connection with the medical treatment or accommodation of a child at the health facility under this section shall be defrayed out of monies that may be appropriated for that purpose by Parliament.

Hearing of  
parent or  
guardian

**173.** A court shall, where a child in need of care and protection is brought before the court, allow the child's parent, guardian or person having parental responsibility for the child to be heard on an application made in relation to the child.

Application  
of trust for  
maintenance  
of child

**174.** A court may, where a child is, by an order of the court made under this Part, removed from the care of a person, and that person is entitled under a trust to receive a sum of money in respect of the child's maintenance, order the whole or a part of the sums payable under the trust to be paid to another person in whose care the child is committed to be applied for the child's benefit in a manner that the court may direct, having regard to the terms of the trust.

Cruelty to,  
or neglect  
of, child

**175.** (1) A person having parental responsibility, custody, charge or care of a child commits an offence if that person—

(a) wilfully neglects to provide care, protection and maintenance of the child or proper contribution towards reasonable maintenance of, or care for, the child; or

(b) assaults, ill-treats, abandons or exposes a child to any form of suffering or injury to mental or physical health.

(2) A person who commits an offence under subsection (1) is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

(3) For the purposes of this section, a person having parental responsibility, custody, charge or care of a child shall be considered to have wilfully neglected to provide care, protection and maintenance of that child if the person concerned has wilfully failed or neglected to provide adequate food, clothing, education, immunisation, shelter and medical care.

**176.** (1) A court may, on information on oath by a person who the court considers is acting in the best interests of the child, issue a warrant authorising an authorised officer named in the warrant to search for a child if it appears to the court that there is reasonable cause to suspect that—

Warrant to search for and remove child

- (a) the child has or is being assaulted, ill-treated, abandoned or neglected in a place within the jurisdiction of the court in a manner likely to cause the child suffering or injury to mental or physical health;
- (b) a serious offence has or is being committed in respect of the child; or
- (c) the child is otherwise in need of care and protection in accordance with section 167.

(2) An authorised officer may, with a warrant, enter any house, building or other place specified in the warrant, and may remove the child from that place.

(3) Where a court issues a warrant under subsection (1) and it is found that a child has or is being assaulted, ill-treated, abandoned or neglected in any manner, or that a serious offence has or is committed in respect of the child, or that the child is in need of care and protection, an authorised officer may take the child and keep the child in a place of safety until the child is brought before a court in accordance with section 169.

(4) A court issuing a warrant for the purposes of this section may, by the same warrant, cause a person accused of an offence in respect of the child concerned to be apprehended and brought before a court of competent jurisdiction.

(5) A warrant under this section shall not name the child concerned.

**177.** (1) A court may, in addition to the orders under section 170, make any of the following orders for the protection of children in need of care and protection:

Orders for protection of children

- (a) supervision order;
- (b) care order;
- (c) access order;
- (d) residence order;
- (e) assessment order;
- (f) production order; or
- (g) any other order the court considers necessary.

(2) The following persons may apply for an order for the protection of a child:

- (a) a child in need of care and protection;
- (b) a parent, guardian or custodian of the child;
- (c) a relative of the child;
- (d) a person having parental responsibility for the child;
- (e) the Director of Social Welfare; or
- (f) an authorised officer.

(3) A person under subsection (2), may apply for more than one order at the same time, but the court shall not make more than one order in response to the application if those orders are likely to be detrimental to the best interests of a child, or if the desired effect of the orders sought by the applicant may be achieved by making only one order.

(4) An application for an order under this Part may be made separately or as part of any proceedings under this Act.

(5) Subject to this Act, an order made under this Part shall cease to have effect on the child attaining the age of nineteen years, except that the court may extend the application of the order where special circumstances exist to justify the extension.

Supervision  
order

**178.** (1) A court may, where a child in need of care and protection is returned to the care and custody of the child's parent, guardian or person having parental responsibility for the child, make a supervision order placing the child under the supervision of an authorised officer.

(2) A court shall, prior to making a supervision order ensure that—

- (a) enquiries or investigations are carried out and a welfare report is availed to the court; and
- (b) written notice of the proceedings is given to the parent, guardian or person having parental responsibility for the child.

(3) A supervision order shall remain in force for a period not exceeding twelve months, but the court may, on the application of the authorised officer extend the order for a further period not exceeding six months having regard to the best interests of the child.

(4) A parent, guardian or person having parental responsibility for the child shall be heard on an application made under subsection (3).

(5) A court may make an interim supervision order on application by the parent, guardian or person having parental responsibility for the child or on the court's own motion—

- (a) where the court determines that the circumstances of the child concerned require that an order be made pending the submission of a welfare report prepared in accordance with subsection (2);
- (b) on adjourning an application for a supervision order; or
- (c) on making of an order for the assessment of the child under this Act.

(6) An interim order shall remain in force for a period not exceeding eight weeks.

(7) A court may vary or discharge an interim supervision order on the application of—

- (a) a child in need of care and protection, with the leave of the court;
- (b) a parent, guardian or person having parental responsibility for the child; or
- (c) an authorised officer.

**179.** (1) A court may make a care order in respect of a child if the court is satisfied that— Care order

- (a) all possible alternative methods for assisting the child have been unsuccessful and the care order is in the best interests of the child;
- (b) the child concerned is suffering or is likely to suffer significant harm, and that the harm, or probability of harm, is attributed to the—
  - (i) care given to the child, or likely to be given to the child and if the care order is not made, the care shall not be what is reasonably expected of a parent; or
  - (ii) child being beyond the control of the child's parent, guardian or person having parental responsibility for the child; and
- (c) the danger to which the child is exposed is so severe as to require the child's immediate removal from the place where the child is residing.

(3) A court shall, where a child has a disability, as far as practicable, entrust the care of the child to a person or institution that is suitably placed to cater for the needs of the child.

(4) A court making a care order shall cause a record to be delivered to the person or institution entrusted with the care of the child, containing information regarding the child concerned as the court considers necessary.

(5) A care order shall place a child in care until the child attains the age of nineteen or for a shorter period as the court considers necessary.

(6) The Director of Social Welfare shall, on the making of a care order under this section, supervise and monitor the care provided to the child concerned by the person or institution to whom or to which the child is committed under the order, and periodically assess the condition and circumstances of the child.

(7) A court may, on an application by the Director of Social Welfare, or on its own motion, make an interim care order—

- (a) if it has reasonable grounds to believe that the circumstances of the child are as mentioned in subsection (1);
- (b) on the adjournment of an application for a care order; or
- (c) on making an assessment order.

(8) An interim care order made under subsection (7) shall remain in force for a period not exceeding eight weeks, and may be extended for a further period of four weeks if at the expiry of the period the court considers the extension necessary.

(9) A care order or interim care order may be discharged by the making of—

- (a) an adoption order in respect of the child;
- (b) a residence order in respect of the child; or
- (c) a supervision order in respect of the child.

(10) A court may, on the application of a child, the Director of Social Welfare, parent, guardian, or person having parental responsibility for the child, vary or discharge the care order or interim care order on terms that the court considers necessary.

Arrangements  
for access to  
child in care

**180.** (1) A court shall, before making a care order, consider the arrangements made by the Director of Social Welfare, or proposed to be made, for affording contact with the child during the term of the care order, and shall invite the parties to the proceedings to comment on the arrangements or to make an application for contact with the child.

(2) A court shall, where it makes an access order under this section, determine the frequency and duration of access to the child, subject to conditions that the court considers necessary.

(3) The Director of Social Welfare or the child may, with the leave of the court, apply to the court to deny access to a person and on that application, the court shall, if satisfied that the contact between the child and that person should be denied, make an order authorising the Director of Social Welfare to deny contact between the child and the person named in the order.

**181.** (1) The ministry responsible for child development and welfare shall, where a child in need of care and protection is reintegrated into the child's birth family or is placed in kinship care or emergency foster care, provide intensive family support and other welfare support if the intensive family support or other welfare support contributes to the wellbeing of the child and prevents the child from being placed under institutional care.

Intensive  
family  
support

(2) Despite subsection (1), intensive family support may be provided by—

(a) a child care facility where the ministry responsible for child development and welfare approves the provision of intensive family support by a child care facility; or

(b) any other social service provider accredited to provide intensive family support under section 182.

**182.** (1) A social service provider that intends to provide intensive family support shall apply to the Director of Social Welfare for accreditation in the prescribed manner and form, on payment of a prescribed fee.

Accreditation  
to provide  
intensive  
family  
support

(2) The Director of Social Welfare shall, within thirty days of receipt of an application under subsection (1), grant or reject the application and inform the applicant of the decision.

(2) The conditions for accreditation, the validity of the accreditation, the renewal of the accreditation, the variation and transfer of the accreditation, and the suspension or revocation of the accreditation under this section shall be prescribed.

### PART XIII FOSTER CARE

**183.** (1) A person who intends to foster a child shall notify the Director of Social Welfare of the person's intention to do so in the prescribed manner and form.

Application  
to foster  
child

(2) The Director of Social Welfare shall, on receipt of a notice under subsection (1), match a child with a prospective foster parent and apply to the Children's Court for a foster order.

(3) The Director of Social Welfare shall, before the making of an application under subsection (2), appoint a child welfare inspector to manage the procedure relating to the fostering of each child.

Persons  
qualified to  
foster  
children

- 184.** (1) The following persons may apply to be foster parents:
- (a) a sole applicant who has attained the age of twenty-five years;
  - (b) a sole applicant who has attained the age of twenty-one years and is a relative of a child;
  - (c) two spouses jointly, where one of the joint applicants has attained the age of twenty-five years; or
  - (d) two spouses jointly, where one of the joint applicants has attained the age of twenty-one years and is a relative of the child.
- (2) Despite subsection (1), the following persons shall not apply to be foster parents:
- (a) a single man in respect of a female child and a single woman in respect of a male child;
  - (b) a non-resident;
  - (c) a person convicted of an offence and sentenced to a term of imprisonment exceeding six months without the option of a fine;
  - (d) a person from whose care a child has been removed under this Act;
  - (e) a person who has been convicted of an offence under this Act; and
  - (f) a person who is excluded from taking care of a child under this Act.
- (3) Despite subsections (1) and (2), the Children's Court may permit the following persons to be foster parents, if the Children's Court is satisfied that there are special circumstances that justify them to be foster parents:
- (a) a sole male applicant in respect of a female child;
  - (b) a sole female applicant in respect of a male child; or
  - (c) in the case of joint applicants, if they are not married to each other.
- (4) A foster parent shall have the same responsibility in respect of the child's maintenance as if the foster parent was the parent of the foster child.
- (5) A person who contravenes this section commits an offence.

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- 185.** A child may be placed under foster care for a period that the Children's Court may determine or until the child attains the age of nineteen years. Duration of foster care
- 186.** (1) A child welfare inspector appointed under section 183 shall prepare a report to the Children's Court which shall contain— Procedure before placement in foster care
- (a) details of the name, approximate age, religion and employment of the prospective foster parents;
  - (b) the number and approximate ages of other persons living in the household of the prospective foster parent; and
  - (c) details of the child and circumstances surrounding the situation of the child.
- (2) The Children's Court shall, on the basis of the report under subsection (2), place the child in the care and custody of the prospective foster parent.
- (3) A child shall be placed with a foster parent if—
- (a) a child welfare inspector has interviewed the prospective foster parent and assessed that the person is a suitable person to foster a child;
  - (b) a child welfare inspector has visited the home of the prospective foster parent and has confirmed in writing that it is likely to meet the requirements of the particular child and that the conditions in the home are satisfactory;
  - (c) two persons of good standing who have known the prospective foster parent well for at least five years have confirmed about the good character and suitability of the prospective foster parent to care for the child;
  - (d) it is established by the person in charge of a health facility that the prospective foster parent is not a mental patient likely to adversely affect the child;
  - (e) it is established that no person in the home of a prospective foster parent has been convicted of an offence exceeding six months without the option of a fine which would render it undesirable for the child to associate with that person;
  - (f) the wishes of the child concerning the proposed fostering are ascertained, so far as practicable, and are taken into account; and

(g) the child and the prospective foster parent are counselled on the effects of foster care by a child welfare inspector.

Religion

**187.** (1) Where a child's religion is known, the child shall be placed with a prospective foster parent who is of the same religion as the foster child.

(2) Where it is not possible to place a child with a prospective foster parent of the same religion with the child, the child may be placed with a prospective foster parent of a different religion.

(3) Where a child's religion is not known, the child shall be placed with a prospective foster parent who shall undertake to bring up the child in accordance with the religious denomination of the prospective foster parent.

Cultural background

**188.** (1) A child shall, where possible, be placed with a prospective foster parent who has the same cultural background as the child.

(2) Where it is not possible to place a child with a prospective foster parent of the same cultural background with the child, the child may be placed with a prospective foster parent of a different cultural background.

Undertaking by foster parents

**189.** (1) A foster parent shall, on the day on which the child is placed with the foster parent, sign an undertaking in the prescribed manner and form.

(2) Where the foster parent cannot read the English language sufficiently to understand the nature of the undertaking, a child welfare inspector shall cause the undertaking to be translated in a language the foster parent understands and explained to the foster parent in a language which the foster parent understands and shall certify to that effect in a prescribed manner and form.

(3) A foster parent shall be given a copy of the undertaking signed by that foster parent.

(4) A copy of the undertaking shall be sent to the Children's Court.

Medical examination

**190.** (1) A child shall be placed with a prospective foster parent if the child has been examined by a health practitioner and the person examining the child has reported to the Director of Social Welfare, in writing, on the child's physical and mental condition.

(2) An examination report required under subsection (1) shall be submitted to the Director of Social Welfare within four weeks of carrying out the child's medical examination.

(3) A child welfare inspector placing a child with the foster parent shall submit to the foster parent a list of immunisations carried out in respect of the child and indicate to the foster parent the list of other immunisations required to be effected in respect of the child in accordance with the ministry responsible for health's schedule of immunisations, and the foster parent shall ensure that those immunisations are carried out.

(4) A foster parent and child welfare inspector concerned, shall at all times keep a record of the birth certificate and immunisations in respect of a foster child.

(5) Where a child placed with a foster parent is under five years of age, the foster parent shall ensure that the child is medically examined by a health practitioner every month.

(6) Where a child placed with the foster parent is above the age of five years, the foster parent shall ensure that the child is medically examined by a health practitioner once every year.

(7) A health practitioner who examines a child under subsection (5) or (6) shall report, in writing, to the Director of Social Welfare on the physical, mental and emotional condition of the child.

(8) A foster parent shall ensure that the report under subsection (7) is given to the Director of Social Welfare.

**191.** (1) A child welfare inspector shall visit the foster family and see the child—

Visits during placement

- (a) within two weeks after the date of placement of the child with the foster family where the child is under two years of age, and thereafter once every three months;
- (b) within one month after the date of placement of the child with the foster family where the child is above two years of age, and thereafter once every three months;
- (c) within one month after receiving notification from a foster parent that the foster parent has changed the foster parent's place of residence; or
- (d) not later than one week after receipt of information from the child, a foster parent or any other person which indicates the need for the child welfare inspector to visit the child.

(2) A child welfare inspector who carries out a visit under subsection (1) shall submit a written report to the Director of Social Welfare and place the report in the child's case record stating in detail the child welfare inspector's observations as to the child's welfare, progress and conduct, and changes which have occurred in the circumstances of the foster family.

(3) The report made under subsection (2) shall, based on a child's age and level of maturity, include the child's views and feelings concerning placement and any possible challenges.

(4) The Children's Court shall, on an application by the child welfare inspector, terminate the placement of the child with the foster parent where the challenges identified in the report remain unresolved within thirty days of the date of the visit of the child welfare inspector under subsection (1).

Prohibition  
to remove  
child  
without  
leave

**192.** (1) A foster parent shall not remove a child from the Republic without the leave of the Children's Court and that leave shall be granted in exceptional circumstances being shown by that foster parent.

(2) An application for leave made under subsection (1) shall be accompanied by the following information relating to the child:

- (a) final destination of the child;
- (b) physical address of the place where the child shall be residing;
- (c) contact address of the person responsible for the child; and
- (d) duration that the child shall be absent from the Republic.

(3) Where leave is granted the—

- (a) Children's Court may impose conditions and restrictions that the Children's Court considers appropriate having regard to the best interests of the child; and
- (b) foster parent shall inform the Director of Social Welfare prior to leaving the Republic.

Illness

**193.** A foster parent shall, where a foster child is ill, ensure that the child receives medical attention and, as soon as practicable, notify the Director of Social Welfare of that illness.

- 194.** (1) A foster parent shall, where a foster child dies — Death
- (a) obtain a medical certificate of death and a post-mortem report of the cause of death; and
  - (b) within twenty-four hours of the death, notify the Director of Social Welfare.
- (2) The Director of Social Welfare shall, where the child's parent or guardian is known, inform the parent or guardian of the death of the child.
- (3) A child shall, where a child is placed with a single foster parent and that foster parent dies, be returned to the—
- (a) Director of Social Welfare; or
  - (b) child care facility where the child was taken from prior to the foster placement.
- 195.** (1) A foster child shall not be allowed to remain with a foster parent where it appears that the placement is no longer in the best interests of the child, except that the— Termination of placement
- (a) foster parent may appeal to the Children's Court if the child welfare inspector seeks to remove a foster child who has been in the care of the foster parent for more than twelve months; and
  - (b) Children's Court, on appeal, may prohibit the removal or authorise the removal subject to conditions that the Children's Court considers necessary.
- (2) The provisions of this Part shall cease to have effect in relation to a fostered child on the —
- (a) discharge of the care order;
  - (b) expiry of the period specified by the Director of Social Welfare for the duration of the foster placement of the child; or
  - (c) child attaining the age of nineteen years.
- 196.** (1) The Director of Social Welfare shall maintain a register of foster parents, in which the Director of Social Welfare shall enter details relating to the foster parents. Records
- (2) Despite the generality of subsection (1), the register shall contain the following information:

- (a) details of the name, age, sex, religion, employment and address of the foster parent;
- (b) the number and ages of other persons living in the household of the foster parent;
- (c) details of the name, sex, age, religion and address of each parent of the foster child, if known; and
- (d) the date of placement, the date of termination and the reason for termination of the placement.

(3) The Director of Social Welfare shall, in respect of a child placed in a foster home, maintain a register of foster children and a case record for each foster child in a prescribed manner and form.

(4) The Director of Social Welfare shall keep the following documents with the case record of the foster child:

- (a) a copy of the application form completed by the foster parent;
- (b) a copy of the birth certificate of the foster child and other necessary documents relating to the foster child;
- (c) a copy of the undertaking required by section 189; and
- (d) reports made under this Part.

(5) A register referred to under subsection (1) and the case record referred to under subsection (3) may be inspected during normal working hours by a public officer authorised by the Director of Social Welfare.

#### PART XIV

##### ADOPTION

Principles  
relating to  
adoption

**197.** The following principles shall apply in matters relating to adoption:

- (a) the best interests of a child as the paramount consideration;
- (b) subsidiarity which requires that adoption should be considered once all measures to maintain the child in the child's biological family are exhausted;
- (c) exhaustion of national mechanisms prior to the making of an inter-country adoption; and
- (d) poverty shall not in itself justify the adoption of the child.

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- 198.** (1) The following types of adoption shall apply: Types of adoption
- (a) open adoption; or
  - (b) closed adoption.
- (2) The following shall apply in an open adoption:
- (a) the adoptive parent may, in consultation with a parent or guardian of a child, change the name of the adopted child;
  - (b) the link between a child and the child's family of origin shall be maintained; and
  - (c) the adopted child shall receive an inheritance from both the adoptive parent and the child's family of origin.
- (3) A parent or guardian of the child may, in an open adoption, enter into a post-adoption agreement with the adoptive parent of the child to provide for—
- (a) communication and visitation between the child and the parent or guardian concerned, and another person that may be stipulated in the agreement; and
  - (b) the provision of information, including medical information, about the child after the application for adoption is granted.
- (4) A post-adoption agreement under subsection (3)—
- (a) takes effect on the date that the adoption order is granted;
  - (b) may be amended or terminated by an order of the Children's Court on application—
    - (i) by a party to the agreement; or
    - (ii) by the adopted child.
- (5) The following shall apply in a closed adoption:
- (a) the adoptive parent may change the name of the adopted child;
  - (b) the link between a child and the child's family of origin shall not be maintained; and
  - (c) the adopted child shall receive an inheritance only from the adoptive parent as provided under section 239.

Adoptable  
children

**199.** A child may be adopted if—

- (a) the child is an orphan and has no guardian;
- (b) the whereabouts of the child's parent or guardian cannot be established after due diligence for a period of six months;
- (c) the child has been deliberately abandoned for a period of three months;
- (d) the child's parent or guardian has abused or deliberately neglected the child or has allowed the child to be abused or deliberately neglected;
- (e) consent is granted for the adoption of the child as required under this Part; or
- (d) the child is resident within the Republic whether or not the child is a citizen.

Persons who  
may adopt

**200.** (1) The following persons may apply to adopt a child:

- (a) a sole applicant who has attained the age of twenty-five years and is at least twenty-one years older than the child;
- (b) a sole applicant who has attained the age of twenty-one years and is a relative of a child;
- (c) two spouses jointly, where one of the joint applicants has attained the age of twenty-five years and is at least twenty-one years older than the child;
- (d) two spouses jointly where one of the joint applicants has attained the age of twenty-one years and is a relative of the child; or
- (e) step mother or step father of the child.

(2) An adoption order shall be made in favour of the following persons if the court is satisfied that there are special circumstances that justify the making of an adoption order:

- (a) a sole male applicant in respect of a male child;
- (b) a sole female applicant in respect of a female child; or
- (c) in the case of joint applicants, if they are not married to each other.

(3) Despite subsection (1), the following persons shall not apply to be adoptive parents—

- (a) a single man in respect of a female child and a single woman in respect of a male child;
- (b) a person from whose care a child has been removed under this Act;
- (c) a person who is excluded from taking care of a child under this Act;
- (d) a person convicted of an offence and sentenced to a term of imprisonment exceeding six months without the option of a fine; and
- (e) a person who has been convicted of an offence under this Act.

**201.** (1) Subject to the provisions of this Act, the following information during the process of adoption and post-adoption shall be confidential:

Confidentiality

- (a) the identity and any information relating to a child;
- (b) the identity and any information relating to a child's parent, guardian or person having parental responsibility for the child; and
- (c) the identity and information relating to the prospective parent.

(2) Information under subsection (1) may, in consideration of the best interests of the child, be released during and after the adoption process on leave being granted by the Children's Court.

(3) Adoption proceedings in the Children's Court shall be held in camera.

(4) In an inter-country adoption, personal information of a child, prospective parent or a child's parent, guardian or person having parental responsibility for the child shall only be used for the purposes for which it is provided.

**202.** (1) A child shall be placed with a prospective parent if the child has been examined by a health practitioner and the person examining the child has reported to the Director of Social Welfare, in writing, on the child's physical, emotional and mental condition.

Medical examination of child prior to adoption

(2) An examination report required under subsection (1) shall be submitted to the Director of Social Welfare within four weeks of carrying out the child's medical examination.

(3) A child shall, where the child placed with a prospective parent is under five years of age, be medically examined by a health practitioner every month, and the child welfare inspector concerned with the placement of the child shall, so far as possible, ensure that the prospective parent complies with the requirements of this subsection.

Prohibition  
of two or  
more  
adoption  
orders  
simultaneous-  
ly

**203.** Two or more adoption orders shall not be made simultaneously in respect of the same child.

General  
prohibitions  
relating to  
adoption

**204.** (1) A person shall not—

- (a) engage in an adoption contrary to the provisions of this Part;
- (b) give or receive, or agree to give or receive, any consideration, in cash or in kind, or gift for the adoption of a child;
- (c) through fraud, coercion, undue influence or duress, cause a person to give up a child for adoption;
- (d) derive improper financial or other gain from an activity relating to an adoption under this Part; or
- (e) publish or cause to be published in any form or by any means an advertisement dealing with the placement or adoption of a child.

(2) Subsection (1)(b) does not apply to—

- (a) the biological mother of a child receiving reimbursement for—
  - (i) reasonable medical expenses incurred in connection with the pregnancy, birth of the child and follow-up treatment;
  - (ii) reasonable expenses incurred for counselling; or
  - (iii) any other prescribed expenses;

- 
- (b) a lawyer, psychologist or other professional person receiving fees and expenses for services provided in connection with an adoption;
  - (c) a central authority receiving prescribed fees;
  - (d) an adoption agency receiving prescribed fees;
  - (e) a foreign adoption body authorised to provide inter-country adoption services receiving prescribed fees; or
  - (f) any other prescribed person.
- (3) Despite subsection (2) (a), a reimbursement for the reasons specified under subsection (2) (a) shall not be made at the request of a biological mother.
- (4) Subsection (1)(e) does not apply to—
- (a) the publication of a notice under this Act or a court order;
  - (b) an advertisement by an adoption agency accredited to provide adoption services for purposes of recruitment as may be prescribed; or
  - (c) other forms of advertisement as may be prescribed.
- (5) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

### **Division 1 - Domestic Adoptions**

**205.** (1) A person who intends to adopt a child may, three months before the making of an application for adoption, notify the Director of Social Welfare of the person's intention to adopt a child in the prescribed manner and form.

Procedure for  
adoption

(2) The Director of Social Welfare shall appoint a child welfare inspector to manage the procedure relating to the adoption of a child.

(3) A child welfare inspector shall before placing a child with the prospective parent—

- (a) obtain written consent from the child's parent, guardian or person having parental responsibility for the child;
- (b) interview the prospective parent and assess that the prospective parent is a suitable person to adopt a child;

- (c) visit the home of the prospective parent and confirm, in writing, that the prospective parent is likely to meet the requirements of the particular child and that the conditions of the home of the prospective parent are satisfactory;
  - (d) confirm the good character and suitability of the prospective parent to care for the child from two persons of good standing who know the prospective parent;
  - (e) ensure that the prospective parent is not a mental patient likely to adversely affect the child;
  - (f) establish that a person in the home of a prospective parent has not been convicted of an offence exceeding six months without the option of a fine which would render it undesirable for the child to associate with that person; and
  - (g) ensure that the child and the prospective parent have been counselled on the effects of adoption by the child welfare inspector or any other person appointed by the Director of Social Welfare.
- (4) Consent required under subsection (3)(a)—
- (a) may be obtained from a pregnant woman in relation to that woman's unborn child; and
  - (b) shall be obtained without fraud, coercion, undue influence or duress.
- (5) Consent obtained under this section may be withdrawn by the person who has given the consent within thirty days from the date that the consent is given, after which the consent is final, except that a pregnant woman under subsection (4)(a) may withdraw that consent within six weeks of the birth of the child.
- (6) Consent obtained under this section may be given without the knowledge of the identity of the applicant for an adoption order, and where the consent is subsequently withdrawn on the basis that the identity of the applicant is not known, the consent shall be considered to have been unreasonably withheld for the purposes of section 212.
- (7) A person who has given consent for a child to be adopted shall not be entitled to remove the child from the care and custody of the prospective parent during the placement of the child with the prospective parent except with the leave of the court and in the best interests of the child.

(8) A child welfare inspector managing the process of the adoption of a child shall, in the prescribed manner and form, prepare a written report to the Director of Social Welfare which shall contain—

- (a) information under subsection (4);
- (b) details of the name, approximate age, religion and employment of a prospective parent;
- (c) the number and approximate ages of other persons living in the household of a prospective parent; and
- (d) details of the child and circumstances surrounding the situation of the child.

(9) The Director of Social Welfare shall, match a child with the prospective parent, on the basis of the report under subsection (8) and apply to the Children's Court for a supervision order.

(10) The Children's Court shall, where the Children's Court grants a supervision order under subsection (9), place the child in the care and custody of the prospective parent for a period of three consecutive months before the date of the application to the Children's Court.

**206.** (1) A child welfare inspector shall visit the prospective parent and child—

Visits during placement

- (a) within two weeks after the date of the placement of the child with the prospective parent and thereafter once every two weeks; or
- (b) not later than forty-eight hours after receipt of a request for a visit from the child, a prospective parent or any other person.

(2) A child welfare inspector who carries out a visit under subsection (1) shall submit a written report to the Director of Social Welfare and place the report in the child's case record stating in detail the child welfare inspector's observations as to the child's welfare, progress and conduct and changes which have occurred in the circumstances of the prospective parent.

(3) A report made under subsection (2) shall, based on a child's age and level of maturity, include the child's views and feelings concerning placement and any possible challenges.

(4) The Children's Court shall, on an application by the Director of Social Welfare, terminate the placement of the child with the prospective parent where the challenges identified in the report prepared under subsection (2) remain unresolved within seven days of the date of the visit of the child welfare inspector under subsection (1).

Contact  
between  
prospective  
parent and  
child's  
parent in  
domestic  
adoption

**207.** (1) A child's parent, guardian or person having parental responsibility for the child and the prospective parent may, during the placement of the child with a prospective parent and an application for domestic adoption, be in contact—

- (a) if the placement of the child with a prospective parent has been approved by the Children's Court; and
- (b) on permission being granted by the Director of Social Welfare.

(2) A contact referred to under subsection (1) may take place on conditions that the Director of Social Welfare may determine.

Termination  
of placement

**208.** A child shall not remain with a prospective parent where it appears that the placement is no longer in the best interests of the child, except that—

- (a) the prospective parent may appeal to the Director of Social Welfare if the child welfare inspector seeks to remove a child who has been in the care of the prospective parent prior to the making of an application for adoption; and
- (b) the Director of Social Welfare, on appeal, may prohibit the removal or authorise the removal subject to conditions that the Director of Social Welfare considers necessary.

Prohibition  
to remove  
child without  
leave during  
placement

**209.** (1) A prospective parent shall not remove a child from the Republic during the placement referred to under section 205 without leave of the Children's Court.

(2) A prospective parent shall, where leave is granted under subsection (1), inform the Director of Social Welfare prior to leaving the Republic.

Illness during  
placement in  
domestic  
adoption

**210.** The prospective parent shall, where a child is seriously ill during the placement, ensure that the child receives immediate medical attention and, as soon as practicable, notify the Director of Social Welfare.

**211.** (1) A person who intends to adopt a child shall apply to the Children's Court for an adoption order after the placement of the child under section 205. Application to adopt child

(2) An adoption application shall be accompanied by the following documents:

- (a) the effective date of notice to the Director of Social Welfare under section 205;
- (b) the report under section 205;
- (c) a child's case record under section 206;
- (d) the medical examination report under section 202;
- (e) in the case of an open adoption, a post-adoption agreement under section 198;
- (f) subject to section 205, written consent in the prescribed manner and form from —
  - (i) both parents of the child if both are living;
  - (ii) a parent who is living, where one parent is deceased;
  - (iii) one parent, where the other parent is not capable or is deprived of exercising parental responsibility;
  - (iv) the guardian of the child;
  - (v) the person having parental responsibility for the child;
  - (vi) a child who has attained the age of fourteen who is able to consent;
  - (vii) the other spouse, on the application of one of the spouses; or
  - (viii) in the case of a child born out of wedlock whose mother is a child, the parent or guardian of the mother of the child; and
- (g) the death certificate of the child's parent, if the child's parent is deceased.

(3) Subject to this Act, in obtaining the written consent under subsection (2) preference shall be given to the parents of the child.

(4) Written consent referred to under subsection (2) shall be attested by a Commissioner for Oaths in the case of a document executed within the Republic or in accordance with the provisions of the Authentication of Documents Act in the case of a document executed outside the Republic.

- (5) An adoption order shall be made in respect of a child if —
- (a) the child resides in the Republic;
  - (b) the child has been continuously in the care and custody of the applicant for a period of three consecutive months immediately preceding the date of the application; and
  - (c) the conditions under this Part have been met.

Power to  
dispense  
with consent

**212.** (1) The Children's Court may dispense with the consent required under section 205 if it is satisfied that —

- (a) in the case of the parent or guardian of the child, the parent or guardian has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child;
  - (b) in the case of a person having parental responsibility for the child, the person has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child;
  - (c) the person whose consent is required —
    - (i) cannot be found;
    - (ii) is a mental patient incapable of giving consent; or
    - (iii) withheld the consent unreasonably;
  - (d) the child is an orphan and has no guardian or any person having parental responsibility for the child who is willing and able to adopt the child; or
  - (e) the Children's Court is provided with certified copies of the death certificate or other documentation that may be required by the Children's Court of the child's parent, guardian or person having parental responsibility for the child.
- (2) For the purposes of subsection (1) —
- (a) abandonment of a child may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and custody of the child has not seen or heard from a parent or guardian of the child for a period of at least six consecutive months;
  - (b) persistent failure to maintain a child may be presumed where despite demands being made, a parent or guardian has not contributed to the maintenance of the child for a period of at least six consecutive months; and

(c) in determining whether the consent is being withheld unreasonably, the Children's Court shall take into account all relevant factors, including the —

- (i) nature of the relationship between the child and the person withholding consent and any findings by the Children's Court in this respect; and
- (ii) prospects of a sound relationship developing between the child and the person withholding consent in the immediate future.

(3) The Children's Court may dispense with the consent of the spouse of the applicant for an adoption order if the Children's Court is satisfied that, in addition to the conditions under subsection (1), the spouses have divorced.

(4) A person who gave consent to the adoption of a child under section 205 may, with the leave of the Children's Court and on exceptional circumstances being shown, apply to withdraw the consent after an application for adoption has been made.

(5) The Children's Court may at the request of the person who intends to withdraw the consent keep that person's name and identity confidential.

**213.** (1) Where a child dies during placement, the prospective parent shall —

Death

- (a) obtain a medical certificate of death and a post-mortem report of the cause of death unless impracticable; and
- (b) within twenty-four hours of the death, notify the Director of Social Welfare.

(2) Where a child's parents or guardians are known, the Director of Social Welfare shall inform them of the child's death.

(3) If a prospective parent dies during the placement, in the case where a child is placed with a single prospective parent, the child shall be returned to the Director of Social Welfare.

(4) If a prospective parent dies during an application for adoption in the Children's Court, the adoption process shall terminate and the child shall —

- (a) be placed in the care and custody of the guardian *ad litem*; and
- (b) have a guardian *ad litem* appointed by the Children's Court to make the necessary arrangements for the child in accordance with section 214.

(5) Subject to section 200(1)(c), where an application for adoption is made by two spouses jointly and one of the spouses dies during an application for adoption in court, the adoption process shall, subject to section 211, continue as if the application had been made by the surviving spouse solely.

Guardian  
*ad litem* for  
child

**214.** (1) For the purposes of an application for adoption, the Children's Court shall appoint a guardian *ad litem* for the child pending the hearing and determination of the adoption application.

(2) A guardian *ad litem* shall —

(a) safeguard the interests of the child pending the determination of the adoption proceedings;

(b) investigate and appraise the Children's Court as to the circumstances pertinent to the adoption of the child in the prescribed manner;

(c) make recommendations on an interim order or adoption order in respect of the child;

(d) intervene on behalf of the child and arrange for the care of the child in the event of the withdrawal of a consent under this Part;

(e) where the prospective parent dies, intervene on behalf of the child and arrange for the child to be returned to the person having parental responsibility for the child; and

(f) undertake duties that the Children's Court may from time to time direct or as may be prescribed.

(3) An appointment of a guardian *ad litem* shall expire on the making of a final adoption order by the Children's Court under this Part unless the Children's Court, having regard to the best interests of the child, extends the period of the appointment.

(4) Despite the generality of subsection (3), where an adoption order is rescinded under this Part, the Children's Court shall have power to extend the period of appointment of a guardian *ad litem* until the date of the determination of the rescission.

Interim  
orders

**215.** (1) The Children's Court may, where an application for an adoption order is pending in the Children's Court, on the application of the guardian *ad litem*, or on its own motion, make an interim order to the applicant with respect to the custody, maintenance, education, residence, safety, welfare of the child or parental responsibility for the child.

(2) The Children's Court shall, when making an interim adoption order impose a condition that the child shall be under the supervision of the guardian *ad litem*.

(3) The consent and the power to dispense with consent under sections 211 and 212, respectively, shall apply to an interim adoption order under this section.

(4) Where an interim adoption order is made —

(a) a person who has given consent to the adoption shall not be entitled, except with the leave of the Children's Court, to remove the child concerned from the care and custody of the applicant; and

(b) the applicant for an adoption order shall not, without the leave of the Children's Court, remove the child from the Republic.

(5) The Children's Court may grant an order for leave under subsection (4) if the Children's Court is satisfied that —

(a) exceptional circumstances in relation to the health, welfare and safety of the child exist; and

(b) a social welfare report is made by the Director of Social Welfare authorising the removal of the child from the Republic.

(6) Where the Children's Court grants an application for a child to leave the Republic in accordance with this section, the Children's Court shall make a wardship order in respect of the child and cause the applicant to execute a security bond with or without sureties for the child to be returned to the Republic by the applicant for an adoption order within a period as may be specified by the Children's Court.

(7) A person who fails without reasonable cause to return a child to the Republic within the period specified in the wardship order issued under subsection (6) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(8) An interim adoption order shall cease to have effect on the making of an adoption order.

**216.** (1) An open adoption order may be converted to a closed adoption order on the application of an adoptive parent to the Children's Court that granted the adoption order.

(2) Sections 211 and 212 shall apply to the application for conversion under this section, with the necessary modifications.

Conversion  
from open  
to closed  
adoption  
order

**Division 2 - Inter-country Adoptions**

Functions  
of central  
authority in  
Republic

**217.** The central authority in the Republic shall take appropriate measures to —

- (a) facilitate inter-country adoptions;
- (b) provide information to other central authorities on the laws of the Republic concerning adoption and other general information on adoption;
- (c) prevent improper financial or other gain with respect to an adoption;
- (d) collect, preserve and exchange information about the situation of the child and the prospective parent, so far as is necessary to complete the adoption process;
- (e) promote the development of adoption counselling and post-adoption services in the Republic;
- (f) provide other central authorities with general evaluation reports about experiences with inter-country adoption; and
- (g) respond, in accordance with this Act and other written laws, to requests from other central authorities for information about a particular adoption situation.

Communica-  
tion  
between  
central  
authorities

**218.** Central authorities shall, during an inter-country adoption, communicate on the adoption process and the measures taken to complete the adoption.

Conditions  
for inter-  
country  
adoption by  
State of  
origin

**219.** An inter-country adoption shall take place if a central authority of the State of origin of the child —

- (a) establishes that the child is adoptable;
- (b) determines that an inter-country adoption is in the best interests of the child after possibilities for placement of the child within the State of origin have been given due consideration;
- (c) establishes that the prospective parent qualifies to adopt and has been counselled on the effects of adoption;
- (d) ensures that —
  - (i) the person, institution or authority whose consent is necessary for the adoption to take place, has been counselled and informed of the effects of their consent;

- (ii) the consent under subparagraph (i), has been obtained freely and evidenced in writing and obtained without fraud, coercion, undue influence or duress; and
  - (iii) where the consent of the mother is required, that the consent has been given after the birth of the child; and
- (e) ensures, having regard to the age and level of maturity of the child, that—
- (i) the child has been counselled and duly informed of the effects of the adoption and of the child's consent to the adoption, where that consent is required;
  - (ii) the child's wishes and opinions have been considered;
  - (iii) the child's consent to the adoption, where that consent is required, has been given freely and evidenced in writing; and
  - (iv) where the child's consent is required, that such consent has been obtained without fraud, coercion, undue influence or duress.

**220.** An inter-country adoption shall take place if a central authority of the receiving State —

- (a) establishes that the child is adoptable;
- (b) determines that the prospective parents qualify to adopt a child;
- (c) ensures that the prospective parents are counselled on the effects of adoption; and
- (d) determines that the child is or shall be authorised to enter and reside permanently in that State.

Conditions for inter-country adoption by receiving State

**221.** (1) Subject to section 200, where the Republic is the State of origin, the following persons may adopt a child:

- (a) a non-citizen resident in another State;
- (b) two spouses jointly who are resident in another State where —
  - (i) one is a citizen and the other is a non-citizen; or
  - (ii) both are citizens; or
- (c) a citizen who is resident in another State.

Applicants for inter-country adoption

(2) Subject to section 200, where the Republic is the receiving State, the following persons may adopt a child:

- (a) a citizen resident in the Republic;
- (b) a person with a foreign nationality resident in the Republic;  
or
- (c) two spouses jointly resident in the Republic, where —
  - (i) one is a citizen and the other is a non-citizen;
  - (ii) both are citizens; or
  - (iii) both are non-citizens.

Procedure  
for adoption  
of child from  
Republic

**222.** (1) A person resident in another State who intends to adopt a child resident in the Republic shall apply to the central authority of the receiving State.

(2) If the central authority of the receiving State is satisfied, having regard to the laws of the receiving State that the person qualifies to adopt a child, the central authority shall, in the prescribed manner and form, prepare a report on the prospective parent and transmit the report to the central authority in the Republic.

(3) The Director of Social Welfare shall determine whether a child is available for adoption, match a child with the prospective parent and appoint a child welfare inspector to manage the procedure relating to an inter-country adoption under this section.

(4) Where a child is available for adoption, the child welfare inspector shall —

- (a) obtain written consent from the parents, if existing, guardian or the person having parental responsibility for the child;
- (b) assess, based on the report under subsection (2), whether the prospective parent is likely to meet the requirements of the particular child; and
- (c) ensure that the child and the child's parent, guardian or person having parental responsibility for the child are counselled on the effects of adoption.

(5) Consent required under subsection (4)(a) —

- (a) shall be obtained without fraud, coercion, undue influence or duress; and
- (b) may be withdrawn by the person who has given the consent within sixty days from the date that the consent is given, after which the consent is final.

(6) Consent under this section may be given without the knowledge of the identity of the applicant for an adoption order and where the consent is subsequently withdrawn on the basis that the identity of the applicant is not known, the consent shall be considered to have been unreasonably withheld for the purposes of section 212.

(7) For record purposes, the child welfare inspector managing the process of the adoption of the child shall, in the prescribed manner and form, make a written report to the Director of Social Welfare which shall contain the following:

- (a) the information under subsection (4);
- (b) details of the name, approximate age, religion and employment of the prospective parents;
- (c) financial capacity of the prospective parent; and
- (d) details of the child and circumstances surrounding the situation of the child.

(8) The Director of Social Welfare shall, on the basis of the report under subsection (7), prepare a report on the child in the prescribed manner and form and —

- (a) transmit the report to the central authority of the receiving State;
- (b) give reasons for the Director of Social Welfare's determination on the placement to the central authority of the receiving State; and
- (c) attach proof that the necessary consents have been obtained.

(9) The prospective parents shall, where the central authority in the Republic and the central authority in the receiving State both agree that the adoption process shall commence, travel to the Republic to meet the child.

(10) A child welfare inspector shall introduce the child to the prospective parent for a period of thirty days through face-to-face visitation of the child with the prospective parent for the purposes of an initial bonding period of the child with the prospective parent.

(11) The Director of Social Welfare shall, on completion of the face-to-face visitation under subsection (10), place the child in the care and custody of the prospective parent for a period of sixty days before the date of the application to court on receipt of a supervision order from the Children's Court.

(12) The Director of Social Welfare shall, before placing the child with the prospective parent, ensure that the provisions of section 202 are complied with.

Visitation during, and termination of, placement in inter-country adoption

**223.** Sections 206 and 208 shall apply to an inter-country adoption with the necessary modifications.

Prohibition to remove child without leave during placement

**224.** A prospective parent shall not remove a child from the Republic during the placement referred to under section 222.

Illness during placement in inter-country adoption

**225.** The prospective parent shall, where a child is seriously ill during the placement referred to under section 222, ensure that the child receives immediate medical attention and, as soon as practicable, notify the Director of Social Welfare.

Application for adoption

**226.** (1) On the expiration of the period under section 222(11), if the central authority in the Republic and the central authority of the receiving State both agree on the adoption, the prospective parent shall apply to the Children's Court for an adoption order in the prescribed manner and form.

(2) Sections 211 to 215 shall apply, with the necessary modifications, to an application for adoption in this section.

(3) The prospective parent shall, in addition to the requirements under section 211, attach the reports under section 206(2) and 222(7) to the application for adoption.

(4) An adoption order shall, in addition to the conditions under section 211, be made if —

- (a) the adoption is in the best interests of the child;
- (b) it has been determined that the prospective parents agree to the adoption, and qualify to adopt a child;
- (c) the central authority of the receiving State has approved the decision for the prospective parent to adopt the child;
- (d) the child is not prevented from leaving the Republic—
  - (i) under any written law; or
  - (ii) by an order of a court of competent jurisdiction;

- (e) the central authorities of the Republic and the receiving State have agreed to the adoption of the child;
- (f) the name of the child has been on the list for adoption for at least sixty days and no prospective parent is available in the Republic;
- (g) the child is authorised to enter and reside in the receiving State permanently; and
- (h) the requirements of this Act have been met.

(5) A central authority shall, where an adoption order is granted, take all necessary steps to —

- (a) obtain permission for the adopted child to leave the Republic and to enter and reside permanently in the receiving State; and
- (b) ensure that the transfer of the child to a receiving State takes place in a secure manner and, if possible, in the company of the prospective parents.

(6) This section does not apply to a child resident in the Republic who is to be placed for adoption outside the Republic with a relative of that child or with a person who will become an adoptive parent jointly with the child's biological parent.

(7) Sections 211 to 215 apply to the adoption of a child under subsection (6).

**227.** (1) A central authority of the Republic may withdraw its approval to the adoption of a child from the Republic, within a period of thirty days from the date on which the central authority grants its approval to the adoption of the child.

Withdrawal  
of approval  
by Republic

(2) Where the central authority of the Republic withdraws its approval, the child shall be returned to the Republic as may be prescribed.

**228.** (1) A person resident in the Republic who intends to adopt a child resident in another State may apply to the Director of Social Welfare.

Application  
to adopt  
child from  
other State  
by person in  
Republic

(2) The Director of Social Welfare shall appoint a child welfare inspector to manage the procedure relating to the adoption of a child.

- (3) The child welfare inspector shall —
- (a) interview the prospective parent and assess that the prospective parent is a suitable person to adopt a child;
  - (b) visit the home of the prospective parent and confirm in writing that the prospective parent is likely to meet the requirements of the particular child and that the conditions of the home of the prospective parent are satisfactory;
  - (c) confirm about the good character and suitability of the prospective parent to care for the child from two persons of good standing who know the prospective parent;
  - (d) establish that the prospective parent is not a mental patient likely to adversely affect the child;
  - (e) establish that a person in the home of a prospective parent has not been convicted of a serious criminal offence which would render it undesirable for the child to associate with that person; and
  - (f) ensure that the prospective parent is counselled on the effects of adoption.
- (4) For record purposes, the child welfare inspector managing the process of the adoption of the child shall, in the prescribed manner and form, make a written report to the Director of Social Welfare which shall contain the following:
- (a) the information under subsection (3);
  - (b) details of the name, approximate age, religion and employment of the prospective parents;
  - (c) the number and approximate ages of other persons living in the household of the prospective parent;
  - (d) reasons for adoption by the prospective parent;
  - (e) the ability of the prospective parent to undertake an inter-country adoption;
  - (f) family, medical and other history of the prospective parent; and
  - (g) the characteristics of the children who the prospective parent can adopt.

(5) The Director of Social Welfare shall, on the basis of the report referred to under subsection (4), prepare a report on the prospective parent in the prescribed manner and form and submit the report to the central authority of the country concerned.

(6) The central authority of the State concerned shall, in accordance with the relevant laws of that State and where an adoptable child is available for adoption —

- (a) prepare a report on the child;
- (b) attach proof that the necessary consents have been obtained to the report under paragraph (a); and
- (c) state the reasons for its determination on the placement of the child.

(7) The central authority in the State concerned shall, in accordance with the relevant laws of that State, refer the application for adoption to the relevant authorities, if the central authorities in the State concerned and the Republic both agree to the adoption based on the reports under subsections (5) and (6).

(8) An inter-country adoption order granted under this section shall be recognised and registered in the Republic in accordance with this Act and any other written law.

**229.** (1) Where an adoption order is granted on an application under section 228, the transfer of the child to the Republic shall be carried out if —

Transfer of  
adopted child  
to Republic

- (a) the central authority of the Republic has approved the adoption of a child by the prospective parent;
- (b) the central authorities of both States have agreed that the adoption may proceed;
- (c) the child is authorised to enter and reside in the Republic permanently.

(2) The central authority of the Republic shall, where an adoption order is granted, take all necessary steps to ensure that the transfer of the child to the Republic takes place in a secure manner and, if possible, in the company of the prospective parents.

(3) The Director of Social Welfare shall, where the transfer of a child does not occur, send the reports under section 228(6) to the country concerned.

Registration  
of birth and  
recording of  
adoption of  
child born  
outside  
Republic

Cap. 51

**230.** (1) Where an adoption order is granted in respect of a child born outside the Republic to an adoptive parent residing in the Republic, the adoptive parent may apply to the Registrar-General to —

(a) register the birth of the child in accordance with the Births and Deaths Registration Act; and

(b) to record the adoption of the child in the register of births in accordance with section 249.

(2) An application under subsection (1) shall be accompanied by —

(a) the adoption order; and

(b) the birth certificate of the adopted child, or if the birth certificate cannot be found —

(i) documentary evidence relating to the date of birth of the child; or

(ii) a document attested to by a court specifying the age or the estimated approximate age of the child.

Removal of  
adopted  
child from  
adoptive  
parent

**231.** (1) A central authority of the Republic shall, where the adoption of a child is to take place after the transfer of a child to the Republic and it appears to the central authority of the Republic that the continued placement of a child with the prospective parent is not in the child's best interests, take all necessary measures to protect the child.

(2) Despite the generality of subsection (1), a central authority of the Republic shall —

(a) cause the child to be withdrawn from the prospective parent;

(b) arrange temporary care for the child;

(c) in consultation with the central authority of the State of origin of the child, arrange without delay a new placement of the child with a view to adoption or, where in appropriate, arrange alternative long-term care for the child; and

(d) as a last resort, arrange the return of the child, if it is in the best interests of the child.

(3) A child may, having regard to the age and level of maturity of a child, be consulted and consent to the measures to be taken under this section.

(4) An adoption of a child under this section shall not take place if the central authority of the State of origin of the child is not informed of the new prospective parent.

**232.** An inter-country adoption order shall, before a transfer of a child to the receiving State, cease to have effect and all documents transmitted to the Republic shall be returned to the receiving State if the child-

Death, illness or injury of child before transfer to receiving State

(a) dies; or

(b) is injured or falls seriously ill making it impossible to transfer the child to the receiving State.

**233.** (1) An open adoption order may, where an adoption order granted in the State of origin of a child to an adoptive parent residing in the Republic is an open adoption order, be converted to a closed adoption order if the parent, guardian or person having parental responsibility for the child consents prior to the adoption order being granted.

Conversion of open adoption order to closed adoption order in inter-country adoption

(2) An adoptive parent who intends to convert the adoption from an open adoption to a closed adoption may apply to the Director of Social Welfare and section 228 shall apply, with the necessary modifications.

**234.** (1) A child's parent, guardian or person having parental responsibility for the child and the prospective parent may be in contact if the requirements under this Part have been met and on permission being granted by the central authority of the State of origin of the child.

Contact between prospective parent and child's parent in inter-country adoption

(2) A contact referred to under subsection (1) may take place on conditions that the central authority of the State of origin of the child and the receiving State determine.

(3) This section does not apply to an adoption that takes place within a family.

**235.** (1) The central authority of the Republic shall, where the translation of a document under this Part is requested by a central authority of another State during the process of an inter-country adoption, transmit a translated copy of the document certified as being in conformity with the original document.

Translation of documents

(2) The costs of the translation under subsection (1) shall be borne by the prospective parent.

**Division 3 - Effect of Grant or Refusal of Adoption**

Rejection of application for adoption

**236.** (1) Where the Children's Court rejects an application for adoption under this Part, the child shall —

- (a) be placed in the care and custody of the guardian *ad litem*; and
- (b) the guardian *ad litem* shall make the necessary arrangements for the child in accordance with section 214.

(2) Despite subsection (1), the Children's Court may make an order for parental responsibility for the child as the Children's Court may determine.

Effect of adoption on parental rights

**237.** (1) Where an adoption order is made the —

- (a) rights, duties, obligations and liabilities of the parent, guardian or person having parental responsibility for the child to the child shall cease; and
- (b) adoptive parent shall assume the parental responsibility for the child as if the child were born to the adoptive parent.

(2) The husband and wife shall, where an adoption order is granted jointly to a husband and wife, assume parental responsibility for the child jointly, and the child shall relate to them as parents as if born to that husband and wife.

Orders and agreements in respect of child born outside marriage

**238.** (1) Where an adoption order is made in respect of a child born outside wedlock —

- (a) an order or agreement in force which requires the father or mother of the child to make payment for the benefit of the child shall cease to have effect; and
- (b) the father or mother of the child shall pay any arrears which are due under the order or agreement up to the date of the adoption order.

(2) A foster care order or care order shall be terminated where an adoption order is made in respect of a child committed to the care of foster parents or a child care facility.

Devolution of property on adoption

**239.** (1) In a closed adoption, an adopted child is not entitled to inherit from that child's biological parent if the biological parent dies intestate.

(2) In a testamentary disposition of property, whether or not made in writing, at the date of an adoption order any reference —

- (a) whether express or implied to a child or children of the adoptive parent shall, unless the contrary intention appears, be construed as a reference to the adopted child;
- (b) whether express or implied to a child or children of the adopted child's biological parent shall not be construed as including a reference to the adopted child unless the contrary intention appears; and
- (c) to a person related to the adoptive parent shall, unless the contrary intention appears, be construed as a reference to the person as if that person is a relative of the adopted child.

(3) Despite the Wills and Administration of Testate Estates Act — Cap. 60

- (a) where a disposition made by the adoptive parent prior to the adoption order makes no provision for the adopted child, the adopted child may apply to the Children's Court to vary the disposition to provide for the adopted child from the estate of the adoptive parent; and
- (b) a disposition by will executed before the date of the adoption order shall not be treated for the purpose of this section as if made after that date by a codicil giving retrospective effect to the will.

**240.** (1) An administrator or executor of an estate may distribute the estate of a deceased person to a person entitled under the estate without incurring any liability where at the time of the distribution they had no notice of an adoption order by virtue of which the adopted child is to benefit under the estate but this shall not prejudice the right of an adopted child to trace the property except against a purchaser in good faith.

Supplementary provisions on intestacy and testamentary disposition

(2) A previous adoption order of a child that has been adopted for a second time shall be disregarded for the purpose of devolution of property on the death of the previous adoptive parent.

**241.** (1) Where a child has been adopted outside the Republic in accordance with this Act, the adoption order shall have the same effect as an adoption order made under this Act.

Effect of inter-country adoption

(2) An adoption order made outside the Republic to an adoptive parent resident in the Republic shall be lodged in the Children's Court within the period and in the manner specified by the rules made by the Chief Justice.

**Division 4 - Post-adoption**

Post-adoption report

**242.** (1) A child welfare inspector shall, where an adoption order is granted, report to the Director of Social Welfare on the child's welfare twice within the first year of the adoption.

(2) An adoptive parent shall, in an inter-country adoption, report on the child's welfare through the central authority if the adoptive parent resides outside the Republic and adopted a child who was resident in the Republic.

Power to appoint guardian post-adoption

**243.** (1) The Children's Court may, on an application by the adoptive parent or Director of Social Welfare, appoint a guardian approved by the adoptive parent and whose prior consent, in writing, has been given, where —

(a) the adoptive parent dies, in the case of a sole adoptive parent;

(b) both adoptive parents die;

(c) the adoptive parent is a mental patient and is incapable of exercising parental responsibility for the child before the child attains the age of nineteen; or

(d) the adoptive parent is incapable of exercising parental responsibility for the child due to a physical disability before the child attains the age of nineteen.

(2) The Children's Court may dispense with the approval of the adoptive parent under subsection (1) where the adoptive parent is a mental patient incapable of providing such approval.

(3) The Children's Court may revoke the appointment of a guardian under subsection (1) and appoint any other person to be the guardian of the child at any time before the child attains the age of nineteen, on the application of the adoptive parent, the guardian appointed under subsection (1) or the child.

Revocation of adoption order

**244.** (1) An adoption order or an inter-country adoption made for a child previously residing in the Republic may be revoked on an application by the —

(a) child;

(b) adoptive parent; or

(c) parent, guardian or person having parental responsibility for the child prior to an adoption order.

(2) An application under subsection (1) shall be lodged within three months from the date of the adoption order.

(3) Where three months has elapsed since the granting of an adoption order, an application to revoke an adoption order shall only be made with the leave of the Children's Court and on exceptional circumstances being shown.

(4) Notice of an application for revocation under this section shall be given to —

- (a) the adoptive parent;
- (b) the Director of Social Welfare;
- (c) the parent, guardian or person having parental responsibility for the child who consented to the adoption of the child;
- (d) the central authority of the receiving State; and
- (e) any other person the court considers has a sufficient interest in the application.

(5) An adoption order may be revoked if —

- (a) revocation of the order is in the best interests of the child;
- (b) the applicant is a parent, guardian or person having parental responsibility for the child whose consent is required under this Part, and that consent was not obtained; or
- (c) at the time of making the adoption order, the adoptive parent did not qualify to adopt a child.

(6) Where an adoption order is revoked under this section —

- (a) the adoption order shall cease to have effect with respect to the child;
- (b) the child shall be returned to the Republic, in the case of an inter-country adoption; and
- (c) all responsibilities, rights and other matters terminated by the adoption order are restored.

(7) When revoking an adoption order under this section, the Children's Court may —

- (a) make an appropriate placement order in respect of the child; or
- (b) order that the child be kept in a place of safety until an appropriate placement order can be made.

Adoption order in respect of children previously adopted

**245.** (1) A subsequent adoption order or interim adoption order, may be made in respect of a child who is the subject of a previous adoption order under this Act.

(2) An adoptive parent under the previous adoption order shall be considered to be the parent of the child in relation to an application for a subsequent adoption order in respect of a child referred to under subsection (1).

Amendment of adoption order

**246.** (1) An adoptive parent may, where an adoption order was made before the commencement of this Act, apply to the Children's Court to amend the adoption order in accordance with the provisions of this Act.

(2) The Children's Court power under subsection (1) shall, where the adoption order was made before the commencement of this Act, include the power to amend the adoption order —

(a) by the insertion of the country of birth of the adopted child;

(b) by the insertion of the date which appears to the Children's Court to be the probable date of the adopted child's birth if the adoption order does not specify a precise date as the date of the adopted child's birth; or

(c) to attend to clerical errors.

(3) The Children's Court shall, where an adoption order is amended under this section, cause the amendment to be communicated in the prescribed manner to the Registrar-General who shall cause the adopted children register to be amended accordingly.

#### **Division 5 - Registers and Case Record**

Register of available children for adoption

**247.** The Director of Social Welfare shall keep and maintain a register of children available for adoption in the Republic in which the Director of Social Welfare shall enter the particulars and details relating to each child as prescribed.

Child case record

**248.** (1) The Director of Social Welfare shall, in respect of a child matched with a prospective parent, keep and maintain a child case record for each child in the prescribed manner and form.

(2) A case record referred to under subsection (1) is confidential and may be inspected by a public officer on the approval of the Director of Social Welfare.

249. (1) Where the Children's Court makes an adoption order, the adoption order shall contain a direction to the Registrar-General to make an entry in the adopted children register.

Registration  
of adoption  
orders

(2) For the purposes of compliance with the requirements of subsection (1) where the —

- (a) precise date of the child's birth is not proved to the satisfaction of the Children's Court, the Children's Court shall determine the probable date of the child's birth and the date so determined shall be specified in the order as the date of the child's birth;
- (b) country of birth of the child is not proved to the satisfaction of the Children's Court, the particulars of the country of birth of the child may be omitted from the order and from the entry in the adopted children register; and
- (c) name or surname which the child is to bear after the adoption differs from the child's original name or surname, the new name or surname shall be specified in the order.

(3) Where the Children's Court makes an adoption order in respect of a child whose identity is registered in the register of births and the child has not previously been a subject of an adoption order, the adoption order shall contain a direction to the Registrar-General to cause an entry in the adopted children register and register of births with the words "Adopted" where the name of the child appears.

(4) Where an adoption order is made by the Children's Court in respect of a child who has previously been the subject of an adoption order the adoption order shall contain a direction to the Registrar-General to cause an entry in the adopted children register and register of births with the word "Re-adopted" where the name of the child appears.

(5) Where an adoption order is quashed or an appeal against an adoption order is allowed, the Children's Court that made the order shall give directions to the Registrar-General to cancel any entry in the adopted children register and register of births which was effected in pursuance of the adoption order.

(6) A copy of, or extract from, an entry in any register being an entry the making of which is cancelled under this section, shall be deemed to be an accurate copy or extract if both the marking and the cancellation are omitted from the register.

Adopted  
children  
register

**250.** (1) The Registrar-General shall keep and maintain a register of all adopted children under this Act in which the Registrar-General shall enter the particulars and details relating to each adopted child.

(2) Despite the generality of subsection (1), the adopted children register shall contain the following information:

- (a) details of the name, age and sex of the adopted child;
- (b) details of the name, age, sex, religion, employment and address of the prospective parent;
- (c) the number and ages of other persons living in the household of the prospective parent;
- (d) details of the name, sex, age, religion and address of each parent of the adopted child, if known;
- (e) details of the name, sex, age, religion and address of each guardian or person having parental responsibility for the child, where applicable; and
- (f) the adoption order.

(3) Information contained in the adopted children register may be accessed by the following persons:

- (a) an adopted child after the child has attained the age of nineteen years;
- (b) the adoptive parent;
- (c) the parent or previous adoptive parent, where the child was previously adopted and is re-adopted by another person if the —
  - (i) child has attained the age of nineteen years; and
  - (ii) adoptive parent and the adopted child give their consent in writing;
- (d) public officer of the Children's Court in relation to an application of an adopted child; or
- (e) any other public officer.

(4) An adopted child register shall be open for inspection to the persons referred to under subsection (3) during normal office hours if authorised by the Registrar-General on payment of the prescribed fee.

(5) A certified extract of an adoption order from the adopted children register, purporting to be under the seal or stamp of the Registrar-General, shall be received in evidence and shall be considered to be so issued as the case may be, without further proof, unless the contrary is proved.

(6) The Registrar-General may, on an application by a person referred to under subsection (3), issue to the person a certified extract from the adopted children register, on payment of the prescribed fee.

**251.** The Registrar-General shall keep such other register which may be necessary to record and trace the connection between an entry in the register of births which has been marked with the words "Adopted" and any corresponding entry in the adopted children Register but these registers shall not be open to the public for inspection unless under the order of the Children's Court.

Additional Register

## PART XV

### ADOPTION AGENCIES

**252.** (1) An adoption agency shall provide adoption services.

Functions of adoption agency

(2) Despite the generality of subsection (1), the functions of an adoption agency are to —

- (a) when engaged to do so by a prospective parent, facilitate the adoption of a child under this Act;
- (b) gather information for proposed adoptions under this Act;
- (c) examine and interview a prospective parent and make inquiries and investigations to be obtained for the purpose of ensuring the suitability of the prospective parent to adopt a child;
- (d) when appointed by the Director of Social Welfare, counsel a prospective parent and, where applicable, a child, on the effects of adoption;
- (e) when appointed by the Children's Court, to act as guardian *ad litem* in adoption proceedings;
- (f) in so far as the funds of the adoption agency permit, to make provision for the care and supervision of a child who has been placed by the child's parent, guardian or person having parental responsibility for the child at the disposition of the adoption agency; and

(g) to maintain a register and records in respect of children whose adoptions have been facilitated by the adoption agency.

Prohibition of adoption service without certificate of accreditation

**253.** (1) An adoption agency shall not provide adoption services without a certificate of accreditation issued under this Part.

(2) An adoption agency that contravenes subsection (1) commits an offence.

Application for accreditation as adoption agency

**254.** (1) An adoption agency that intends to provide adoption services shall apply to the Director of Social Welfare for accreditation as an adoption agency in the prescribed manner and form on payment of the prescribed fee.

(2) The Director of Social Welfare shall, within thirty days of receipt of an application under subsection (1), grant or reject the application.

(3) The Director of Social Welfare shall, where it rejects an application under subsection (2), inform the applicant accordingly and give the reasons for the decision.

(4) Despite the generality of subsection (2), the Director of Social Welfare may reject an application for accreditation if —

(a) a person proposed to be employed, or employed by the adoption agency for the purpose of facilitating the adoption of a child is not fit to be so employed, having regard to the best interests of a child;

(b) the number of competent persons proposed to be employed, or employed by the adoption agency is in the opinion of the Director of Social Welfare insufficient with regard to the activities of the adoption agency;

(c) a person taking part in the management or control of the adoption agency or a member of staff of the adoption agency has been convicted of an offence under this Act or Regulations made under this Act; or

(d) there exists a conflict of interest between the other activities undertaken by the adoption agency and the adoption agency's functions under this Part.

(5) Where an application for accreditation is rejected under this section, no further application for registration of the adoption agency may be made within a period of six months beginning with the date when the applicant is notified of the rejection.

**255.** (1) The Director of Social Welfare shall, within fourteen days of the approval of an application under section 254, issue the applicant with a certificate of accreditation if the adoption agency meets the requirements as may be prescribed.

Accreditation  
of adoption  
agency

(2) A certificate of accreditation issued under this section shall be valid for two years and shall be renewable for further period of two years on payment of a prescribed fee.

**256.** An adoption agency accredited under this Act shall notify the Director of Social Welfare of a change in the particulars relating to the accreditation within seven days of the change.

Changes in  
detail

**257.** (1) Subject to this Act, the Director of Social Welfare may suspend or revoke the accreditation of an adoption agency where —

Suspension  
or revocation  
of  
accreditation

(a) the Director of Social Welfare has reasonable grounds to believe that the accreditation was obtained through fraud, misrepresentation or concealment of a material fact;

(b) the number of competent persons proposed to be employed by the adoption agency are in the opinion of the Director of Social Welfare insufficient with regard to the activities of the adoption agency;

(c) a person taking part in the management or control of the adoption agency or a member of staff of the adoption agency has been convicted of an offence under this Act;

(d) there exists a conflict of interest between the other activities undertaken by the adoption agency and the adoption agency's functions under this Part; or

(e) since the accreditation, other circumstances have arisen disqualifying the adoption agency from accreditation.

(2) The Director of Social Welfare shall, before suspending or revoking the accreditation of an adoption agency in accordance with subsection (1) —

(a) give written notice to the adoption agency of its intention to suspend or revoke the accreditation and the reasons for the intended suspension or revocation; and

(b) require the adoption agency to show cause, within a period of sixty days, why the accreditation should not be suspended or revoked.

(3) The Director of Social Welfare shall not suspend or revoke the accreditation of an adoption agency under this section if the adoption agency takes remedial measures to the satisfaction of the Director of Social Welfare, within the period of sixty days referred to in subsection (2).

(4) The Director of Social Welfare may, if the adoption agency fails to show cause to the satisfaction of the Director of Social Welfare, or does not take any remedial measures to the satisfaction of the Director of Social Welfare, within the time specified in subsection (2), suspend or revoke the accreditation and issue the adoption agency with a notice to that effect.

(5) The Director of Social Welfare may, before revoking the certificate of accreditation, suspend the adoption agency for a specified period and on terms and conditions as the Director of Social Welfare may determine.

(6) Where the Director of Social Welfare revokes a certificate of accreditation under this section, the name of the adoption agency shall not be restored except on conditions that may be prescribed and on payment of a prescribed fee.

(7) The revocation of the accreditation of an adoption agency under this section does not affect any liability incurred by the adoption agency before the revocation, and any legal proceedings commenced or continued against the adoption agency before the revocation may be continued against that adoption agency.

(8) An adoption agency whose accreditation is suspended or revoked shall, within thirty days of the Director of Social Welfare's direction to suspend or revoke the accreditation, transfer all documents relating to the adoption of a child in the possession of an adoption agency to the Director of Social Welfare.

Surrender of  
certificate of  
accreditation

**258.** (1) An accredited adoption agency that is wound up or decides to cease to carry out activities relating to the certificate of accreditation shall, within sixty days of the winding up or decision to dispense with accreditation, notify the Director of Social Welfare, in writing, of the winding up or decision, and surrender the certificate of accreditation.

(2) An adoption agency that surrenders the certificate of accreditation under subsection (1) shall transfer the documents relating to the adoption of a child in that adoption agency's possession to the Director of Social Welfare.

**259.** The Director of Social Welfare shall publish annually in the *Gazette* and a daily newspaper of general circulation in the Republic the names of accredited adoption agencies.

Publication of accredited adoption agency

**260.** An adoption agency shall display a certificate of accreditation in a conspicuous place at the registered place of business.

Display of certificate of accreditation

**261.** A certificate of accreditation issued under this Part shall not be transferred to a third party.

Prohibition of transfer of certificate of accreditation

**262.** (1) An adoption agency whose certificate of accreditation is lost, defaced or destroyed may apply to the Director of Social Welfare for a duplicate certificate in the prescribed manner and form on payment of a prescribed fee.

Duplicate certificate of accreditation

(2) The Director of Social Welfare may, within seven days of receipt of an application under subsection (1), issue a duplicate certificate of accreditation to the adoption agency.

**263.** (1) An adoption agency shall report to the Director of Social Welfare the following:

Reporting requirements for accredited adoption agency

- (a) statistical data on persons to whom adoption services have been provided;
- (b) the adoption services provided during the reporting period and the conditions under which the adoption services were provided;
- (c) the number and skills of staff of the adoption agency;
- (d) the relationship with other accredited adoption agencies and the details thereof;
- (e) adoption working agreements entered into by the adoption agency; and
- (f) other administrative, operational, financial or other information relevant to the provision of quality adoption services.

(2) Reporting requirements and the period for reporting of an accredited adoption agency shall be as prescribed.

**264.** (1) The Director of Social Welfare shall keep and maintain a register of accredited adoption agencies under this Act in which the Director of Social Welfare shall enter the details and particulars relating to —

Register of accredited adoption agency

- (a) accredited adoption agencies and whose certificates of accreditation are revoked;

(b) the applications rejected and the reasons for the rejection; and

(c) any other information that the Director of Social Welfare may determine.

(2) A register under subsection (1) shall be kept in the custody of the Director of Social Welfare at the ministry responsible for child welfare and development, and shall be open for inspection by members of the public during normal office hours on payment of a prescribed fee.

(3) The Director of Social Welfare may, on application by any person, issue to the person a certified extract from the Register of a copy of a certificate of accreditation on payment of a prescribed fee.

Confidential  
information

**265.** (1) A member of staff of the adoption agency or any person employed by the adoption agency for the purposes of assisting in the facilitation of an adoption of a child shall deal with the documents and information relating to the adoption in a confidential manner.

(2) Subject to subsection (3), a person who has possession or control over documents or information referred to in subsection (1) shall not disclose the information or the content of a document to a person other than —

(a) the Children's Court, the Minister, the Director of Social Welfare or any other member of staff of the adoption agency; or

(b) an advocate representing the prospective parent or the guardian *ad litem* appointed under Part XIV.

(3) Subsection (1) does not apply to the communication of a document or information in good faith in the interest or intended interest of a child, the prospective parent or the parent or guardian of the child, or a person having parental responsibility for the child.

(4) A person who contravenes subsections (1) and (2) commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a period not exceeding six months, or to both.

(5) A member of staff of an adoption agency or any person employed by the adoption agency for the purposes of assisting in the facilitation of an adoption of a child, who is required to produce a document or disclose information in court shall only produce a document or disclose information necessary for the purpose of bringing into effect the provisions of this Part.

**266.** (1) A foreign adoption body may provide adoption services in the Republic when it is authorised to do so by the Director of Social Welfare and the central authority of the State of origin of the foreign adoption body.

Authorisation of foreign accredited adoption bodies

(2) The following may be prescribed with respect to the authorisation of a foreign adoption body:

- (a) the form and manner for application for authorisation;
- (b) the validity of the authorisation and the fees payable for authorisation;
- (c) the extent and manner in which a foreign adoption body may provide adoption services in the Republic; and
- (d) the suspension and revocation of authorisation.

**267.** (1) An adoption agency accredited under this Part to provide inter-country adoption services may enter into an adoption working agreement with a foreign accredited adoption body.

Adoption working agreement

(2) An adoption agency referred to under subsection (1) may enter into an adoption working agreement if the adoption agency obtains approval, in writing, from the Director of Social Welfare.

(3) An adoption agency shall provide the Director of Social Welfare with certified copies of all adoption working agreements entered into by that adoption agency.

## PART XVI

### CHILD CARE FACILITY

**268.** (1) A person shall not establish a child care facility without the approval of the Director of Social Welfare.

Prohibition of establishment of child care facility without approval

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

**269.** (1) A person who intends to establish a child care facility shall apply to the Director of Social Welfare for approval of the child care facility in the prescribed manner and form on payment of a prescribed fee.

Child care facility

(2) The Director of Social Welfare shall, on receipt of an application under subsection (1), cause to be undertaken an assessment of the application in order to determine whether the applicant meets the requirements for approval.

(3) The Director of Social Welfare shall, within thirty days of receipt of an application under subsection (1) —

- (a) grant the approval in the prescribed manner and form; or
- (b) reject an application which does not meet the requirements for approval and inform the applicant, in writing, of the reasons for the rejection.

(4) The following may be prescribed:

- (a) the criteria for granting the approval of a child care facility;
- (b) the procedure for amendment, renewal or transfer of the approval granted under subsection (3);
- (c) the terms and conditions attaching to the grant, amendment, refusal, renewal or transfer of the approval granted under this Part; and
- (d) other matters that are necessary or incidental to the effective regulation of a child care facility under this Part.

(5) The Minister may, by statutory instrument, for the purposes of facilitating the effective implementation and enforcement of this Act —

- (a) exempt certain categories of persons from the application of some or all of the provisions of this section; and
- (b) provide that some or all of the provisions of this section shall not apply in certain circumstances.

Suspension  
or  
cancellation  
of approval

**270.** (1) Subject to this Act, the Director of Social Welfare may suspend or cancel the approval of a child care facility if the approval —

- (a) was obtained by fraud, false information or statement, or misrepresentation; or
- (b) contravenes this Act or any terms and conditions of the approval.

(2) The Director of Social Welfare shall, before suspending or cancelling the approval of a child care facility in accordance with subsection (1) —

- (c) give written notice to the child care facility of its intention to suspend or cancel the approval and the reasons for the intended suspension or cancellation; and

(d) require the child care facility to show cause, within a period of thirty days, why the approval should not be suspended or cancelled.

(3) The Director of Social Welfare shall not suspend or cancel an approval under this section if the child care facility takes remedial measures to the satisfaction of the Director of Social Welfare, within the period of thirty days referred to in subsection (2).

(4) The Director of Social Welfare may, if a child care facility fails to show cause to the satisfaction of the Director of Social Welfare, or does not take any remedial measures to the satisfaction of the Director of Social Welfare, within the time specified in subsection (2), suspend or cancel the approval and issue the child care facility with a notice to that effect.

(5) The Director of Social Welfare shall, where the Director of Social Welfare cancels the approval of a child care facility under subsection (4), publish the notice of cancellation in a daily newspaper of general circulation in the Republic.

(6) A child care facility shall, where the child care facility receives a copy of the notice under subsection (4), cease to operate as a child care facility, within seven days of the service of the notice.

(7) Despite the provisions of this section, the Director of Social Welfare may, where it determines that the continued operation of a child care facility presents danger or imminent harm to children, order the closure of the child care facility.

**271.** (1) A child shall be received in the care of a child care facility if —

Reception of  
child in child  
care facility

(a) in an emergency situation, the child is taken to the institution by an authorised officer or a person who has reasonable cause to believe that the child is in need of care and protection; or

(b) the child is referred to the child care facility by way of an interim care order or a care order.

(2) Where a child is received by a child care facility in accordance with subsection (1) (a), a child care facility shall —

(a) notify the Director of Social Welfare, within forty-eight hours of the child being received; and

(b) bring the child before a court without delay unless —

- (i) the child's guardian or parent applies to the Director of Social Welfare for the child's release; or
- (ii) it is not in the best interests of the child to bring the child before a court.

(3) Where a child is brought before a court under subsection (2), the court shall order that the child —

(a) be placed in the care and custody of the Director of Social Welfare; and

(b) the Director of Social Welfare shall make the necessary arrangements for the child in accordance with Part XII.

(4) A court shall have the power to dispense with the provisions of subsection (3) and instead make orders in respect of parental responsibility for the child that the court may determine.

(5) The receipt of a child into a child care facility under this section shall be a measure of last resort and the Director of Social Welfare shall take the necessary measures to ensure that a child is placed in family based care.

Maintenance  
of child in  
child care  
facility

**272.** A child care facility in which a child is received shall provide the child with adequate care and protection for the period of the child's accommodation in the child care facility as provided under this Act.

Monitoring  
of progress  
of child

**273.** (1) The Director of Social Welfare shall monitor the progress of a child admitted into a child care facility until the child is discharged from the child care facility or until the expiry of a care order made in respect of the child.

(2) The Director of Social Welfare shall ensure that a child admitted to a child care facility is periodically visited and interviewed by a child welfare inspector.

Inspection  
of child care  
facility or  
other  
premises

**274.** (1) A child welfare inspector or child development officer may inspect a child care facility or other premises which the child welfare inspector or child development officer has cause to believe are being used to accommodate children who are in need of care and protection.

(2) A child welfare inspector or child development officer may, at any reasonable time, after giving prior notice to the child care facility or other premises, enter a child care facility or other premises and —

(a) interview a child or a person in the child care facility;

(b) require the production of an annual report and any records required to be kept in accordance with this Act; and

(c) inspect the conditions and facilities provided by the child care facility or managers of the child care facility.

(3) A child welfare inspector or child development officer shall prepare and submit a report on the inspection carried out under subsection (2) to the Director of Social Welfare.

(4) Where an inspection report indicates that a child in a child care facility is being neglected or abused in a manner which causes the child to be in need of care and protection, the Director of Social Welfare may, on receipt of an inspection report in addition to taking other remedial measures as may be prescribed, require the child care facility to appoint a new management for the child care facility.

(5) Where a child care facility does not comply with the remedial measures under subsection (4), the Director of Social Welfare may suspend or cancel the approval of the child care facility in accordance with section 269.

**275.** The Minister may, by statutory instrument, make provision for —

Child care  
facility  
regulations

(a) standards for the accommodation, staff and equipment to be provided in a child care facility;

(b) the training of persons employed in a child care facility;

(c) the criteria to be applied to limit the number of children who may be accommodated in a child care facility;

(d) the education and training of children in a child care facility;

(e) requirements as to arrangements for medical care, including psychiatric and dental health and the prevention of infectious and contagious diseases in a child care facility;

(f) special care for children with disabilities and children with chronic ailments in a child care facility;

(g) requirements as to the keeping of records and giving of notices in respect of a child received in a child care facility; and

(h) the conduct of inspections of a child care facility.

## PART XVII

## CHILD SAFEGUARDING

Measures on  
child  
safeguarding  
in institution  
or  
organisation

**276.** (1) An institution or organisation shall —

- (a) establish and implement child safeguarding and protection procedures to prevent violence against a child and child rights abuse;
- (b) educate a child on child rights and what constitutes physical, emotional, sexual and self-inflicting violence in a manner that is adapted to the age and maturity of the child;
- (c) ensure that a child has access to a safe channel to report any form of abuse or violence and that a child in the care or custody of the institution or organisation is informed on the manner of reporting any form of violence or abuse; and
- (d) have a child safeguarding focal point person and ensure that a child in the care or custody of the institution or organisation is aware of the safeguarding focal point person.

(2) An institution or organisation shall display information on the channel of reporting referred to under subsection (1)(c) in a conspicuous place that is legible for a child.

(3) An institution or organisation shall immediately inform a child welfare inspector or other authorised officer of any violence or abuse against a child.

(4) An institution or organisation that contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units.

(5) In this Part, unless the context otherwise requires, “institution or organisation” means an institution or organisation that provides services, care or protection to a child, without the presence of the child’s parent, guardian or person having parental responsibility for the child.

Reception of  
child in  
institution or  
organisation

**277.** (1) A child shall be received in the care of an institution or organisation in an emergency situation if a person has reasonable cause to believe that the child is in need of care and protection.

(2) Where a child is received by an institution or organisation in accordance with subsection (1), the institution or organisation shall notify the Director of Social Welfare, within forty-eight hours of the child being received.

(3) The Director of Social Welfare shall, where the Director of Social Welfare is notified in accordance with subsection (2), make the necessary arrangements for the child in accordance with Part XII.

**278.** An institution or organisation in which a child is received under section 277 shall provide the child with adequate care and protection for the period of the child's accommodation in the institution or organisation as provided under this Act.

Maintenance of child in institution or organisation

**279.** The Director of Social Welfare shall —

Monitoring of progress of child in institution or organisation

(a) ensure that a child admitted to an institution or organisation is visited and interviewed by a child welfare inspector; and

(b) monitor the progress of a child admitted into an institution or organisation until the child is discharged from the institution or organisation.

**280.** (1) A child welfare inspector may inspect an institution or organisation which the child welfare inspector has cause to believe is being used to accommodate a child in need of care and protection.

Inspection of institution or organisation

(2) A child welfare inspector may, at any reasonable time, enter an institution or organisation and —

(a) interview a child or a person in the institution or organisation;

(b) require the production of a report and any records required to be kept in accordance with this Act; and

(c) inspect the conditions and facilities provided by the institution or organisation, or managers of the institution or organisation.

(3) A child welfare inspector shall prepare and submit a report on the inspection to the Director of Social Welfare.

(4) The Director of Social Welfare may, where an inspection report referred to in subsection (3) indicates that a child in the institution or organisation is being neglected or abused in a manner which causes the child to be in need of care and protection, recommend to an appropriate authority that the institution or organisation is closed and make the necessary arrangements for the child in accordance with Part XII.

(5) Despite subsection (4), an institution or organisation that neglects or abuses a child in a manner which causes the child to be in need of care and protection commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units.

Regulations  
on child  
safeguarding

**281.** The Minister may, by statutory instrument, make Regulations for —

- (a) child safeguarding and protection procedures;
- (b) the training of persons employed in an institution or organisation that deal directly with children;
- (c) the criteria to be applied to limit the number of children who may be received in the care of an institution or organisation;
- (d) requirements as to arrangements for medical care, including psychiatric and dental health and the prevention of infectious and contagious diseases in an institution or organisation;
- (e) special care for children with disabilities and children with chronic ailments in an institution or organisation; and
- (f) requirements as to the keeping of records and giving of notices in respect of a child received in an institution or organisation.

## PART XVIII

### INTERNATIONAL CHILD ABDUCTION

Interpretation  
for Part  
XVIII

**282.** In this Part, unless the context otherwise requires —

“rights of custody” include the rights relating to the care of the child and the right to determine the child’s place of residence granted by the courts; and

“rights of access” include the right to take a child for a limited period of time to a place other than the child’s habitual place of residence granted by the courts.

Child  
wrongfully  
removed  
from or  
retained in  
Republic

**283.** (1) A child shall be considered to be wrongfully removed from the Republic where —

- (a) it is a breach of the rights of custody or the rights of access granted to a person, institution or any other body that removed the child from the Republic; and

(b) at the time of removal of the child, the rights of custody or the rights of access to the child were exercised solely by that person, institution or other body or jointly with another person, institution or other body, or would have been exercised if the child had not been removed from the Republic.

(2) A child shall be considered to be wrongfully retained in the Republic where —

(a) it is a breach of the rights of custody or the rights of access granted to the person, institution or other body over the child in the country in which the child was habitually resident immediately before the retention; and

(b) the rights of custody or the rights of access to the child were exercised solely by that person, institution or other body or jointly with another person, institution or other body, or would have been exercised if the child had not been retained in the country.

**284.** The central authority in the Republic shall cooperate with other central authorities and shall take all appropriate measures to —

Cooperation  
between  
central  
authorities

(a) discover the whereabouts of a child that is wrongfully removed from the Republic or a child that is wrongfully retained in the Republic;

(b) prevent further harm to the child or to prevent prejudice to any interested parties;

(c) secure the voluntary return of a child into the Republic or the country from which a child was wrongfully removed;

(d) exchange, where desirable, information relating to the social background of the child with another central authority;

(e) provide information on the law of the Republic for the purposes of this Part;

(f) initiate or facilitate the institution of judicial or administrative proceedings —

(i) to obtain the return of a child to that child's habitual place of residence; or

(ii) to make arrangements for securing the effective exercise of rights of access to a child;

- (g) provide or facilitate the provision of legal aid and advice relating to matters under this Part where necessary;
- (h) provide appropriate administrative arrangements as may be necessary to secure the safe return of a child to that child's habitual place of residence; and
- (i) to bring about an amicable resolution of issues relating to the wrongful removal or retention of a child.

Application  
to return  
child

**285.** (1) A person or central authority that claims that a child has been removed from the Republic or retained in the Republic in breach of custody rights shall apply to the central authority of the Republic or of the child's habitual place of residence to secure the safe return of the child in the prescribed manner and form.

- (2) An application under subsection (1) shall clearly state —
  - (a) the grounds on which the claim for the return of the child is based;
  - (b) available information relating to the whereabouts of the child; and
  - (c) the identity of the person who is presumed to have possession of the child.

(3) The central authority in the Republic shall, on receipt of an application under subsection (1), take all appropriate measures to obtain the voluntary return of the child.

(4) The central authority in the Republic shall, on receipt of an application under this section, directly and without delay transmit the application to the central authority of another State where the central authority in the Republic has reason to believe that the child is in another State and inform the applicant accordingly.

Commence-  
ment of legal  
proceedings

**286.** (1) The Director of Social Welfare shall commence legal proceedings for the safe return of the child to the Republic or another State where the Director of Social Welfare is satisfied that an application under section 285 is correctly before the central authority.

(2) A court shall hear and determine the matter under subsection (1) within six weeks from the date of commencement of the proceedings.

(3) A court shall order the immediate return of a child in accordance with this section where a period of one year has lapsed from the date of the wrongful removal or retention of a child in the Republic.

(4) Despite subsection (3), a court may order the retention of a child in the Republic if the court is satisfied that the child is settled in the Republic and it is in the best interest of the child to be retained.

(5) A child may be heard by the court on an application under this section having regard to the age and the level of maturity of the child.

(6) The court may stay proceedings under this section or dismiss an application for the return of a child where the court has reason to believe that the child has been taken to another State.

(7) The central authority in the Republic shall, where a child has been taken to another State as provided under subsection (6), apply for the return of the child to the Republic to the central authority of that State.

**287.** (1) The court shall not order the return of a child if —

- (a) the person claiming that a child has been wrongfully removed from the Republic or is wrongfully retained in the Republic did not have rights of custody or rights of access at the time of the removal or retention;
- (b) the person claiming that a child has been wrongfully removed from the Republic or is wrongfully retained in the Republic consented to or subsequently acquiesced to the removal or retention;
- (c) there is a grave risk that the return of the child would expose the child to physical or psychological harm, or place the child in an intolerable situation; or
- (d) subject to section 286(5), the child objects to being returned.

Limitation of  
powers of  
court

(2) The court shall, in considering the circumstances under subsection (1), take into consideration information relating to the social background of the child provided by the central authority in the Republic or any other competent authority.

## PART XIX

## GENERAL PROVISIONS

Harbouring  
or  
concealing  
child

**288.** A person who harbours or conceals a child who is to be placed under care in a child care facility commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

Escape from  
child care  
facility or  
place of  
safety

**289.** (1) A child may be apprehended by a person without warrant and taken to the Director of Social Welfare or an authorised officer where the child —

(a) escapes from a person, child care facility or place of safety, in whose care the child has been entrusted under this Act; or

(b) escapes while being conveyed to or from the child care facility.

(2) The Director of Social Welfare or an authorised officer shall bring the child referred to under subsection (1) before a court in the place where the child was residing immediately before the child escaped within seven days of the child being taken to the Director of Social Welfare or an authorised officer.

(3) A court may, where a child is brought before the court under subsection (1) —

(a) order that the child be returned to the person, child care facility or place of safety;

(b) place the child under the care of some other person, child care facility or place of safety;

(c) make an order which a court may make under sections 159 and 169; or

(d) make an order requiring the child to undergo professional counselling.

(4) Where a child escapes from a person, child care facility or place of safety in whose care the child has been entrusted under this Act, a person or an appropriate officer of the child care facility or place of safety shall within twenty-four hours of the child escaping notify the Director of Social Welfare.

(5) A person commits an offence if the person —

(a) assists or induces a child to escape from a person, child care facility or place of safety, in whose care the child has been placed;

(b) harbours or conceals a child who has escaped from a person, child care facility or place of safety in whose care the child has been placed; or

(c) prevents a child who escapes from returning, or induces the child not to return, to the care of the person, child care facility or place of safety in whose care the child has been placed.

(6) A person who commits an offence under subsection (5) is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

**290.** (1) A person aggrieved with a decision of the Director of Social Welfare or Director of Child Development under this Act, may appeal to the Minister.

Appeals

(2) A person aggrieved with the decision of the Minister under subsection (1) may appeal to the High Court.

**291.** In any proceedings under this Act, a copy of an entry in the payroll of an employer or, if no payroll is maintained, a written statement signed by the employer or a responsible person in the employer's service, shall be evidence that the wages entered or stated in the written statement as having been paid to a person have in fact been paid.

Evidence of wages

**292.** Nothing in this Act prohibits the rendering of professional services in connection with an adoption by a legal practitioner, psychologist or a member of another profession.

Professional services in adoption

**293.** A person who contravenes a provision of this Act, where no specific penalty has been provided is liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both, and, if the person is a foreigner, to the variation or revocation of that person's immigration permit.

General penalty

**294.** Where an offence under this Act is committed by a body corporate or unincorporated body, with the knowledge, consent or connivance of the director, manager, shareholder or partner of the body corporate or unincorporated body, that director, manager, shareholder or partner commits the same offence as the body corporate or unincorporated body and is liable, on conviction, to the penalty specified for that offence under this Act.

Offences by principal officers of body corporate or unincorporated body

Regulations

**295.** (1) The Minister may, by statutory instrument, make Regulations for the better carrying out of the provisions of this Act.

(2) Despite the generality of subsection (1), Regulations under this section may make provision for —

- (a) the manner and form for applications and the fees payable;
- (b) the particulars to be entered on registers under this Act;
- (c) the functions of the National Coordination Committee for Children;
- (d) pre-matching and matching of a child with a prospective parent;
- (e) the regulation of foster care and adoption under this Act;
- (f) the regulation of inter-country adoptions and the prescription of safeguards for inter-country adoptions;
- (g) the criteria for accreditation of an adoption agency;
- (h) the criteria for accreditation of an adoption agency to provide inter-country adoption services;
- (i) the regulation and supervision over the activities of an adoption agency; or
- (j) any matter required to be prescribed under this Act.

(3) The Minister may, by statutory order, confer any power and duties of an authorised officer under this Act on any public officer or class of public officers.

Rules

**296.** (1) The Chief Justice shall make rules of court directing the manner in which applications to the court are to be made and generally providing for matters of procedure under this Act.

(2) Despite the generality of subsection (1), rules under this section may make provision for the —

- (a) manner in which applications to a court may be made;
- (b) officers of a court who shall be responsible for communicating the orders made under this Act to the Director of Social Welfare or Registrar-General, as the case may be; or
- (c) carrying into effect of the purposes of this Act.

**297.** (1) The Legitimacy Act, 1929, the Juveniles Act, 1956, the Adoption Act, 1956, and the Affiliation and Maintenance of Children Act, 1995 are repealed.

Repeal of  
Acts  
Cap. 52  
Cap. 53  
Cap. 54  
Cap. 55

(2) Despite subsection (1), all orders and warrants made or issued under the repealed Acts shall remain in force and be enforced in accordance with the terms of the orders or warrants as if made or issued under this Act.

(3) Despite subsection (1), any registration or approval issued under the repealed Acts shall be valid until the 31<sup>st</sup> of December being a date after the commencement of this Act, after which the holder of the registration or approval shall apply for registration or approval in accordance with the provisions of this Act.

**298.** (1) A reference in a written law or document to a juvenile court shall be construed as a reference to the juvenile court under this Act.

Savings and  
transitional  
provisions

(2) For the avoidance of doubt, a person who was an officer or employee of the Social Welfare Department and Child Development Department before the commencement of this Act shall continue to be an officer or employee of the Social Welfare Department and Child Development Department.

(3) The service of the persons referred to in subsection (2) shall be treated as continuous service.

(4) Nothing in this Act affects the rights and liabilities of any person employed in the Social Welfare Department and Child Development Department before the coming into operation of this Act.

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