



MONTSERRAT

CHAPTER 5.04

CHILDREN (CARE AND ADOPTION) ACT and Subsidiary Legislation

Revised Edition

showing the law as at 1 January 2019

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

CHILDREN (CARE AND ADOPTION) ACT

Act 11 of 2016 .. in force 1 November 2017 (S.R.O. 63/2017)

ADOPTION OF CHILDREN RULES – Section 138

S.R.O. L.I. 31/1947

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CHAPTER 5.04

CHILDREN (CARE AND ADOPTION) ACT

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CHAPTER 5.04

CHILDREN (CARE AND ADOPTION) ACT

(Act 11 of 2016)

AN ACT TO PROVIDE FOR THE CARE AND PROTECTION OF CHILDREN,
OPERATION OF ADOPTION SERVICES AND RELATED MATTERS.

Commencement

[1 November 2017]

PART 1

PRELIMINARY

Short title

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

Interpretation

2. (1) In this Act—

“**abuse**” includes—

- (a) physical abuse;
- (b) sexual abuse;
- (c) verbal abuse;
- (d) economic abuse;
- (e) emotional abuse referred to in subsection (2); and
- (f) psychological abuse referred to in section 12;

“**adopted child**” means a child adopted under this Act or the former Act;

“**Adoption Committee**” means the Adoption Committee established under section 83;

“**Adoption List**” means the list established and maintained pursuant to section 98;

“**adoptive parent**” means a person who has adopted a child under section 119 or the former Act;

“**alternative action plan**” means a plan—

- (a) that sets out the way in which the needs of the child are proposed to be met, having regard to the breakdown in the relationship between the child and his parents; and
- (b) that may include proposals concerning—

- (i) the allocation of parental responsibility or specific aspects of parental responsibility;
- (ii) residential arrangements;
- (iii) supervision;
- (iv) contact arrangements;
- (v) education and training;
- (vi) medical care; or
- (vii) the provision of services;

“attorney-at-law” means an individual who has been admitted to practice law under the Legal Profession Act, (Cap. 2.21);

“biological father” includes a man who—

- (a) is biologically the father of a child;
- (b) has been adjudged by a court of competent jurisdiction to be the father of a child; or
- (c) is a father as a result of artificial conception procedures under the Status of Children Act (Cap. 5.08);

“biological mother” includes a woman who—

- (a) gave birth to a child; or
- (b) is a mother as a result of artificial conception procedures under the Status of Children Act (Cap. 5.08);

“biological parent” means a biological mother or a biological father of a child;

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

“care order” means an order made by a Court to place a child in the care and under the protection of a person or an authority under this Act;

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

“care responsibility” means the authority of a person to exercise the functions specified in section 28 in relation to a child;

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

“child care service” includes—

- (a) a boarding home;
- (b) a group home;
- (c) a foster home;
- (d) a residential care;
- (e) a training centre or training school;

(f) an assessment centre;
(g) a children's home; or
(h) any similar service,
designated by the Governor under section 75 to provide for the care
of children;

“couple” means a man and a woman—

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

“Court” means the Magistrate's Court;

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

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

“Director” means the Director of Social Services;

“domestic violence” means any controlling or abusive behavior or conduct
that harms the health, safety or well-being of a person or a child and
includes—

- (a) abuse or threats of abuse;
- (b) coercion;
- (c) molestation;
- (d) arbitrary deprivation of liberty;
- (e) intimidation;
- (f) harassment;
- (g) stalking;
- (h) damage to or destruction of property; or
- (i) entry into the residence of the person or child without
consent, where the parties do not share the same residence;

“economic abuse” means the avoidance of financial obligations owed by a
person to another person including mortgage or rental obligations;

“former Act” means the Adoption of Children Act (Cap. 5.04);

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

“harm” means ill treatment or the impairment of health or development,
including impairment suffered from seeing or hearing the ill
treatment of another person;

“**health**” includes physical or mental health;

“**home study assessment**” means an assessment conducted by the Adoption Committee on a single person or a couple who makes an application pursuant to section 92;

“**ill treatment**” includes sexual abuse or neglect;

“**legal guardian**” in relation to a child, means a person appointed as the child’s guardian by deed or will, or by order of a court of competent jurisdiction;

“**Minister**” means the Minister with responsibility for social services;

“**Ministry**” means the Ministry with responsibility for social services;

“**parent**” means—

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

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

“**parental responsibility**” means the duties, powers, rights, responsibilities and authority; which by any law, the parent of a child has in relation to that child;

“**permanency plan**” means a plan referred to in section 67;

“**police officer**” means a member of the Royal Montserrat Police Service of the rank of Inspector or above;

“**prescribed**” means prescribed by Regulations;

“**prospective adoptive parent**” means a single person or a couple approved by the Adoption Committee in accordance with section 93;

“**Registrar**” means the Registrar of Births and Deaths;

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

“**resident**” means a person who is ordinarily resident in Montserrat;

“**removal**” means the taking of a child and placing the child in the care and protection of the Director under this Act;

“**sexual abuse**” means any sexual conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of a person; and

“significant harm” means—

- (a) a single traumatic event; or
- (b) a combination of traumatic events,

which interrupts, changes or damages the physical development of a child.

(2) For the purposes of this Act, emotional abuse exists if a child—

- (a) has suffered, is suffering or is likely to suffer in a way that has caused, is causing or is likely to cause significant harm to him; or
- (b) is being or is likely to be exposed to conduct that is domestic violence and the exposure causes, is causing or is likely to cause significant harm to him.

Primary purpose of Act

3. (1) The primary purpose of this Act is to—

- (a) ensure that the best interests of the child are given paramount consideration;
- (b) provide for the care and protection of a child; and
- (c) provide for the adoption of a child in Montserrat in a manner that—
 - (i) promotes the well-being and the best interest of the adopted child throughout his life; and
 - (ii) supports efficient and accountable practice in the delivery of adoption services.

(2) In determining what is in the best interests of a child, the Director or the Court shall have regard to all relevant considerations including—

- (a) the safety of the child;
- (b) the capacity of the parent of the child to properly discharge his parental responsibilities with respect to the child and to meet the child’s needs;
- (c) the physical, mental and emotional needs of the child, and the appropriate care or treatment required to meet those needs;
- (d) the physical, mental, emotional or psychological development of the child;
- (e) where appropriate, the wishes of the child, in light of the child’s age and understanding;

- (f) the need to provide a secure place for the child and the development of a positive relationship as a member of a family;
- (g) the love, affection and ties between the child and other persons in the life of the child;
- (h) the capacity of a person other than a parent to exercise custody rights and duties respecting a child; and
- (i) the continuity of the care for the child and the possible effect of disruption of that care on the child;
- (j) any disability which the child may have;
- (k) any wishes expressed by either one or both parents of the child;
- (l) the relationship that the child has with his biological parents or siblings, if any and any significant other person including a relative where this is considered to be relevant;
- (m) the physical, emotional and educational needs of the child, including the child's sense of personal, family and cultural identity;
- (n) the child's age, maturity, level of understanding, gender, background and family relationships and other characteristics of the child where this is considered to be relevant;
- (o) the attitude of a person wishing to adopt the child towards the child and to parental responsibilities;
- (p) the nature of the relationship of the child with the person wishing to adopt the child;
- (q) the suitability and capacity of the person wishing to adopt the child, to provide for the needs of the child, including the child's emotional and intellectual needs;
- (r) the need to protect the child from harm and abuse; and
- (s) the likely effect on the child in both the short and long term of changes in the circumstances of the child caused by adoption or non-adoption of the child.

PART 2

ADMINISTRATION OF THE ACT

Principles to be applied in the administration of this Act

4. (1) The principles to be applied in the administration of this Act include the following—

- (a) in all actions and decisions made under this Act, whether by legal or administrative process, concerning a child, the safety, welfare and well-being of the child are the paramount consideration, and the safety, welfare and well-being of a child who has been removed from his parents are paramount over the rights of the parents;
- (b) if a child is able to form his own views on a matter concerning his safety, welfare or well-being, he shall be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child and the circumstances;
- (c) in deciding what action it is necessary to take, whether by administrative or legal process, in order to protect a child from harm, the course to be followed shall be the least intrusive intervention in the life of the child and his family, that is consistent with the paramount concern to protect the child from harm and to promote the development of the child;
- (d) if a child is temporarily or permanently deprived of his home or environment or cannot be allowed to remain in that environment in his own best interest, the child is entitled to special protection and assistance from the Social Services Department and his own name and identity shall, if possible, be preserved;
- (e) if a child is placed in a designated child care service, arrangements shall be made, in a timely manner, to ensure the provision of a safe, nurturing, stable and secure environment, recognising the child's circumstances and that, the younger the age of the child, the greater the need for early decisions to be made in relation to a permanent placement; and
- (f) if a child is removed from the home of his parents under this Act, whether temporarily or permanently, the child is entitled to a safe, nurturing, stable and secure environment and unless it is contrary to his best interests, and taking into account the wishes of the child, this may include the retention by the child of relationships with people significant to the child, including his biological or adoptive parents, siblings, extended family, peers, family friends and community.

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

- (a) adoption is to be regarded as a service for the child, not for a person wishing to adopt and care for the child;

- (b) a person does not have the right to adopt a child;
- (c) if a child is able to form his own views on a matter concerning his adoption, he shall be given an opportunity to express those views freely and those views are to be given due weight in accordance with the age, maturity, developmental capacity of the child and the circumstances;
- (d) the given name of a child, identity, religious ties and cultural identity shall, as far as possible, be identified and preserved;
- (e) the likely effect on the child throughout his life of having ceased to be a member of his biological or original family and become an adopted child;
- (f) any harm which the child has suffered or is at risk of suffering; and
- (g) the likely prejudicial effect in the delay in arriving at a decision relating to a child.

Participation of child in decisions

5. (1) In order to ensure that a child is able to participate in decisions that are likely to have a significant impact on the life of the child, a person who participates in the process shall ensure that the child is provided with the following—

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

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

- (a) any plans for emergency or ongoing care, including placement of the child;
- (b) the development of a care plan concerning the child;

- (c) court applications concerning the child;
- (d) the review of a care plan concerning the child;
- (e) the provision of counselling or treatment services; or
- (f) any contact with a parent, relative or other persons connected with the child.

Responsibility of the Minister

6. (1) The Minister is responsible for the overall administration of this Act.

(2) The Minister shall—

- (a) establish goals, objectives and guidelines for the delivery of child care and protection;
- (b) promote a partnership approach between the Government and agencies or corporations respecting the care and protection of children;
- (c) enter into agreements and establish procedures and protocols aimed at promoting the care and protection of children and ensure that the agreements, procedures and protocols are implemented;
- (d) ensure that there is coordination between Government and non-governmental agencies in matters relating to child care and protection and adoption; and
- (e) review the guidelines under paragraph (a) and the procedures and protocols under paragraph (c) annually.

Office of Director of Social Services

7. The Director shall assist the Minister in the administration of this Act.

Responsibility of the Director

8. (1) Subject to the direction of the Minister, the Director shall provide for the care and protection of children by promoting the development, adoption and evaluation of policies and procedures that accord with the purposes of this Act.

(2) In addition to the duties specified in subsection (1), the Director shall —

- (a) promote and safeguard the safety, welfare and well-being of a child;
- (b) assess and investigate or to cause an assessment to be undertaken or reports to be assessed and investigated under Part 5;

- (c) oversee the operation and delivery of child care services;
- (d) establish, with the approval of the Minister, policies and procedures respecting all aspects of child care services;
- (e) provide consultation and direction to relevant authorities respecting child care services under this Act;
- (f) establish procedures for the delegation of his duties and to establish policies respecting the direction and supervision of the delegation;
- (g) advise the Minister and other persons on matters relating to child care services, programmes, facilities and resources necessary to carry out the requirements of this Act;
- (h) determine in association with the Adoption Committee the manner in which a child is selected for adoption;
- (i) establish guidelines for the conduct of negotiations entered into by the Adoption Committee with a parent who wishes to have the child selected by the Adoption Committee to be placed for adoption under this Act;
- (j) receive applications for adoption made under to this Act on behalf of the Adoption Committee and assist the Adoption Committee in the conduct of the necessary investigation required under this Act with respect to the adoption of child;
- (k) make arrangements for and in relation to the placement of a child;
- (l) take appropriate measures to ensure confidentiality of the records of a child, and the parent of a child;
- (m) issue guidelines to child care services in giving effect to this Act; and
- (n) perform any other duties as may be necessary to carry out the provisions of this Act or as may be determined by the Minister.

Director's request for services from other agencies

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

(2) A government department, an agency or a person to which a request is made under subsection (1), shall use his best endeavours to comply with the request.

(3) In determining the most appropriate government department, agency or person to which a request for services may be made, the Director shall consider whether the request—

- (a)* is consistent with the responsibilities of the Government department, agency or person; and
- (b)* would prejudice the discharge of the functions of the Government department, agency or person.

(4) If a Government department, an agency or any person to which a request is made under subsection (1) is not able to comply with the request, the Government department, agency or person shall notify the Director in writing and shall include the reasons for non-compliance in the notice.

Delegation

10. (1) The Director may delegate to a staff member of the Social Services Department or to any other person, his functions, other than the power of delegation under this Act.

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

Boards and Committees

11. (1) The Governor acting on the advice of Cabinet shall appoint the Adoption Committee in accordance with section 83.

(2) The Governor acting on the advice of Cabinet may establish and appoint the members of—

- (a)* an Advisory Committee—
 - (i)* to review the provisions of this Act and the services performed under this Act; and
 - (ii)* to report to the Minister concerning the operation and administration of this Act and whether or not the principles and purposes of this Act are being achieved; and

(b) any Board or other Committee;

to assist the Director in the exercise of his duties under this Act.

PART 3

CARE AND PROTECTION OF CHILDREN

Children in need of care and protection

12. (1) A child is in need of care and protection if there are grounds for believing that the child—

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

(2) In this section “**neglect of a child**” means the failure of a parent of the child to provide the child with adequate care and guidance or other acts or omission by the parent with respect to a child that are not in the best interests of the child or likely to be harmful to the child.

Request for assistance from parent or child

13. (1) A parent has responsibility for the child unless it is not in the best interests of the child that the parent has responsibility for that child.

- (2) A parent or a child may seek assistance from the Director if—
- (a) there is a serious or persistent conflict between the parent and the child of a nature that the safety, welfare or well-being of the child is in jeopardy;
 - (b) the parent is unable to provide adequate supervision for the child to an extent that the safety, welfare or well-being of the child is in jeopardy; or
 - (c) in the case of the child, the parent abandons the child.

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

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

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

(5) If the Director is of the opinion that, despite the assistance provided under subsection (3), the safety, welfare or well-being of the child continues to be in jeopardy, the Director shall cause the child to be brought before the Court.

(6) If the Court is satisfied that—

- (a) the child cannot be controlled by a parent;
- (b) it is in the best interests of the child; and
- (c) the parent understands the results which will follow from and consents to the making of the order,

the Court may place the child under the supervision of the Director or some other person appointed by the Court, for a period not exceeding three years or may make an order under Part 8 for the care and protection of the child.

(7) The Court may extend the period of placement under subsection (5) for a period the Court deems appropriate, but the extended period shall not exceed one year.

PART 4

REPORTING

Mandatory reporting

14. (1) This section applies to a person who—

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

(2) A person under subsection (1) who has knowledge or has reasonable grounds to suspect that a child is in need of care and protection in any of the circumstances mentioned in section 12, shall—

- (a) immediately report or cause to be reported, the circumstances to the Director or to a police officer who shall report the information to the Director; and
- (b) provide the Director with any additional information as is known or available to the person.

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

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

(5) A person who fails to comply with subsection (2) commits a summary offence and is liable to a fine of \$5,000 or to three months' imprisonment.

Records of reports and subsequent action

15. (1) The Director shall keep a record of—

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

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

Protection of persons who make reports

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

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

(2) If consent or leave is not granted under subsection (1)(f), a party or witness in the proceedings shall not be asked, and if asked, is not required to answer any question that cannot be answered without disclosing the identity or leading to the identification of that person.

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

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

(5) If leave is granted under this section, the Court shall—

- (a) state the reasons for the grant of leave; and
- (b) direct that the Director be informed that evidence as to the identity of the person who made the report, or from which the identity of that person could be deduced, has been disclosed.

(6) Subsection (1)(f) does not prevent the disclosure of information from which the identity of the person may be deduced if the prohibition on

the disclosure of that information would prevent the proper investigation of the report.

(7) A report to which this section applies is an exempt document for the purposes of any law in force relating to the freedom of information.

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

PART 5

INVESTIGATION AND ASSESSMENT

Conduct of initial investigation and assessment

17. (1) If—

- (a) a report is made under section 14;
- (b) it appears to the Director that a child may be in need of care and protection; or
- (c) a parent or a child requests assistance under section 13,

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

(2) The initial investigation shall be conducted within seven days of the receipt of the report, the discovery by the Director or the request for assistance under subsection (1).

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

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

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

(5) In conducting an investigation, the Director may—

- (a) visit the residence of the child and any other place frequented by the child;
- (b) transport the child to a place the Director considers appropriate;
- (c) interview and examine the child;

- (d) interview a parent of the child;
 - (e) interview a person who cares for the child or any person who has had an opportunity to observe the child;
 - (f) interview a person who provides health, social, educational and other services to the child or a parent of the child;
 - (g) request information contained in the medical, social, educational and other service records concerning the child, a parent of the child or both;
 - (h) cause an examination to be made of the physical, mental and emotional health and development of the child;
 - (i) request a parent of the child to undergo an examination of his physical, mental, or emotional health or any other assessment; or
 - (j) consult with any other person and gather any other evidence as may be necessary to complete the investigation.
- (6) The Director may apply or cause an application to be made to the Court for an order compelling a person to provide the information or assistance sought in the conduct of the investigation by the Director under subsection (5).
- (7) On application by the Director, the Court may order a person to—
- (a) provide any information under subsection (5) to the Director;
 - (b) allow the Director access to a person, place or record; or
 - (c) co-operate with an investigation by the Director.
- (8) The Court—
- (a) may make an order under subsection (7) if the Court is satisfied that the order is in the best interests of the child; and
 - (b) shall specify in the order the reason for making the order.
- (9) Subject to subsection (10), the Director shall provide a report of the results of an investigation to—
- (a) the parent of the child who is the subject of the investigation; and
 - (b) the child, if he is at least twelve years old and is capable of understanding the circumstances of the investigation.
- (10) The Director shall not provide a report under subsection (9) if—
- (a) the Director has reasonable grounds to believe that the report will endanger the safety of the child or any other person; or
 - (b) a criminal investigation related to the matter has been initiated or is likely to occur.

(11) Despite subsection (10), the Director may provide an extract of the report to a person under subsection (9).

(12) A person who intimidates, threatens or obstructs the Director in the exercise of his duties under this section commits a summary offence and is liable to a fine of \$5,000 or to three months' imprisonment.

Matters for consideration

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

Action taken by Director

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

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

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

Decision against taking action

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

(2) If the Director decides not to take any action, the Director shall make a written record of the reasons for his decision.

Principles of intervention

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

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

Alternative dispute resolution

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

- (a) ensure intervention so as to resolve problems which may exist at an early stage;
- (b) develop a care plan;
- (c) reduce the likelihood that an application for an order will need to be made;
- (d) reduce the incidence of breakdown in child-parent relationships; and
- (e) work towards the making of decisions that are in the best interests of the child concerned if an application for a care order is made.

(2) The participation by a child or a parent of the child in any form of alternative dispute resolution procedure is voluntary.

Development and enforcement of care plans

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

Application for certain orders

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

PART 6

EMERGENCY PROTECTION

Removal of child

25. (1) The Court may, on the application of the Director without notice, issue a warrant to the Director under this section if the Court is satisfied that—

- (a) there are reasonable grounds to believe that—
 - (i) a child is in need of care and protection; and
 - (ii) a less intrusive course of action will not adequately protect the health or safety of the child; and
- (b) the parent or any other person caring for the child has refused to give up the child or to permit entry to the place or premises where the Director has reason to believe that the child is present.

(2) Despite subsection (1), in the case of an emergency, if the Director has reasonable grounds to believe that—

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

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

(3) It is not necessary that a child be identified by name for the purpose of any removal, search warrant or order issued under this Part.

(4) For the purposes of this section, “**a case of an emergency**” includes situations where the life of the child is at risk or there is a risk of serious harm to the child.

Prompt application to court for order

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

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

Emergency protection order

27. (1) The Director shall make an application for an emergency protection order for a child at the first available opportunity after the child has been removed under section 25.

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

(3) The Court shall, in the order—

(a) specify the reason for making the order; and

(b) provide for the child to be placed in the care responsibility of the Director or the person specified in the order.

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

(5) An order made under this section has effect for a period not exceeding thirty days, unless the order is extended under subsection (5).

(6) An order made under this section may, while the order remains in force, be extended once only for a period not exceeding thirty days.

Care responsibility of child removed from parents

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

(a) the child shall be housed in a child care service; and

(b) subject to subsection (2), the Director shall have the care responsibility for the child.

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

(3) The Director or a child care service, having the care responsibility for the child, may delegate that responsibility to—

(a) a relative of the child; or

(b) any other person approved by the Director or the Court, if the approval of the Court is required.

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

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

Care responsibility

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

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

Care responsibility by Director

30. (1) If the Director—

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

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

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

Discharge of child from care responsibility of Director

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

(2) An undertaking under subsection (1) shall be in writing and shall be signed by the person who gives the undertaking.

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

- (a) any views expressed by the child as to whether he wishes the power to be exercised;

- (b) any views expressed by the child as to whether he wishes to return to the care and under the protection of his parents;
 - (c) whether the exercise by the Director of that power is likely to protect the safety, welfare and well-being of the child; and
 - (d) whether the failure of the Director to exercise that power is likely to endanger the safety, welfare and well-being of the child or any other person.
- (4) If the Director intends to discharge from his care responsibility a child who has been placed in his care responsibility by an order of the Court, the Director shall—
- (a) apply to the Court for an order discharging the child from his care responsibility; and
 - (b) in his application under paragraph (a), explain to the Court why his care responsibility with respect to the child is no longer required.

PART 7

ASSESSMENT ORDERS

Making of assessment order

32. (1) The Court may, on the application of the Director or any other party to a care application in respect of a child, make an order for—

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

or both.

(2) A person appointed by the Court to carry out the assessment or any part of the assessment shall do so in accordance with the terms of the order and prepare a report of the assessment.

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

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

Matters for consideration in making assessment order

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

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

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

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

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

Information concerning assessment

34. A child shall be informed of the reasons for the assessment in a language and a manner that he understands, having regard to his age, maturity and circumstances.

Report of assessment

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

PART 8

ORDERS FOR THE CARE AND PROTECTION OF A CHILD

Application for care order

36. (1) The Director may apply for a care order under this Part.

(2) An application for a care order shall specify the particular care order sought and the grounds on which it is sought.

(3) Except as provided by this Part, a care order may be made as an interim order or a final order.

(4) A care order may be varied, but only with the leave of the Court.

Evidence of prior alternative action plan

37. (1) The Director shall, in making a care application to the Court under section 36, furnish details to the Court of—

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

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

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

Notification of care applications

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

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

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

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

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

Leave to withdraw application

39. (1) A person who makes a care application may, with the leave of the Court, withdraw the application.

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

- (a) a statement that indicates how the issues that led to the making of the application have been resolved; or
- (b) a care plan that specifies how the issues that led to the making of the application are to be addressed.

Court not limited by terms of care application

40. The Court may, on a care application, make a care order different from, in addition to, or in substitution for, the order for which the application was made.

Interim care orders

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

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

(3) An interim care order shall be granted for a period not exceeding thirty days.

Consideration of necessity for interim care orders

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

Supervision and care orders

43. (1) If the Director makes an application under section 36 for a care order, the Court may make—

- (a) a supervision or an interim supervision order in accordance with section 52, placing a child under the supervision of the Director while leaving the child in the custody of his parent;
- (b) a care order or an interim care order placing a child in the care of the Director; or
- (c) an order placing the child in the custody of the Director where the parents of the child are unable to care for and maintain the child, and where no other alternative measures are available to protect the child.

(2) In making an order under subsection (1), the Court shall specify the reason for making the order.

Grounds for making a care order

44. (1) The Court may make a care order in relation to a child if it is satisfied that the child is in need of care and protection as a result of any of the following reasons—

- (a) there is no parent available to care for the child as a result of death or incapacity of the parents or for any other reason;
- (b) the parents acknowledge that they have difficulties in caring for the child;
- (c) the child has been, or is likely to be abused;
- (d) subject to subsection (2), the basic physical, psychological, emotional or educational needs of the child are not being met, or are not likely to be met by his parents;
- (e) the child is suffering or is likely to suffer developmental impairment or psychological harm, as a consequence of the domestic environment in which the child is living;
- (f) the child has exhibited sexually abusive behaviour and an order of the Court is necessary to ensure his access to, or attendance at an appropriate therapeutic service; or
- (g) the child is subject to a care and protection order issued by another jurisdiction that is not being enforced.

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

Duration of care order

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

(2) The Court may, on the application of the Director, extend the duration of the care order.

(3) The Director or a person designated by the Director shall review a care order at least once every ninety days and may make recommendations as to any action to be taken, having regard to the outcome of the review.

Purpose of the care order

46. The purpose of the care order is—

- (a) to remove a child from a situation in which he has suffered, is suffering or is likely to suffer abuse or harm;
- (b) to assist the child and those with whom he is living or wishes to live with to examine the circumstances that have led to the making of the order; and

- (c) to take steps to resolve or ameliorate the problem so as to ensure the child's return to his family or community.

Care orders for a child care service

47. (1) The Director may apply to the Court for a care order—

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

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

(3) In making an order under subsection (1), the Court shall specify the reason for making the order.

Duty to enforce care order

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

Parental responsibility vested in person in charge of child care service

49. (1) The person in charge of a child care service in which a child is placed under a care order has the parental responsibility for the care of the child.

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

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

Special duties of Director in relation to care orders

50. (1) The Director shall—

- (a) work with the parent of a child before and after the termination of a care order, so that the child can be returned to his family or community after the termination of the care order;
- (b) arrange family and child counselling for the child and his family, before, during and after the return of the child to his family or community; and

- (c) seek the assistance of persons in the family or community who can help in the process of resolving the problems which caused the care order to be made.
- (2) If a child is placed in a child care service, the Director shall communicate with the parent of the child, to—
- (a) inform the parent of the progress of the child; and
 - (b) arrange a trial period for the child to be reunited with the parent.

Application for supervision order

51. (1) The Director may apply to the Court for a supervision order, if the Director is satisfied that there is a need for continuous supervision of a child.

(2) Before making an application for a supervision order, the Director shall appoint a person to perform the duties of supervisor and to offer any services the Director may consider appropriate.

Supervision order

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

- (a) there is a need for continuous supervision of the child;
 - (b) the child is in need of care and protection;
 - (c) the child concerned is suffering or likely to suffer abuse or harm; and
 - (d) the abuse or harm, or probability of abuse or harm is attributable to—
 - (i) the care given to the child, or likely to be given to the child if the order were not made;
 - (ii) the fact that the child is beyond parental control; or
 - (iii) the neglect of the child.
- (2) In making an order under this section, the Court shall specify—
- (a) the reason for making the order;
 - (b) the purpose of the order; and
 - (c) the length of the order.

Duties of a supervisor while a supervision order is in force

53. The duties of a supervisor while a supervision order is in force with respect to a child are—

- (a) to mentor, advise and assist the child;
- (b) to advise the parent of the child;
- (c) to make plans for the future of the child in consultation with the child and his parent; and
- (d) to take any other reasonable step as may be necessary to reduce any harm to the child.

Requirements of supervision order

54. Without limiting the information that may be included in a supervision order by the Court, a supervision order may require the child, the parent of the child or both the child and his parent to—

- (a) report to the supervisor at a place and at intervals stated by the supervisor; and
- (b) take part in discussions with the supervisor in relation to the welfare, safety and well-being of the child, in particular whether the child should be engaged in some form of activity including educational, vocational or recreational activity.

Duration of supervision order

55. (1) The Court shall make a supervision order for a period of not less than six months and not exceeding twelve months.

(2) Despite subsection (1), the Court may, on its own motion or on an application made by the Director and after giving the parties an opportunity to be heard, extend the period of a supervision order for a period not exceeding twelve months.

(3) The Court shall, in making a supervision order, require the Director to submit—

- (a) halfway through the supervision period, a report setting out the progress of the supervision;
- (b) at least two months before the end of the supervision period, a report which sets out—
 - (i) the outcome of the supervision as at the date of the report;
 - (ii) whether there is need for an extension of the supervision period; and
 - (iii) whether any other order should be made for the care and protection of the child; and
- (c) at the end of the supervision period, a report which sets out—
 - (i) the outcome of the supervision; and

- (ii) whether the purpose of the supervision has been achieved.

Director to enforce supervision order

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

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

- (a) give the parties an opportunity to be heard concerning the allegation; and
- (b) determine whether the order has been breached,

and if the Court finds that the order has been breached, the Court may make any order as it considers appropriate in the circumstances.

Care plans

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

(2) The care plan shall provide for the following—

- (a) the allocation of parental responsibility for the duration of the period for which the child is removed from the care of his parent;
- (b) the kind of placement proposed to be sought for the child, including—
 - (i) how it relates to permanency planning for the child;
 - (ii) any interim arrangement that is proposed for the child pending permanent placement and the timetable proposed for achieving a permanent placement;
- (c) the arrangements for contact between the child and his parent, relatives, friends and other persons connected with the child;
- (d) the child care service designated to supervise the placement of the child; and
- (e) the health, educational and other services that need to be provided to the child.

(3) In the preparation of the care plan, the best interests of the child shall be the paramount consideration.

(4) The care plan shall be made as far as possible with the agreement of the parent of the child concerned.

- (5) The care plan is only enforceable if it—
- (a) is developed by the Director through an agreement with the parent of the child and the child, where applicable; or
 - (b) represents a set of proposals developed by the Director which is in the best interests of the child.

Requirement to consider care plan

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

Child and family assessment report

59. (1) The Director shall submit to the Court for consideration a written child and family assessment report in respect of a child before the Court makes an order under this Part.

(2) The Director shall make a home visit to interview the parent of the child concerned and carry out the necessary investigations concerning the child before making a child and family assessment report.

(3) If the child in respect of whom the child and family assessment report is made is considered by the Director to be of sufficient age and understanding, the Director, shall interview the child.

(4) A child and family assessment report shall contain matters relating to the welfare of the child and recommendations as to any action to be taken by the Court.

(5) The Court shall take the information contained in the child and family assessment report into account in so far as it is relevant to the order being made.

(6) The Court is not required to accept a recommendation made by the Director in the child and family assessment report if the Court is not satisfied with the recommendation.

(7) If the Court does not accept a recommendation made by the Director in the child and family assessment report, it shall state and record its reasons for not accepting the recommendation.

Other order which may be made by the Court

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

- (a) an order—
 - (i) accepting undertakings;
 - (ii) for the provision of support services to the child or a parent of the child; or

- (iii) for the child or a parent of the child to attend therapeutic or a treatment programme;
- (b) a compulsory assistance order; or
- (c) a contact order.

Order accepting undertakings

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

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

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

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

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

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

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

Order for the provision of support services

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

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

- (a) it gives notice of its intention to consider making the order to the person or child care service who would be required to provide support under the order;
- (b) the person or child care service is given an opportunity to appear and be heard by the Court before the Court makes that order;
- (c) the person or child care service consents to the making of the order; and

(d) the views of the child in relation to the proposed order have been taken into account.

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

Order to attend therapeutic or treatment programme

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

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

in accordance with the terms specified in the order.

(2) The Court shall not make an order under this section—

- (a) if the child is or has been the subject of criminal proceedings arising from the same abusive behaviour; or
- (b) unless the Court has been presented with and has considered the provisions of a plan that outlines the therapeutic programme proposed for the child.

Compulsory assistance order

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

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

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

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

(3) A compulsory assistance order shall make provision for all of the following matters—

- (a) the person who will be responsible under the order for the child;
 - (b) the place at which the child is to reside;
 - (c) a description of the therapeutic programme and other support to be provided to the child;
 - (d) the maintenance of twenty-four hour supervision of the child;
 - (e) the duration of the order; and
 - (f) any other matter as the Court may determine.
- (4) The duration of a compulsory assistance order shall not exceed 3 months.
- (5) For the purposes of this section “**compulsory assistance order**” means assistance in the form of intensive care and support that is necessary to protect the child from suicide or any other life threatening or serious self-destructive behaviour.

Contact order

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

- (a) stipulating minimum requirements concerning the frequency and duration of contact between the child and his parent, relatives or other persons of significance to the child;
 - (b) that contact with a specified person be supervised;
 - (c) denying contact with a specified person if contact with that person is not in the best interests of the child;
 - (d) that any contact with the child be supervised by the Director or a person designated by the Director.
- (2) An order referred to in—
- (a) subsection (1)(a) does not prevent more frequent contact with a child with the consent of a person having parental responsibility for the child;
 - (b) subsection (1)(b) may be made only with the consent of the person specified in the order and the person who is required to supervise the contact.

Orders with significant impact on persons

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

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

Preparation and requirements of permanency plan

67. (1) If the Director makes an application to the Court for a care order other than an emergency protection order, the Director shall assess whether there is a realistic possibility of the child being returned to his parent, having regard to—

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

(2) If, on the completion of the assessment made under subsection (1), the Director determines that there is a realistic possibility of restoration, the Director shall prepare a permanency plan involving restoration and submit it to the Court for its consideration.

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

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

(4) If the Director assesses that there is no realistic possibility of restoration, the Director shall prepare a permanency plan for suitable adoption for the child and submit it to the Court for the Court's consideration.

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

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

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

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

(9) In this section—

“parent”, in relation to the child concerned, means—

- (a) if the child has been adopted, the child's adoptive parent; or
- (b) if the child has not been adopted, the child's biological parent; and

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

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

Provision of services to facilitate restoration

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

Review of permanency plan

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

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

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

Costs

70. The Court shall not make an order for costs in any proceedings relating to the care and protection of a child unless there are exceptional circumstances that justify the Court in doing so.

Final orders to be given to parties

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

Variation and revocation orders

72. (1) An application to vary or revoke an order made under this Act may be made, with the leave of the Court, by any of the following persons—

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

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

(3) In determining whether to grant leave to vary or revoke the order, the Court shall consider the following matters—

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

(4) If—

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

the applicant shall notify the Director of the application and the Director is entitled to be a party to the application.

(5) The Court is not required to hear or determine an application made to it in respect of a child by a person under subsection (1)(c) or (d) unless it considers the person to have a sufficient interest in the welfare of the child.

(6) If—

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

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

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

- (a) the best interests of the child;
- (b) the age and maturity of the child;
- (c) the wishes of the child and the weight to be given to those wishes;
- (d) the length of time the child has been in the care of the person who has parental responsibility for the child;
- (e) the strength of the bond of the child to his parent or the person who has parental responsibility for the child;
- (f) the capacity of the parent of the child to provide an adequate standard of care for the child;
- (g) whether the grounds for making the original order still exist; and
- (h) the risk to the child of harm if the present care arrangements are varied or revoked.

(8) The Court may, on application, vary or revoke a care order if it is satisfied that it is appropriate to do so.

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

(10) On the making of an order under subsection (9), the Court shall cause notice of the order to be served on the Director.

PART 9

CHILD CARE SERVICES

Principles

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

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

Conditions for foster care placements

74. (1) If an order has been made pursuant to Part 8, the Director may place the child with a person who is willing to undertake the care and protection of the child.

(2) An application to foster a child shall be made to the Director, but a relative of a child without a parent or guardian may foster the child without first applying to the Director.

(3) If a relative of a child fosters a child under subsection (2), this Part does not apply to the relative.

(4) The Governor acting on the advice of Cabinet shall make regulations for foster care placements.

Designated child care services

75. The Governor acting on the advice of Cabinet may by Order designate a place as a child care service.

Purpose of child care service

76. (1) A child care service shall provide substitute family care for a child until—

- (a) the parent of the child is able to provide adequate care to meet the basic needs of the child;
- (b) the child can be reunited with his family; or
- (c) arrangements are made for the custody or other permanent placement of the child.

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

(3) After a child has been returned to his parent from a child care service, the Director shall keep in regular contact with the child and his family until the completion of any order made under Part 8 or until the discharge of the order.

(4) If a child is—

- (a) unable to return to his parent;
- (b) unable to be fostered; or
- (c) has no parent or a foster parent,

he shall, where possible, be cared for and assisted by a child care service and the Director until adoption can be arranged for the child.

Parental responsibility at child care service

77. If a child has been placed in a child care service under a care order, the manager and staff of the child care service have the parental responsibility for the child.

Contact with parents and relatives

78. The child care service and the Director shall maintain—

- (a) contact with the parent or relatives of the child in the child care service; and
- (b) contact between the child and the parent or relatives of the child.

Recovery order

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

(2) A recovery order may—

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

Application for recovery order

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

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

Escape or removal from a child care service

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

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

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

(3) The child referred to in subsection (1) may be returned to the child care service or person in whose care he was placed.

(4) Despite subsection (3), if returning the child to the child care service or person in whose care he was placed is not in the best interests of the child, the Director may—

- (a) move the child under a care order; or
- (b) apply to the Court for a variation order.

(5) A person shall not remove a child from a child care service without the consent of the manager or in accordance with an order of the Court.

(6) A person who contravenes subsection (5) commits a summary offence and is liable to a fine of \$5,000 or to three months' imprisonment.

Court's power to order parent to contribute

82. (1) If a child who has a parent has been placed in a child care service, the Court may order the parent to contribute towards the maintenance of the child.

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

(3) An order for contribution made under subsection (1) remains in force as long as the child is in the child care service, but a person who has been ordered to contribute may, at any time, apply to the Court for the

order to be varied or discharged on the ground that the circumstances have changed since the order was made.

PART 10

ADOPTION COMMITTEE

Establishment of Adoption Committee

83. (1) There is established the Adoption Committee.

(2) The Adoption Committee shall assist the Minister in giving effect to the provisions relating to adoption in this Act.

(3) The Governor acting on the advice of Cabinet shall appoint the following persons as members of the Adoption Committee—

- (a)* the Director, who shall be the Chairperson;
- (b)* a Child Care Officer;
- (c)* a Youth Development Officer;
- (d)* a Social Welfare Officer;
- (e)* a representative from the Attorney General's Chambers; and
- (f)* two representatives from non-governmental organisations whose mandate reflects the care and protection of children.

(4) A person under subsection (3)(*c*) and (*f*) shall be appointed as a member of the Adoption Committee from among persons with the relevant experience, qualifications and expertise in the field of child care and protection and adoption.

(5) The Adoption Committee shall report to the Minister on the conduct of the business, activities and other affairs of the Adoption Committee.

Term of appointment

84. A member of the Adoption Committee under section 83(3)(*f*) holds office for a period not exceeding three years and is eligible for reappointment.

Conduct of meetings of the Adoption Committee

85. (1) The Adoption Committee shall meet at a time and a place as the Director determines.

(2) The Director shall preside at all meetings of the Adoption Committee.

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

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

Secretary to the Adoption Committee

86. The Governor acting on the advice of Cabinet shall appoint a Secretary of the Adoption Committee.

Office of the Adoption Committee

87. The office of the Adoption Committee is at the Ministry and its records shall be kept there securely and confidentially.

Oath or Affirmation of Secrecy

88. A member of the Adoption Committee shall, before assuming office, take the Oath of Secrecy or Affirmation of Secrecy, as set out in the Schedule.

Functions of the Adoption Committee

89. (1) The Adoption Committee shall act as an advisory body to the Director with respect to all matters relating to adoption.

(2) Without limiting the generality of sub-section (1), the functions of the Adoption Committee are to—

- (a) determine the manner in which a child is selected for adoption;
- (b) make recommendations to the Director with respect to the suitability of a person to adopt a child;
- (c) establish guidelines for the conduct of negotiations entered into by the Adoption Committee with a parent who wishes to have the child selected by the Adoption Committee to be placed for adoption;
- (d) receive and determine applications made under section 92;
- (e) assess the suitability of a person to adopt a child;
- (f) establish and maintain an Adoption List under section 98;
- (g) make arrangements for and in relation to the placement of a child;
- (h) take appropriate measures to ensure confidentiality of the records of a child, the biological parents of a child and the adoptive parents of the child; and
- (i) perform any other function as may be necessary to carry out the provisions of this Act.

(3) For the purpose of carrying out its functions, the Adoption Committee may—

- (a) conduct inquiries and carry out investigations with respect to any matter;
- (b) establish procedures to conduct interviews; and
- (c) solicit, accept and review reports from individuals or organisations concerned or involved in the adoption of children.

PART 11

PLACEMENT OF A CHILD FOR ADOPTION

Placement of a child for adoption

90. (1) A child may be placed for adoption only by the Adoption Committee.

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

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

Persons who may apply for placement of a child

91. A single person may, subject to this Act, make an application to the Adoption Committee under section 92, to have a child placed in his home for adoption if that person—

- (a) has attained the age of twenty-five;
- (b) is at least eighteen years older than the child, except where he is the spouse of the parent of the child or a relative of the child; and
- (c) has been resident in Montserrat for at least one year immediately prior to making the application.

(2) A couple may, subject to this Act, make an application to the Adoption Committee under section 92 to have a child placed in their home for adoption if one of them—

- (a) has attained the age of twenty-five;
- (b) is at least eighteen years older than the child, except where he is the spouse of the parent of the child or a relative of the child; and
- (c) has been resident in Montserrat for at least one year immediately prior to making the application.

(3) A person may apply to the Court for a waiver of the residency requirements under subsection (1) or (2).

(4) The Court may waive the age requirements under this section if it determines that—

- (a) it is in the best interests of the child to do so; and
- (b) in the particular circumstances of the case, it is desirable to make an adoption order.

Application and assessment for placement

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

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

(3) The Adoption Committee shall compile a report of its findings under the home assessment study conducted under subsection (2).

Decision by the Adoption Committee

93. (1) If, having regard to the home study assessment conducted under section 92 and any recommendations by the Director, the Adoption Committee determines that an applicant—

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

(2) The Adoption Committee shall not grant approval for an applicant who is a single person, to have a child placed in the home of that applicant for the purposes of adoption unless the Adoption Committee is satisfied, having conducted the home study assessment under section 92, that there are exceptional circumstances which make it desirable to render the applicant suitable to adopt a child.

Review of decision of Adoption Committee

94. An applicant who is aggrieved by a decision of the Adoption Committee made under section 93, may, not later than two weeks after the date of receipt of the written notice of the decision from the Adoption Committee, make an application to the Minister in the prescribed form for review of that decision on the grounds that the assessment of the applicant by the Adoption Committee was incorrect.

Appointment of review panel

95. (1) On receipt of an application for review made under section 94, the Governor acting on the advice of Cabinet shall, by instrument in writing, appoint a review panel consisting of—

- (a) an attorney-at-law of at least seven years standing, who shall be the Chairperson; and
- (b) two other persons, one of whom shall be a public officer and who, in the opinion of the Governor acting on the advice of Cabinet, have the relevant qualifications and experience in the field of social work, psychology or child welfare.

(2) A member of a review panel shall not be a member of the Adoption Committee.

(3) The appointment of a member of the review panel is automatically terminated on the completion of the inquiry in respect of the review.

Role of review panel

96. (1) The review panel appointed under section 95 shall—

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

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

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

- (a) shall act without regard to technicalities and legal form;
- (b) is not bound by rules of evidence; and
- (c) may inform itself on any matter in a manner as it thinks fit, including the interviewing the applicant who applied for the review.

Adoption Committee to review decision

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

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

Adoption List

98. The Adoption Committee shall prepare and maintain an Adoption List in which it shall record—

- (a) the name of each prospective adoptive parent, in a form that—
 - (i) sets out the chronological order in which applications were received by the Adoption Committee; and
 - (ii) shows a record of such particulars, as the Adoption Committee thinks necessary to assist it in the placement of a child for adoption with an applicant; and
- (b) the name or identification of each prospective child available for adoption, in a form that—
 - (i) sets out the chronological order in which each child was approved for adoption; and
 - (ii) shows a record of such particulars, as the Adoption Committee thinks necessary to assist it in the placement of the child for adoption.

Adoption Committee to have regard to Adoption List

99. In making arrangements for and in relation to the placement of a child for adoption, the Adoption Committee shall, without prejudice to its duty to consider all other relevant matters, including in particular—

- (a) the welfare and interests of the child; and
- (b) the wishes of the parent or parents of the child and the applicant wishing to adopt,

have regard to the Adoption List and to the chronological order of the names of the prospective adoptive parents entered on the Adoption List.

Duties of Adoption Committee prior to placement

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

- (a) provide counselling and information on adoption and alternatives to adoption to the biological parents of the child or any other person having care and protection of the child who is requesting a placement of that child for adoption;
 - (b) if a biological parent of the child wishes to select the child's prospective adoptive parent, provide the biological parent with information about the prospective adoptive parent;
 - (c) obtain as much information as possible about the medical and social history of the biological parents of the child and preserve the information for the child;
 - (d) give the prospective adoptive parent information about the medical and social history of the biological parents of the child;
 - (e) ensure that the child—
 - (i) if sufficiently mature, has been counselled about the effects of adoption; and
 - (ii) if twelve years of age or older, has given consent to the adoption;
 - (f) obtain consent as is required under section 102; and
 - (g) enter into a placement agreement with the prospective adoptive parent under subsection (2).
- (2)** A placement agreement referred to in subsection (1) shall—
- (a) be for a period of three months;
 - (b) be made in the prescribed form; and
 - (a) specify the terms and conditions of the placement and the manner and the circumstances under which the placement agreement may be revoked.
- (3)** The Adoption Committee may reduce or extend the placement period if, in the opinion of the Adoption Committee, it is in the best interests of the child to do so.
- (4)** The date on which a placement agreement comes into effect is the date on which the child is placed in the home of the prospective adoptive parent for adoption.

Supervision of placement

101. (1) If a placement agreement has been entered into under section 100, and a child is placed in the home of a prospective adoptive parent for adoption, the Adoption Committee shall appoint person to supervise the placement of the child, in the prescribed manner.

(2) At the end of a placement period, the person appointed under subsection (1) shall prepare a post placement report which shall be submitted to the Adoption Committee for approval.

(3) The post placement report required under subsection (1) shall provide information and professional assessment concerning—

- (a)* the apparent suitability of the placement of the child in the home of the prospective adoptive parent; and
- (b)* the likelihood that the welfare of the child will be satisfactorily provided for in the long term.

(4) The post placement report shall include—

- (a)* the relevant circumstances of the placement;
- (b)* the relations between the child and the prospective adoptive parents and members of the household of the prospective adoptive parents;
- (c)* the care the child is receiving;
- (d)* whether the child understands the meaning of adoption;
- (e)* whether the child has any views on the proposed adoption and any proposed change of the name of the child; and
- (f)* any further information as may be deemed helpful for the consideration of the Court or as the Court may require for purposes of considering an application for an adoption order made under section 112.

Consent to be obtained prior to adoption

102. (1) Subject to section 103(2), the Adoption Committee shall not place a child and the Court shall not make an adoption order in relation to a child unless the consent of the following is obtained—

- (a)* the child, if the child is twelve years of age or over;
- (b)* the biological parents of the child; and
- (c)* if applicable, a person having custody of the child.

(2) Any consent given by the biological mother to the adoption of her child is invalid if it is given less than six weeks after the birth of the child.

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

(4) If a child from another jurisdiction is to be placed for adoption in Montserrat, the laws of that jurisdiction apply with respect to the consent required for the adoption of the child.

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

(6) Despite subsections (2) and (3), the Adoption Committee may approve the placement of a child or the Court may approve an adoption order if it is in the best interest of the child.

Form of consent

103. (1) Consent to the adoption of a child shall be in the prescribed form.

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

Dispensing with consent

104. (1) On application, the Court may, by order, dispense with consent required under section 102 if—

- (a) the Court is satisfied that it is in the best interests of the child to do so;
- (b) the person or child whose consent is to be dispensed with is not capable of giving an informed consent;
- (c) reasonable but unsuccessful attempts have been made to locate the person whose consent is to be dispensed with;
- (d) the person whose consent is to be dispensed with—
 - (i) has abandoned or deserted the child;
 - (ii) is not capable of caring for the child; or
 - (iii) has not made reasonable efforts to meet his parental obligations with respect to the child; or
- (e) other circumstances exist which in the opinion of the Court justify dispensing with consent.

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

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

Withdrawal of consent

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

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

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

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

(5) The withdrawal of any consent to the placement of a child for adoption or of any consent given under section 102 is ineffective if it is given after an application for an adoption order is made.

Withdrawal of consent given outside Montserrat

106. (1) If consent to the adoption of a child residing in Montserrat was given by a person under the laws of another jurisdiction, the consent given shall be withdrawn in accordance with the laws of that jurisdiction.

(2) Subsection (1) does not operate to limit the right of a child to withdraw his consent under section 105.

Withdrawal of consent by the Court

107. (1) Subject to subsection (2), if an application for an adoption order has been made after consent to the adoption of a child has been given under this Act, a person who has provided consent under section 102 may apply to the Court to have his consent withdrawn and that consent may only be withdrawn with the approval of the Court.

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

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

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

Transfer of care responsibility or custody to Adoption Committee

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

(2) Subsection (1) does not apply to an adoption by a relative or a person who makes an application under section 91 to jointly become a parent of a child with the biological parent of the child.

Adoption Committee as guardian of child

109. When consent to an adoption is given by the biological parent of a child or other person having care responsibility or custody of the child, the Adoption Committee becomes the guardian of the child until an order for adoption is made or the consent to the adoption is withdrawn under this Act.

Transfer of care responsibility during placement

110. If a child is placed in the home of a prospective adoptive parent for adoption, the Director shall retain care responsibility of the child—

- (a)* until an order for adoption is made;
- (b)* if the consent to the adoption is withdrawn; or
- (c)* if the placement agreement is revoked in the manner as may be prescribed under section 100(2).

Release from child care service for adoption

111. (1) If a child in respect of whom an adoption order is sought is placed in a child care service under section 47, the manager of the child care service may, with the consent of the Director, sanction the unconditional release of the child from the child care service for the purposes of the adoption.

(2) If an application for an adoption order in respect of the child is refused, the prospective adoptive parent shall, within seven days of the date on which the application was refused, return the child to the child care service.

(3) The manager of the child care service shall—

- (a)* receive the child into the child care service; and
- (b)* keep the child there for the unexpired period, if any, of the term for which the child was originally placed with the child care service.

(4) Despite subsection (2), a child may again be released for adoption.

PART 12

ADOPTION PROCEEDINGS

Application for adoption order

112. (1) A prospective adoptive parent with whom a child has been placed for adoption may make an application to the Court for an adoption order under this Part.

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

Time for making application

113. An application under section 112 shall be made within four weeks before the end of the placement agreement.

Notice of application to Adoption Committee

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

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

- (a)* a copy of the report of the home study assessment conducted on the prospective adoptive parent under section 92;
- (b)* a copy of the post placement report prepared and approved under section 101;
- (c)* certification in the prescribed manner, that the prospective adoptive parent has been resident in Montserrat for at least one year;
- (d)* a copy of the placement agreement and a statement from the Director that all applicable placement requirements as stipulated in the placement agreement have been met;
- (e)* a recommendation on any issue relating to adoption which the Adoption Committee considers necessary; and
- (f)* any other information which the Adoption Committee considers necessary to enable the Court to determine whether the proposed adoption is in the best interests of the child.

Documents required to be filed with application

115. (1) An application made under section 112 shall be accompanied by the following documents—

- (a) all consent required for the adoption an order dispensing with consent or an application to dispense with consent;
- (b) the birth certificate of the child or if it cannot be obtained, satisfactory evidence of the facts relating to the birth of the child;
- (c) a copy of a medical report in respect of the child issued by a medical practitioner registered under the Medical Act (Cap. 14.02);
- (d) a copy of the report of the home assessment study conducted under section 92;
- (e) a copy of the notice of approval of application for placement under section 93;
- (f) a copy of the placement agreement and a statement from the Director that all applicable placement requirements as stipulated in the placement agreement have been met; and
- (g) any other information as may be prescribed or required by the Court.

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

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

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

Confidentiality

116. (1) If the biological parent of a child does not know the identity of an applicant for adoption of his child and the applicant does not know the identity of the biological parent of the child he is desirous of adopting, the Court may order that the identity of either party or information that could reveal their identities not be disclosed and reference to that child shall be by reference to a serial number.

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

Hearing and legal representation

117. The hearing of an application made under section 112 shall be held in private and access to the files of the Court concerning an application for

adoption is restricted unless the Court determines otherwise, having regard to the best interests of the child.

Interim adoption order

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

(2) Subject to the power of the Court to dispense with any consent, all consent required with respect to an adoption order are necessary for an interim adoption order.

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

Adoption order

119. (1) The Court may, on consideration of the documents and evidence filed under sections 114 and 115, make an order for adoption if it is satisfied that—

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

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

- (a) have regard to the principles set out in section 4;
- (b) take into account any wishes or feelings of the child that are expressed by the child, in light of the age, maturity and understanding of the child, that are expressed by the child; and
- (c) consider whether there is a need for any arrangements to allow a person to have contact with the child and to that effect consider any existing or proposed arrangements and obtain any views of the parties to the proceedings.

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

(4) If an adoption order is made by the Court, the Registrar shall cause compliance to be made with the directions contained in the order

both in regard to marking an entry in the Register of Births with the word “Adopted” and in regard to making the appropriate entry in the Adoption Register.

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

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

Effect of adoption order

120. (1) If an adoption order is made under section 119—

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

(2) If a child is adopted for a subsequent time—

- (a) the child becomes the child of the subsequent adoptive parent;
- (b) the subsequent adoptive parent becomes the parent of the child;
- (c) the adoptive parent, immediately before the subsequent adoptive parent, ceases to have parental responsibilities with respect to the child except an adoptive parent who remains as a parent jointly with the subsequent adoptive parent; and
- (d) a person having custody of the child ceases to have custody of the child.

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

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

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

(6) Subject to subsection (7), if an adoption order is made in respect of a child, any maintenance or affiliation order in force with respect to the child and any agreement under which the biological father of the child has undertaken to make payments specifically for the benefit of the child, ceases to have effect.

(7) Despite subsection (6), a biological father of a child shall pay arrears of maintenance or affiliation payments specifically for the benefit of the child which are due under a maintenance or affiliation order or agreement at the date of the adoption order.

Revocation of adoption on marriage of biological parents

121. If a single biological parent of a child who has adopted the child marries the other biological parent of the child, then the Court by which the adoption order was made may revoke the adoption order, on application of any of the biological parents concerned.

Change of name

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

(2) If a request is made under subsection (1), the Court may change the given name or the surname of the child or both, if—

(a) the child is five years or older and his views are considered on the matter; and

(b) the child is twelve years or older and gives his consent.

(3) The consent of a child may be obtained for the purposed of this section even if the Court has dispensed with the consent of the child for adoption.

(4) Before changing the given name or surname of a child the Court shall consider factors that it considers relevant, including the level of

maturity or the level of understanding of the child, in determining the weight that it should give to the views of the child.

Duties of Court

123. (1) If an adoption order is made, the Court shall send a certified copy of the order to—

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

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

PART 13

INTER-COUNTRY ADOPTIONS

Approval for inter-country adoptions

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

(2) An application under subsection (1) shall be made by the applicant and presented either by himself or through an attorney-at-law.

(3) An application under subsection (2) shall be accompanied by a police certificate from the applicant's place of ordinary residence and an affidavit duly sworn by the applicant in the prescribed form that satisfies the Adoption Committee that—

- (a) the applicant—
 - (i) does not have a criminal record;
 - (ii) is a fit and proper person to adopt the child and has adequate means to maintain and look after the child in an appropriate manner; and
 - (iii) has a current recommendation from the competent body responsible for adoption in his country of origin; and
- (b) the applicant's country of origin will respect and recognise an adoption order made under this Act.

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

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

(6) If an applicant makes an application to the Court in pursuance of a recommendation made by the Adoption Committee under subsection (5), the Court may request the Adoption Committee to transmit all or any of the records relevant to the matter of the adoption and the records are admissible as evidence before the Court in the proceedings and the Court may accept the records of the Adoption Committee without further proof.

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

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

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

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

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

Exception

125. Section 124 does not apply to a child who is brought into Montserrat for adoption by a relative of the child or by a person who will become an adoptive parent jointly with a biological parent of the child.

Memoranda of Understanding

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

- (a) collaboration and exchange of information with competent authorities in that jurisdiction who are responsible for adoption; and
- (b) establishment of safeguards to ensure that inter-country adoptions take place in the best interests of the child and with respect for the fundamental rights of the child as recognised by law.

Provision and exchange of information

127. (1) The Minister may, in accordance with the requirements, as may be prescribed—

- (a) furnish a person with information relating to the safety, welfare and well-being of a particular child or class of children;
- (b) direct a person to furnish the Minister with information relating to the safety, welfare and well-being of a particular child or class of children.

(2) The person to whom a direction is given under subsection (1)(b) shall comply promptly with the requirements of the direction.

(3) If information is furnished under subsection (1)—

- (a) the furnishing of the information is not, in any proceedings before a court, tribunal or committee, to be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct; and
- (b) no liability for defamation is incurred because of the furnishing of the information; and
- (c) the furnishing of the information does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy.

(4) A reference in subsection (3) to information furnished under subsection (1) extends to any information so furnished in good faith and with reasonable care.

(5) Any law in force in Montserrat that prohibits or restricts the disclosure of information does not—

- (a) operate to prevent the furnishing of information; or
- (b) affect a duty to furnish information,

under this section.

(6) This section does not affect any obligation or power to provide information apart from under this section.

PART 14

REGISTRATION OF ADOPTION ORDERS

Adoption Register

128. (1) The Registrar shall maintain an Adoption Register, in which he shall make entries as may be directed to be made in it under an adoption order.

(2) A certified copy of any entry in the Adoption Register, if purporting to be sealed or stamped with the seal or stamp of the Office of the Registrar is, without any further or other proof of that entry, receivable as evidence of the adoption to which it relates.

(3) If the entry in the Adoption Register under subsection (2) contains a record of the date of the birth or the country of the birth of the adopted child, it is receivable as evidence of that date or country in all respects as if the copy were a certified copy of an entry in the Register of Births.

(4) The Registrar shall cause an index of the Adoption Register to be made and kept in the Registrar's Office and a person is entitled to—

- (a) search the index; and
- (b) have a certified copy of any entry in the Adoption Register in all respects on, and subject to the same terms, conditions and regulations as to payment of fees or otherwise as are applicable under the Registration of Births and Deaths Act (Cap. 6.13) in respect of—
 - (i) searches in registers kept in the Registrar's Office; and
 - (ii) the supply from the office of certified copies of entries in the Register of Births.

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

(6) The registers and books kept under subsection (5) and any index of the registers and books are not open to public inspection and search.

(7) The Registrar shall not furnish a person with any information contained in or with any copy or extract from the registers or books, except under an order of a Court.

(8) For the purposes of compliance with the requirements of subsection (2)—

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

Post Adoption Register

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

(2) Except as may be prescribed, no record or copy of a record kept and maintained under subsection (1) is open to inspection by, or otherwise available to, a person.

PART 15

OFFENCES

Making of payment prohibited

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

(2) A person who contravenes subsection (1) commits a summary offence and is liable to a fine of \$20,000 or to two years' imprisonment.

(3) Subsections (1) and (2) do not apply in respect of the payment of—

(a) a prescribed fee under this Act; or

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

Contravening placement requirements

131. (1) A person shall not—

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

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

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

(2) A person who contravenes subsection (1) commits a summary offence and is liable to a fine of \$10,000 or to six months' imprisonment.

Advertising

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

(2) A person who contravenes subsection (1) commits a summary offence and is liable to a fine of \$10,000 or to six months' imprisonment.

Making a false statement

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

(2) A person who contravenes subsection (1) commits a summary offence and is liable to a fine of \$10,000 or to six months' imprisonment.

Confidentiality of information

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

(2) A member of the Adoption Committee under section 83(3)(f) who contravenes subsection (1) is liable to be dismissed as a member of the Adoption Committee or, in the case of all members, may be liable to the penalty stipulated under section 135(2).

Releasing confidential information to unauthorised person

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

(2) A person who contravenes subsection (1) commits a summary offence and is liable to a fine of \$15,000 or to one year imprisonment.

Offences

136. A person who—

- (a)* having responsibility for the care and protection of a child, causes the child to be in need of care and protection;
- (b)* under section 13, knowingly makes a report or provides information which he knows to be false or misleading;
- (c)* reveals the identity of a person who makes a report or provides information under this Act;
- (d)* fails to comply with a Court order relating to the care of a child;
- (e)* obstructs the Adoption Committee or any other person in the performance of its functions or duties under this Act;
- (f)* without authority, induces or attempts to induce a child who is in the custody or supervision of the Director or of any other person who is responsible for the care of the child, to change the place of residence of the child;

- (g) unlawfully takes, detains or harbours a child who is in the custody of or under the supervision of the Director or who is the subject of a removal order;
 - (h) has unlawful access to or contact or communication with a child who is in the custody of or under the supervision of the Director;
 - (i) publishes information that identifies the parties to an agreement or proceedings under this Act, other than information respecting the child of that person; or
 - (j) violates any other provision of this Act,
- commits a summary offence and is liable to a fine of \$50,000 or to three years' imprisonment.

Limitation of liability

137. (1) A member of the Adoption Committee is not personally liable for any damage suffered by a person in consequence of an act or thing—

- (a) done in good faith; or
- (b) done or omitted to be done,

in the course of the exercise or performance of a power, duty or function under this Act.

(2) The Director and members of staff of the Social Services Department or any other person acting under the authority of this Act is not personally liable for any damage suffered by a person in consequence of an act or thing—

- (a) done in good faith; or
- (b) done or omitted to be done,

in the course of the exercise or performance of a power, duty or function under this Act.

PART 16

MISCELLANEOUS

Appeals and procedures

138. (1) An appeal from a decision of the Court lies with the Court of Appeal.

(2) The Chief Justice may make rules with respect to proceedings before the Court relating to children.

Regulations

139. (1) The Governor acting on the advice of Cabinet may make regulations for giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), the Governor acting on the advice of Cabinet may make regulations—

- (a) respecting procedures for and access to, and the disclosure of, information obtained in the administration of this Act;
- (b) respecting reports of investigations;
- (c) respecting the establishment and maintenance of a child abuse register;
- (d) respecting the establishment and appointment of an Advisory Committee under section 11, including its composition, terms of appointment and the responsibility of its members;
- (e) providing for temporary care arrangements;
- (f) prescribing forms to be used under this Act;
- (g) prescribing the fees payable for applications made or other things done under this Act;
- (h) prescribing the procedures and the terms and conditions for placement arrangements;
- (i) respecting the maintenance of records;
- (j) providing for the management and operation of a child care service;
- (k) prescribing requirements as to the accommodation and equipment to be provided in a child care service;
- (l) prescribing the medical arrangements to be made for protecting the health and well-being of a child in a child care service;
- (m) regulating the management of a child care service;
- (n) respecting the regular inspection of a child care service;
- (o) to ensure the safety, welfare and well-being of a child in a child care service;
- (p) to promote certain standards for the delivery of a child care service;
- (q) respecting the qualifications necessary for employment with a child care service;
- (r) respecting the Post Adoption Register;
- (s) respecting home study assessments and post placement reports;

- (t) governing the review of decisions made by the Adoption Committee;
- (u) providing for the procedure and the manner in which a home study assessment shall be conducted by the Adoption Committee; and
- (v) respecting any other matter the Governor acting on the advice of Cabinet considers necessary or advisable to effectively carry out the purposes of this Act.

PART 17

TRANSITIONAL PROVISIONS¹

Subordinate legislation under former Act

140. Subordinate legislation made under the former Act continues in force with the necessary modifications to bring it in conformity with the provisions of this Act until new subordinate legislation is made under this Act.

Effect of repeal of former Act on adoption order

141. If—

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

Application of former Act

142. (1) If a child was placed for adoption under the former Act, the former Act continues to apply to all matters relating to the adoption of that child by the prospective adoptive parent.

(2) If a parent consented to the adoption of a child under the former Act and the child is placed for adoption with a prospective adoptive parent on the commencement of this Act, the former Act continues to apply to all matters relating to the adoption of the child by that prospective adoptive parent.

Consent under former Act

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

¹ Act 11 of 2016 repealed and replaced the Adoption of Children Act (Act 18 of 1944) referred to in this Part as “the former Act”.

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

SCHEDULE

(Section 88)

OATH OF SECRECY

I, _____, Member of the Adoption Committee, do solemnly and sincerely swear that I will faithfully and honestly fulfil the duties that devolve upon me by reason of my membership on the Adoption Committee and that I will not, without due authority, disclose or make known any matter that comes to my knowledge by reason of such membership.
So help me God.

AFFIRMATION OF SECRECY

I, _____, Member of the Adoption Committee, do solemnly affirm and declare that I will faithfully and honestly fulfil the duties that devolve upon me by reason of my membership on the Adoption Committee and that I will not, without due authority, disclose or make known any matter that comes to my knowledge by reason of such membership.

ADOPTION OF CHILDREN RULES – SECTION 9

(S.R.O. L.I. 31/1947)

Short title

1. These Rules may be cited as the Adoption of Children Rules.

Interpretation

2. In these Rules—

“**Act**” means the Adoption of Children Act¹;

“**applicant**” means the person or persons making an application for an adoption order under the Act;

“**Court**” means the High Court.

Application for adoption order

3. Every application for an adoption order shall be made by originating summons to the Court and shall be entitled “In the Matter of the Infant and in the Matter of the Act” and there shall be presented to the Court the following—

- (a) a written statement in duplicate according to Form A in the Schedule;
- (b) a statement of particulars according to Form B in the Schedule;
- (c) written consent according to Form C in the Schedule; and
- (d) a statement with respect to the identity of the child according to Form D in the Schedule.

Where previous application made

4. If it appears to the Court that the applicant has made a previous application under the Act in respect of the same child, the Court shall not entertain the application unless satisfied that there has been a substantial change in the circumstances.

Respondents

5. The following persons shall be made respondents, namely, the child in respect of whom the application is made, every person or body who is a parent or guardian of the child or has the actual custody of the child or is liable to contribute to the support of the child, and where the applicant has a spouse who is not also an applicant, the spouse of the applicant.

Hearing, and service of notice

6. (1) The Court shall fix a time for the hearing of the application and shall issue a notice according to Form E in the Schedule addressed to the respondents and shall direct the applicant to cause such notice to be served on each of them:

¹ See Part 17 of the Children (Care and Adoption) Act.

Provided that where the child is in the actual custody of any person such notice need not be served on the child, but may require such person to produce the child to the Court.

(2) Any notice under these Rules shall be served upon any respondent to whom it is addressed either by delivering a copy to him personally or by leaving a copy with some person for him at his last known or usual place of abode or by sending a copy by registered post to him at his last known or usual place of abode, whether such place of abode is in Montserrat or elsewhere:

Provided that where the respondent is a body, the copy shall be sent to the registered office of that body, or if there is no registered office, to the place where the body transacts or carries on its business.

Hearing *in camera*

7. Every application under the Act shall be heard and determined *in camera*.

Attendance, and waiver of

8. (1) Subject to the provisions of this rule, an adoption order or an interim order shall not be made except after the personal attendance before the Court of the applicant, the child and the parent or guardian of the child; notwithstanding in the case of the parent or guardian that written consent has been obtained or that the Court is asked to dispense with consent.

(2) The Court may waive the requirement under paragraph (1)—

(a) in the case of the child, if satisfied that special circumstances exist which render it inexpedient or unnecessary that the child shall personally attend before the Court;

(b) in the case of any other person, if satisfied that he cannot be found or is incapable of giving consent or that in view of any other special circumstances it is right that this requirement should be waived.

(3) In any case where the Court dispenses with the personal attendance of any person other than the child, the written consent of that person verified by a declaration purporting to be made before and signed by a Justice of the Peace or Commissioner of Oaths shall be *prima facie* evidence of such consent.

(4) In the case of a joint application for an adoption order or an interim order the Court may, if it thinks fit, dispense with the personal attendance of one spouse if his or her application be verified by a declaration purporting to be made before and signed by a Justice of the Peace or Commissioner of Oaths.

Separate examination

9. Subject to the provisions of this rule and of rules 8(4) and 12(3)(b), the Court may direct that the applicant or any respondent shall attend and be heard and examined separately and apart from the other parties to the application:

Provided that no such direction shall be given unless—

- (a) the Court is satisfied that the giving of the direction is desirable and will not prejudice the determination of any question involved; and
- (b) the consent of the applicant or respondent to whom it is proposed that the direction shall be given and of all other parties to the application is first obtained.

Notice to absent respondent

10. On any adjournment of the hearing, the Court may issue to any respondent not in attendance a notice of the time and place to which the hearing is adjourned and may direct the applicant to cause it to be served.

Drawing up of orders

11. (1) An adoption order or an interim order shall be drawn up in Form F or Form G in the Schedule, as the case may require.

(2) No copy or duplicate of such order shall be given to or served upon any person other than the applicant and the Registrar except by special direction of the Court.

(3) An interim order shall include such provision for the maintenance and education of the child and such terms as regards the exercise of supervision by some fit and proper person appointed by the Court.

Further hearing after interim order

12. (1) Where the determination of an application has been postponed and an interim order has been made, the applicant shall at least two months before the expiration of the order apply to the Court to proceed with the determination of the application and it shall thereupon be lawful for the Court to fix a time for the further hearing of the application and to issue a notice in the Form H in the Schedule, addressed to the respondents and to direct the applicant to cause such notice to be served on each of them:

Provided that where the child is in the actual custody of the applicant the notice need not be served on the child.

(2) Subject to the provisions of this rule, where the applicant so applies, an adoption order shall not be made unless the applicant and the child have attended the further hearing.

(3) (a) The Court may waive the requirement under paragraph (2) in the case of the child if satisfied that special circumstances exist which render it inexpedient or unnecessary that the child shall personally attend before the Court.

(b) In the case of a joint application the Court may, if it thinks fit, dispense with the personal attendance of one spouse, if his or her application be verified by a declaration purporting to be made before, and signed by, a Justice of the Peace or Commissioner of Oaths.

Costs

13. On the making of an interim order or on the determination of the application, the Court may make such order as to costs as it may think just, and in particular may order the applicant to pay the out-of-pocket expenses incurred by the guardian *ad litem* or incurred in attending the Court by any other of the respondents, or such part thereof as the Court thinks proper.

Copy of adoption order to be sent to Registrar-General

14. (1) Upon the making of an adoption order, the Registrar of the Court shall within seven days from the date thereof send a duplicate or a certified copy of the order to the Registrar-General of Montserrat and shall also, subject to the payment by the applicant of any fee required by law, deliver or send a duplicate or certified copy to the applicant.

(2) The duplicate or certified copy, if sent by post, shall be sent by registered post.

Application of rules of Supreme Court

15. Subject to the foregoing rules, the Rules of the Supreme Court shall apply in respect of all proceedings under the Act.

SCHEDULE

FORMS

FORM A

(Rule 3(a))

APPLICATION FOR AN ADOPTION ORDER

I (We), the undersigned resident
at hereby state:

1. I am (We are) desirous of being authorized under the provisions of the Adoption of Children Act, to adopt a child of the sex, resident at in the (hereinafter called “the child”).

*2. The child was on the date of the coming into force of the Act in my (our) custody and was being brought up, maintained and educated by me (us) as my (our) child under a *de facto* adoption and had been in my (our) custody and had been so maintained and educated for a period of not less than two years before that date, to wit, from and after the day of, 20..... .

3. The child has been in my (our) care and has been brought up, maintained and educated by me (us) since

4. I am married to whose written consent to the making of the order is appended hereto.

(I am unmarried.)

(We are married to each other.)

5. I am (We are) domiciled in the

6. I (We) have not received or agreed to receive, and no person has made or given or agreed to make or give to me (us) any payment or other reward in consideration of the adoption (except as follows).

7. I (We) [have made no previous application under the Act to the Court in respect of the said child] (or) [have made a previous application to the Court in respect of the said child which was dealt with on the day of, 20..... as follows, viz:—].

* Delete except in the case of *de facto* adoption

8. The particulars furnished in this application and in the attached form are true and complete and I am (we are) a fit and proper person(s) to maintain and bring up the said child suitably.

In Witness Whereof I (we) have signed this statement on the day of, 20..... .

.....
Signature of Applicant(s)

FORM B

(Rule 3(b))

**PARTICULARS TO BE FURNISHED WITH
APPLICATION FOR ADOPTION ORDER**

Name in full

Address

Occupation

Date of birth

Age last birthday

Relationship (if any) to the child

*These particulars are to be furnished by both male and female applicant,
if the application is being made by two spouses.*

FORM C

(Rule 3(c))

CONSENT OF PARENT OR GUARDIAN OF CHILD

Consent to an adoption order in respect of a child formerly named

An application to the Court having been made for an order authorizing the adoption, under the provisions of the Adoption of Children Act, of the said child.

I (We) the undersigned
of being—

- *(a) the father of the child
- (b) the mother of the child
- (c) the guardian of the child
- (d) a person (acting on behalf of a body) having the actual custody of the child
- (e) a person (acting on behalf of a body) being liable to contribute to the support of the child
- (f) the spouse of the applicant

hereby state that I (we) understand the nature and effect of the adoption order for which application is made (and that in particular I (we) understand that the effect of the order will be permanently to deprive me (us) of my (our) parental rights) and I (we) hereby consent to the making of an adoption order in favour of the applicant.

In Witness Whereof I (we) have signed this consent on the day of, 20..... .

(Signature)

(Signature)

Signed in the presence of:

(Signature)

(Address)

(Description)

(Signature)

(Address)

(Description)

* Delete all but one of these descriptions, except in the case of father and mother consenting jointly

FORM D

(Rule 3(d))

STATEMENT BY APPLICANT OF IDENTITY OF CHILD NOW NAMED

1. I (We), being the applicant(s) herein, hereby certify that the child above-named is the child formerly known as

2. The father of the child is now resident at whose written consent to the making of an adoption order is appended hereto; and the mother of the child is now resident at whose written consent to the making of the adoption order is appended hereto.

3. The child was born on the day of, 20....., and is identical with the child to whom the attached certified copy of an entry in the Register of Births relates.

4. The child is a British subject and has never married.

*5. The guardian(s) of the child is (are) of whose written consent(s) to the making of an adoption order is (are) appended hereto.

*6. The child is in the actual custody of of whose written consent to the making of an adoption order is appended hereto.

*7.of is (are) liable to contribute to the support of the child and his (their) written consent(s) to the making of an adoption order is (are) appended hereto.

..... Signature of Applicant(s)

Dated the day of, 20.....

* Delete whichever is not applicable.



FORM E
(Rule 6(1))

NOTICE OF AN APPLICATION FOR AN ADOPTION ORDER
IN RESPECT OF A CHILD NAMED ⁽¹⁾

(formerly ⁽²⁾

To of

and of

TAKE NOTICE—

- (1) That an application has been made by ⁽³⁾
for an order under the Adoption of Children Act, authorizing him to adopt
the said child, being a child of the sex, aged
years, resident at
- (2) That the said application will be heard before the High Court sitting
at on the day of,
20..... at the hour of in the noon, and that you
are severally required to attend before the Court (and in the case of
..... to produce the said child before the Court).

Dated the day of, 20.....

.....
Registrar

NOTES

- ⁽¹⁾ *Insert name or names by which the child is to be known.*
- ⁽²⁾ *Delete where there is no change of name. Where there is change of name insert former names, including surname.*
- ⁽³⁾ *Where the application is made by two spouses jointly the form should be modified.*

FORM F

(Rule 11(1))

ADOPTION ORDER IN RESPECT OF CHILD NAMED

(1) OR (FORMERLY) (2)

The day of, 20..... .

Application has been made by (hereinafter called the male applicant), a person not under the age of 25 years, by occupation residing at in Montserrat and domiciled in Montserrat (and by his wife (hereinafter called the female applicant) being the mother of the child or a person not under the age of 25 years) that he (she) is (they are) desirous of being authorized under the Adoption of Children Act, to adopt a child of the sex, aged years, resident at in Montserrat, a British subject who has never been married, the child of (and of his wife (herein called the child)):

And the *male (and female) applicant(s) being (respectively) not less than 21 years older than the child:

*(And the male (and female) applicant(s) and the child being within the prohibited degrees of consanguinity):

*(And the male applicant being the putative father of the child (and the female applicant being the mother of the child)):

And all the consents required by the Act having been obtained or dispensed with:

And the Court being satisfied that the statements made in the application are true:

*(And having sanctioned the following payment or reward, viz).

IT IS ORDERED that the applicant(s) be authorized to adopt the child:

(And as regards costs it is further ordered that):

And it is directed that the Registrar-General of shall make an entry recording this adoption in the Adopted Children Register in accordance with the particulars set out in the Schedule to the Act (and shall enter the date of birth of the child in Column 6 of the said Register as the day of, 20.....).⁽⁴⁾

And it having been proved to the satisfaction of the Court that the child was born on the date last mentioned and is identical with to whom an entry numbered and made on the day of, 20..... in the Register of Births for relates, it is further directed that the Registrar-General, in addition to making in the Adopted Children Register the entry of the date of birth directed above, shall cause the aforesaid entry in the Register of Births to be marked with the word "Adopted".⁽⁵⁾

By the Court,

.....
Registrar

NOTES⁽⁶⁾

- (1) *Insert name or names, including surname, by which the child is to be known.*
 - (2) *Delete where there is no change of name. Where there is change of name, insert former name including surname.*
 - (3) *Insert Christian name or names by which the child is to be known. The surname should not be stated here.*
 - (4) *Delete (.....) unless the date of birth has been established to the satisfaction of the Court whether by an entry in the Register of Births or otherwise.*
 - (5) *Where no entry relating to the child is found in the Register of Births this paragraph should be deleted.*
 - * *Delete words not applicable.*
 - (6) *An adoption order, or copy sent to the Registrar-General is required to be drawn up on paper of foolscap folio size, thirteen inches by eight inches, and to have a margin to be left blank, not less than one inch wide on the left side of the face of the order, and a similar margin on the right side of the reverse, if any.*
-

FORM G
(Rule 11(1))

INTERIM ORDER IN RESPECT OF CHILD NAMED

(1) FORMERLY (2)

The day of, 20..... .

Application has been made by (hereinafter called the male applicant) a person not under the age of 25 years, by occupation resident at in Montserrat and domiciled in Montserrat (and by his wife (hereinafter called the female applicant) being the mother of the child or a person not under the age of 25 years) that he (she) is (they are) desirous of being authorized under the Adoption of Children Act, to adopt (3) a child of the sex, aged years, resident at in Montserrat, a British subject who has never been married, the child of (and of his wife) (herein called the child):

*And the male (and female) applicant(s) being (respectively) not less than 21 years older than the child:

*(And the male (and female) applicant(s) and the child being within the prohibited degrees of consanguinity):

*(And the male applicant being the putative father of the child):

*(And the female applicant being the mother of the child):

And all consents required by the Act having been obtained or dispensed with:

And the Court being satisfied that the statements made in the application are true.

IT IS ORDERED that the determination of the application be postponed to the day of, 20..... . And it is further ordered that the custody of the child be given to the applicant(s) for a period not exceeding two years, viz., until the day of, 20..... , by way of a probationary period upon the following terms, viz. and that the applicant(s) shall at least two months before that date apply for a determination of the application.

(And as regards costs it is ordered that).

By the Court,

.....
Registrar

NOTES

- (1) *Insert the name or names including surname, by which the child is to be known.*
 - (2) *Delete where there is no change of name. Where there is change of name, insert former name including surname.*
 - (3) *Insert Christian name or names by which the child is to be known. The surname should not be stated here.*
- * *Delete words not applicable.*
-

FORM H
(Rule 12(1))

NOTICE OF FURTHER HEARING OF AN APPLICATION
FOR AN ADOPTION ORDER IN RESPECT OF A CHILD NAMED

(1) FORMERLY (2)

To

of

and

of

TAKE NOTICE—

(a) that an application was made by (3) for an order under the Adoption of Children Act, authorizing him to adopt the said child, being a child of the sex, then aged years;

(b) that the determination of the said application was postponed to the day of, 20....., and an interim order was made by the Court on the day of, 20.....;

(c) that the said application will be further heard before the Court sitting at on the day of, 20....., and that it is open to you to attend before the Court.

Dated this. day of, 20..... .

.....
Registrar

NOTES

- (1) *Insert name or names, including surname by which the child is to be known.*
- (2) *Delete where there is no change of name. Where there is change of name, insert former name, including surname.*
- (3) *Where the application was made by two spouses jointly the form should be modified.*
