



ASCENSION

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FAMILY, EDUCATION AND WELFARE

CHILD WELFARE ORDINANCE, 2011

Ordinance A11 of 2011

In force 18 October 2011

Amended by Ordinances A6 of 2012 and A8 of 2014

Subsidiary legislation:

COURTS (WELFARE OF CHILDREN)(ASCENSION)(RULES), 2012

(Made under the Courts (Appeals and Rules) Ordinance 2017 and the Constitution)

Legal Notice A6 of 2012 (w.e.f.12 December 2012)

ASCENSION SAFEGUARDING OF CHILDREN BOARD REGULATIONS, 2013

Legal Notice A1 of 2013 (w.e.f.20 February 2013)

Also included for information:

DISABLED YOUNG PERSONS POST-SCHOOL TRAINING POLICY, 2014

CHILD WELFARE ORDINANCE, 2011

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CHILD WELFARE ORDINANCE, 2011

AN ORDINANCE to introduce provisions on the welfare and rights of children which are in line with the principles contained in the United Nations Convention on the Rights of the Child; and for connected or incidental purposes.

**PART I
PRELIMINARY**

Short title, commencement and application

1. This Ordinance may be cited as the Child Welfare Ordinance, 2011, and comes into force on a date the Governor appoints by notice in the *Gazette*.¹

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires—
- “**actual custody**” in relation to a child means having actual possession of the child’s person (whether or not that possession is shared with one or more other persons), and exercising like duties in relation to the child as if the person exercising the duties had parental responsibilities for the child (whether or not the person has parental responsibility for the child);
- “**ASCB**” means the Ascension Safeguarding of Children Board established by section 19;
- “**child**” means a person under 18 years of age, except that in Part VII and Part VIII “child” means a person under 16 years of age;
- “**child assessment order**” means an order under section 25(1);
- “**child of the family**”, in relation to the parties to a marriage, means—
- (a) a child of both those parties; or
 - (b) any other child, who has been treated by both of those parties as a child of their family;
- “**civil proceedings**” means proceedings other than criminal proceedings;
- “**contact order**” means an order under section 17(2)(b);
- “**Convention**” means the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989, subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force and as extended to St Helena;
- “**court**” means the St Helena Supreme Court;
- “**development**” means physical, intellectual, emotional, social, moral and behavioural development;
- “**disabled**” means blind, deaf, dumb, suffering from mental disorder of any kind, or substantially and permanently handicapped by illness, injury or congenital deformity or any other disability prescribed;
- “**emergency protection order**” means an order under section 26(1);
- “**family proceedings**” means any proceedings in relation to wardship, maintenance or the upbringing of children;
- “**father**” means biological father or adoptive father;
- “**Government**” means Her Majesty’s Government in right of Ascension;
- “**harm**” means ill-treatment or the impairment of health or development; and where the question of whether harm suffered by a child is significant turns on his or her health or development, his or her health or development is to be compared with that which could reasonably be expected of a similar child;
- “**health**” means physical or mental health;
- “**home**” includes any institution, other than—
- (a) a school; or
 - (b) a hospital;
- “**ill-treatment**” includes sexual abuse and forms of ill-treatment which are not physical;
- “**lump sum order**” means an order under Schedule 1 for the payment of a lump sum;

¹ See *Gazette Notice 112 of 18 October 2011*

“**mother**” means biological mother or adoptive mother;

“**parent**” in relation to a child, means—

- (a) his or her biological father, whether married to his or her biological mother or not;
- (b) his or her biological mother, whether married to his or her biological father or not; or
- (c) his or her adoptive father or adoptive mother;

“**parental responsibility**” has the meaning given by section 7;

“**parental responsibility agreement**” means an agreement referred to in section 10(1)(c);

“**periodical payments order**” means an order under Schedule 1 for the making or securing of periodical payments;

“**police protection**” is to be construed in accordance with section 28(1);

“**prescribed**” means prescribed by regulations under this Ordinance;

“**prohibited steps order**” has the meaning given by section 17(2)(c);

“**qualified social worker**” means a person qualified to provide social services pertaining to the welfare of children in the United Kingdom, an Overseas Territory or any Commonwealth Country;

“**Registrar**” means the Registrar of the Supreme Court;

“**relative**”, in relation to a child, means his or her grandparent, brother, sister, uncle or aunt (whether of the whole blood or the half blood or by affinity) or his or her step-parent;

“**residence order**” means an order under section 17(2)(a);

“**school**” means an educational institution for providing pre-school, primary school or secondary school education;

“**section 17 order**” has the meaning given by section 17(1);

“**specific issue order**” has the meaning given by section 17(2)(d);

“**voluntary organisation**” means a body (other than a public authority) whose activities are not carried on for profit;

“**young person**” means a person who has attained 16 years of age, but who is under 18 years of age.

(2) For the purposes of this Ordinance, a child is in need if—

- (a) without the provisions for the child of services under this Ordinance, he or she is unlikely to achieve or maintain a reasonable standard of health or development, or to have the opportunity of achieving or maintaining the standard; or
- (b) the child’s health and development is likely to be significantly impaired, or further impaired, without the provision for him or her of the services: or
- (c) the child is disabled.

(3) Any register to be kept by the ASCB under this Ordinance may be kept in electronic format; and where the a register is so kept, any obligation to make it available for inspection is fulfilled by making the entries on it available in visible and legible form.

PART II WELFARE AND RIGHTS OF THE CHILD

Welfare of child

3. (1) Whenever the Government, a court, a competent authority, a voluntary organisation or any other person makes a decision with respect to—

- (a) the custody, care, maintenance, health, education, development or any other

- matter relating to the upbringing of a particular child or children in general; or
 (b) the administration of a child's property or the application of any income arising from it,

the child's welfare must be the paramount consideration.

(1A) This Ordinance does not require the Government to provide for any child any health, welfare or educational facility other than those the facilities (if any) that it provides for children generally.

(2) Subject to this Ordinance, the following provisions of this section are guiding principles for establishing or promoting the welfare of a child in the making of a decision referred to in subsection (1).

(3) In considering what constitutes the welfare of a child, regard must be had to the provisions of the Convention, with appropriate modifications to suit the circumstances in Ascension.

(4) Regard must be had to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

(5) Regard must be had to the importance of promoting, so far as practicable, the upbringing of the child by his or her family; and for this purpose "family", in relation to the child, includes any individual who has parental responsibility for him or her and any person with whom he or she has been living.

(6) Regard must be had to all the circumstances of the case including, in particular—

- (a) the ascertainable wishes and feelings of the child, considered in the light of his or her age and understanding;
- (b) the child's physical, emotional and educational needs;
- (c) the likely effect on the child of any change in his or her circumstances;
- (d) the child's age, gender, background and any other circumstances relevant in the matter;
- (e) any harm that the child has suffered or is at risk of suffering;
- (f) how capable each of the child's parents or guardians, and any other person involved in the care of the child, is of meeting his or her needs;
- (g) in the case of court proceedings, the range of powers available to the court under this Ordinance in the proceedings in question.

(7) Regard must be had as to whether the making of an order by a court or other competent authority would be better for the child than making no order at all.

(8) Regard must be had to the child's right—

- (a) to leisure which is not morally harmful and to participate in any sports and cultural and artistic activities available in Ascension;
- (b) to a just call on any social amenities or other resources available in any situation of armed conflict or natural or man-made disasters;
- (c) to exercise, in addition to all the rights stated in this Ordinance, all the rights set out in the Convention, with appropriate modifications to suit the circumstances in Ascension.

(9) A court may, where the facilities in Ascension are not sufficient to deal with any matter relating to the welfare of the child, order a person with parental responsibility for the child to remove the child from Ascension and return him or her to the place where the child is domiciled.

(10) A court must not make an order under subsection (9) unless it has received and considered a report by a qualified social worker as to the suitability of the making of the order.

Child's right to stay with parents

4. (1) Subject to subsection (2), a child is entitled to live with his or her parents or guardian.

(2) If a court determines that the welfare of the child requires the separation of the child from his or her parents or guardian—

- (a) the best substitute alternative staying place must be provided for the child; and
- (b) the parents or guardian must have access to and contact with the child as the court determines.

Child's right to parental responsibility

5. Every child is entitled to parental responsibility as provided in this Ordinance.

Child's right to protection

6. It is the duty of a parent, guardian or any person with custody of a child to use his or her best efforts to protect the child from discrimination, violence, abuse and neglect, and the child is entitled to the exercise of that duty.

PART III

PARENTAL RESPONSIBILITY AND GUARDIANSHIP

Division 1

Parental responsibility

Meaning of "parental responsibility"

7. (1) In this Ordinance, and in any enactment passed or made after the commencement date of this Ordinance, "parental responsibility", in relation to a child,—

- (a) means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his or her property; and
- (b) includes the rights, powers and duties which a guardian of the child's estate appointed to act generally would have had in relation to the child and his or her property, including in particular the right to receive or recover in his or her own name as trustee, for the benefit of the child, property of whatever description and wherever situated which the child is entitled to receive or recover.

(2) The fact that a person has, or does not have, parental responsibility for a child does not affect—

- (a) any obligation which the person has in relation to the child (the as a statutory duty to maintain the child); or
- (b) any rights which, in the event of the child's death, that person (or any other person) has in relation to the child's property.

(3) The fact that a person has parental responsibility for a child does not entitle the person to act in any way that would be incompatible with an order made with respect to the child under this Ordinance or any other enactment.

Parental responsibility: general provisions

8. (1) More than one person may have parental responsibility for a child at the same time.

(2) A person who has parental responsibility for a child at any time does not cease to have that responsibility solely because some other person subsequently acquires parental responsibility for the child.

(3) If more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; but nothing in this Part affects the operation of any enactment requiring the consent of more than one person in a matter affecting the child.

(4) A person who has parental responsibility for a child must not surrender or transfer any part of that responsibility to another, but may arrange for some or all of it to be met by one or more persons acting on his or her behalf (who may be a person who already has parental responsibility for the child).

(5) The making of any such arrangement does not affect any liability of the person making it that may arise from any failure to meet any part of his or her parental responsibility for the child.

(6) If a person has care of a child but does not have parental responsibility for the child, he or she may (subject to this Ordinance) do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.

(7) Every person who has parental responsibility for a child in Ascension is under a specific duty to consider (and periodically, as occasion requires, to reconsider) whether it is or is not in the best interests of the child for the child to remain in Ascension, having regard to the whole circumstances but with particular reference to the limited educational, health, welfare, and recreation facilities available in Ascension.

(8) A person who has parental responsibility for a child may not (except with the leave of the ASCB) leave Ascension without the child unless the child remains on Ascension with another person with parental responsibility

(9) A person who fails to comply with subsection (8) commits offence.
Penalty: A fine of £5,000 or imprisonment for 6 months, or both.

Parental responsibility of biological parents

9. (1) If a child's biological parents were married to each other at the time of his or her birth, they each have parental responsibility for the child.

(2) If a child's biological parents were not married to each other at the time of his or her birth—

- (a) the biological mother has parental responsibility for the child;
- (b) the biological father does not have parental responsibility for the child, unless he acquires it in accordance with this Ordinance.

Acquisition of parental responsibility by biological father

10. (1) If a child's biological parents were not married to each other at the time of his or her birth—

- (a) the biological father acquires parental responsibility for the child upon marrying the biological mother of the child at any time after the child's birth;
- (b) the court may, on the application of the biological father, order that he is to have parental responsibility for the child; or
- (c) the biological parents may by agreement ("a parental responsibility agreement") provide for the biological father to have parental responsibility for the child.

(2) No parental responsibility agreement has effect for the purposes of this Ordinance unless—

- (a) it is made in the form prescribed by rules of court; and
- (b) if rules of court are made prescribing the manner in which the agreements shall be recorded, it is recorded in the prescribed manner.

(3) An order under subsection (1)(b) may only be revoked, and a parental responsibility agreement may only be terminated, by an order of the court made on the application—

- (a) of any person who has parental responsibility for the child; or
- (b) with the leave of the court, of the child himself or herself.

(4) The court must not grant leave under subsection (3)(b) unless it is satisfied that the child has sufficient understanding to make the proposed application.

(5) A parental responsibility agreement continues in force until the child reaches the age of 18, unless it is terminated earlier.

Acquisition of parental responsibility by step-parent

10A. (1) If a child's parent who has parental responsibility for the child is married to a person who is not the child's biological parent ("**the step-parent**")—

- (a) the court may, on the application of the step-parent, order that he or she is to have parental responsibility for the child; or
- (b) the parent with parental responsibility (or, if the other biological parent of the child also has parental responsibility for the child, both the parents) may

by agreement with the step-parent provide for the step-parent to have parental responsibility for the child.

(2) An agreement under subsection (1)(b) is also a “parental responsibility agreement”, and section 10(2) applies in relation to the agreements as it applies in relation to parental responsibility agreements under section 10.

(3) A parental responsibility order under subsection (1)(a), or an agreement under subsection (1)(b), may only be brought to an end by an order of the court made on the application—

- (a) of any person who has parental responsibility for the child; or
- (b) with the leave of the court, of the child himself or herself.

(4) The court may only grant leave under subsection (3)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.

(5) A parental responsibility agreement under subsection (1)(b) continues in force until the child reaches the age of 18, unless it is terminated earlier.

Division 2

Guardianship

Appointment of guardian by court

11. (1) If an application is made to the court with respect to a child who has no parent with parental responsibility for him or her, the court may by order appoint any person to be the child’s guardian.

(2) The power conferred by subsection (1) may also be exercised in any family proceedings in the court if the court considers that the order should be made although no application has been made for it.

(3) A person appointed guardian of a child under this section has parental responsibility for the child.

(4) No guardian of a child may be appointed otherwise than in accordance with this section or section 12.

(5) The court must not make an order under subsection (1) unless it has received and considered a report by a qualified social worker as to the suitability of the making of the an order.

Appointment of guardian by parent, etc.

12. (1) A parent who has parental responsibility for his or her child may appoint another person to be the child’s guardian in the event of the parent’s death.

(2) A guardian of a child may appoint another person to take his or her place as the child’s guardian in the event of the guardian’s death.

(3) An appointment under this section must, as far as is practicable, be made with the consent of the person being appointed and an appointment does not have effect unless it is made in writing, dated and signed by the person making it or—

- (a)* in the case of an appointment made by a will which is not signed by the testator, it is signed at the direction of the testator; or
- (b)* in any other case, it is signed at the direction of the person making it, in his or her presence and in the presence of 2 witnesses who each attest the signature.

(4) A person appointed as a child's guardian under this section has parental responsibility for the child concerned.

(5) If, on the death of a person making an appointment under this section, the child concerned has no parent with parental responsibility for him or her, the appointment takes effect on the death of that person.

(6) If, on the death of any person making an appointment under this section, the child concerned has a parent with parental responsibility for him or her, the appointment takes effect when the child no longer has a parent who has parental responsibility for him or her.

(7) A person appointed guardian under this section may disclaim the appointment, but no the disclaimer has effect unless—

- (a)* it is in writing, signed and made within a reasonable time after the person first knows that the appointment has taken effect; and
- (b)* if rules of court prescribe the manner in which the disclaimers are to be recorded, it is recorded in the prescribed manner.

(8) This section does not prevent an appointment under this section being made by 2 or more persons acting jointly.

Termination of appointment

13. (1) An appointment of a guardian under section 11 or 12 may be brought to an end at any time by order of the Court made—

- (a)* on the application of any person who has parental responsibility for the child;
- (b)* with the leave of the Court, on the application of the child concerned; or
- (c)* in any family proceedings, if the Court considers that it should be brought to an end even though no application has been made.

(2) An appointment under section 12 revokes an earlier such appointment (including one made in an unrevoked will or codicil) made by the same person in respect of the same child, unless it is clear (whether by express provision in the later appointment or by any necessary implication) that the purpose of the later appointment is to appoint an additional guardian.

(3) An appointment under section 12 (including one made in an unrevoked will or codicil) is revoked if the person who made the appointment revokes it in writing, dated and signed either—

- (a)* by him or her; or
- (b)* at his or her direction, in his or her presence and in the presence of 2 witnesses who each attest the signature.

(4) An appointment under section 12 (including one made in an unrevoked will or codicil) is revoked if the person appointed is the spouse of the person who made the appointment and either—

- (a) a decree of the Supreme Court dissolves or annuls the marriage; or
- (b) the marriage is dissolved or annulled and the divorce or annulment is entitled to recognition in Ascension,

unless a contrary intention appears by the appointment.

(5) An appointment under section 12 (other than one made in a will or codicil) is revoked if the person who made the appointment, with the intention of revoking it, destroys the instrument by which it was made or has some other person destroy it in his or her presence.

(6) An appointment under section 12 made in a will or codicil is revoked if the will or codicil is revoked.

(7) An appointment under section 11 or 12, unless it is brought to an end earlier, continues in force until the child reaches the age of 18.

*Division 3
Supplemental*

Duration of orders

14. No order under this Part with respect to a child continues in force after the child has reached the age of 18.

Restriction on further applications

15. On disposing of any application for an order under this Part, a court may (whether or not it makes any other order in the proceedings) order that no application for an order under this Part of any specified kind may be made with respect to the child concerned by any person named in the order without the leave of the court.

**PART IV
ORDERS WITH RESPECT TO CHILDREN**

Wardship

16. (1) Subject to subsection (2), no child may be made a ward of court except by an order made by the Court on an application made by, or with the consent of, the Attorney General or the ASCB.

(2) If application is made for an order under subsection (1) in respect of a child, the child becomes a ward of court on the making of the application, but ceases to be a ward of court at the expiration of a period prescribed by rules of court, unless within that period an order has been made in accordance with that application.

(3) The Supreme Court may, on an application in that behalf or of its own motion,

order that a child who is a ward of court ceases to be a ward of court.

Orders in relation to wards of court

17. (1) The court has plenary jurisdiction to make any orders necessary for safeguarding and promoting the welfare of any ward of court.

(2) Without limiting subsection (1), the court may, in particular, make orders of all or any of the following kinds, namely:

- (a)* a “**residence order**” settling the arrangements to be made as to the person with whom the child is to live;
- (b)* a “**contact order**” order requiring the person with whom the child lives or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other;
- (c)* a “**prohibited steps order**” that no step which could be taken by a parent in meeting his or her parental responsibility for a child, and which is of a kind specified in the order, may be taken by any person without the consent of the court;
- (d)* a “**specific issue order**” giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for the child;
- (e)* a “**financial provision order**” that a person make the financial provision as the order may specify for or towards the care of the ward;
- (f)* a “**parental rights order**” that the parental rights and responsibilities of any person in relation to the ward are suspended, either wholly or in part, or that a named person is to have parental rights or responsibilities in relation to the child either generally or to an extent specified in the order.

(3) Schedule 1 has effect in relation to financial provision orders.

Reports

18. (1) When considering any question with respect to a child under this Ordinance the court may ask—

- (a)* the ASCB to arrange for an officer of the ASCB; or
- (b)* a qualified social worker,

to make to the court a report, orally or in writing, with respect to any specified matter appearing to the court to be relevant to the application, and the ASCB or a qualified social worker as the case may be, must comply with the request.

PART V ASCENSION SAFEGUARDING OF CHILDREN BOARD

Establishment of ASCB

19. (1) This section establishes a Safeguarding of Children Board (“the ASCB”) for Ascension, to be known as “the Ascension Safeguarding of Children Board”.

(2) The ASCB consists of the persons or their representatives, and the representatives of the bodies that exercise functions or are engaged in activities relating to

children, that the Governor prescribes by regulations.

(3) The ASCB may, without prejudice to its right to be represented by an advocate, be represented by any of its members in any proceedings under this Ordinance.

Functions and procedure of ASCB

20. (1) The objectives of the ASCB are to—

- (a) co-ordinate what is done by each person or body represented on it for the purposes of safeguarding and promoting the welfare of children in Ascension; and
- (b) ensure the effectiveness of what is done by each such person or body for those purposes.

(2) The ASCB has the functions in relation to its objective that the Governor prescribes by regulations (which may in particular include functions of review or investigation).

(3) The Governor may by regulations make provision as to the procedures to be followed by the ASCB.

Further provisions concerning ASCB

21. (1) In exercising its functions under this Ordinance, the ASCB may, for the purpose of promoting awareness of the views and interests of children,—

- (a) encourage persons exercising functions or engaged in activities affecting children to take account of their views and interests;
- (b) advise the Governor on the views and interests of children;
- (c) publish a report on any matter considered or researched by it under this section.

(2) The ASCB must be concerned in particular with the views and interests of children so far as relating to the following aspects of their well-being—

- (a) physical and mental health and emotional well-being;
- (b) protection from harm and neglect;
- (c) education, training and recreation;
- (d) the contribution made by them to society;
- (e) social and economic well-being.

(3) The ASCB must take reasonable steps to involve children in the discharge of its functions under this section, and in particular to—

- (a) ensure that children are made aware of its functions and how they may communicate with it; and
- (b) consult children, and organisations working with children, on the matters it proposes to consider and research under subsection (1)(c).

Functions of ASCB in relation to children in danger or need

22. (1) The ASCB must, in accordance with the following provisions of this Ordinance, take all steps that appear to it to be appropriate to safeguard and promote the welfare of children who are suffering, or likely to suffer, significant harm.

(2) The ASCB may provide, or arrange with voluntary organisations or other persons for the provision of, advice and guidance for the purpose of—

- (a) performing its duty under subsection (1); and
- (b) safeguarding and promoting the welfare of children who are in need.

(3) For the purposes of this Ordinance a child is in need if—

- (a) without the provision for him or her of advice and guidance under this Part, the child is unlikely to achieve or maintain a reasonable standard of health or development, or to have the opportunity of achieving or maintaining the standard; or
- (b) the child's health or development is likely to be significantly impaired, or further impaired, without the provision for him or her of the advice or guidance; or
- (c) the child is disabled.

Funding of ASCB

23. (1) The ASCB is to be wholly funded by the Government.

(2) The Government is responsible for providing staff, goods, services, accommodation and other resources for the proper functioning of the ASCB.

PART VI PROTECTION OF CHILDREN

Child assessment orders

24. (1) On the application of the Attorney General or the ASCB for an order to be made under this section with respect to a child, the court may make the order if (and only if) it is satisfied that—

- (a) the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm;
- (b) an assessment of the state of the child's health or development, or of the way in which he or she has been treated, is required to enable the applicant to determine whether or not the child is suffering, or likely to suffer, significant harm; and
- (c) it is unlikely that the an assessment will be made, or be satisfactory, in the absence of an assessment order under this section.

(2) The court may treat an application under this section as an application for an emergency protection order.

(3) The court must not make a child assessment order if it is satisfied that—

- (a) there are grounds for making an emergency protection order with respect to the child; and
- (b) it ought to make such an order rather than a child assessment order.

(4) A child assessment order must specify the date by which the assessment is to begin, and has effect for a period, not exceeding 7 days beginning with that date, specified in the order.

(5) If a child assessment order is in force with respect to a child, any person who is in a position to produce the child must—

- (a) produce the child to the person named in the order; and
- (b) comply with any directions relating to the assessment of the child the court specifies in the order.

(6) A child assessment order authorises any person carrying out the assessment, or any part of it, to do so in accordance with the terms of the order.

(7) Notwithstanding subsection (6), if the child is of sufficient understanding to make an informed decision, he or she may refuse to submit to a medical or psychiatric examination or other assessment.

(8) The child may only be kept away from home—

- (a) in accordance with directions specified in the order;
- (b) if it is necessary for the purposes of the assessment; and
- (c) for the period or periods specified in the order.

(9) If the child is to be kept away from home, the order must contain directions the court thinks fit with regard to the contact that he or she is to be allowed to have with other persons while away from home.

(10) A person applying for a child assessment order must take all reasonably practicable steps to ensure that notice of the application is given to—

- (a) the parents of the child;
- (b) any person who is not a parent of the child but has parental responsibility for him or her;
- (c) any other person caring for the child;
- (d) any person in whose favour a contact order is in force with respect to the child; and
- (f) the child,

before the hearing of the application.

(11) Rules of court may make provision as to the circumstances in which—

- (a) any of the persons mentioned in subsection (10); or
- (b) any other person specified in the rules,

may apply to the court for a child assessment order to be varied or revoked.

Emergency protection orders

25. (1) If any person (“**the applicant**”) applies to the court for an order to be made under this section with respect to a child, the court may make the order if, but only if, it is satisfied that—

- (a) there is reasonable cause to believe that the child will suffer, or is likely to suffer, significant harm if he or she—
 - (i) is not removed to accommodation provided by or on behalf of the applicant; or
 - (ii) does not remain in the place in which he or she is then being accommodated; or
- (b) in the case of an application made by the Attorney General or person authorised

by him or her—

- (i) enquiries are being made with respect to the child under section 24;
- (ii) the enquiries are being frustrated by access to the child being unreasonably refused to a person authorised by the ASCB to seek access in connection with the enquiries; and
- (iii) the ASCB has reasonable cause to believe that the access is required as a matter of urgency.

(2) If an emergency protection order is in force with respect to a child, any person who is in a position to produce the child must comply with any request to produce him or her to the ASCB.

(3) An emergency protection order authorises—

- (a) the removal of the child at any time to the accommodation specified in the order and his or her detention there; and
- (b) the prevention of the child's removal from any hospital or other place in which he or she was being accommodated immediately before the making of the order.

(4) An emergency protection order gives the person specified in the order parental responsibility for the child; and the person must take, and only take, such action in meeting its parental responsibility for the child as is reasonably required to safeguard or promote his or her welfare (having regard in particular to the duration of the order).

(5) If a court makes an emergency protection order, it may give any appropriate directions with respect to—

- (a) the contact which is, or is not, to be allowed between the child and any named person; and
- (b) imposing conditions on the contact.

(6) If a court makes an emergency protection order, it may give appropriate directions with respect to the medical examination or other assessment of the child; and a direction under this subsection may be to the effect that there is to be—

- (a) no examination or assessment; or
- (b) no examination or assessment unless the court directs otherwise,

but if the child is of sufficient understanding to make an informed decision, he or she may refuse to submit to any such examination or assessment.

(7) A direction under subsection (5) or (6) may be given when the emergency protection order is made or at any other time, and may be varied at any time on the application of—

- (a) any person who has parental responsibility for the child; or
- (b) any other person specified for the purpose in rules of court.

(8) If—

- (a) an emergency protection order is in force with respect to a child; and
- (b) the ASCB has exercised the power given by subsection (3)(a) or (b); but
- (c) it appears to the ASCB that it is safe for the child to be returned, or to be allowed to be removed from the place in question, as the case may be,

the ASCB must return him or her or allow him or her to be removed.

- (9) If the ASCB is required by subsection (8) to return the child it must—
- (a) return the child to the care of the person from whose care he or she was removed; or
 - (b) if that is not reasonably practicable, return the child to the care of—
 - (i) a parent of the child;
 - (ii) any individual who is not a parent of the child but has parental responsibility for him or her; or
 - (iii) any other person the ASCB (with the agreement of the court) considers appropriate.

(10) If the ASCB has been required by subsection (8) to return the child or allow him or her to be removed, it may again exercise its powers with respect to the child (at any time while the emergency protection order remains in force) if it appears to it that a change in the circumstances of the case makes it necessary to do so.

(11) If an emergency protection order has been made with respect to a child, the child must, subject to any directions under subsection (5), be allowed reasonable contact with—

- (a) his or her parents;
- (b) any individual who is not a parent of the child but has parental responsibility for him or her;
- (c) any person with whom the child was living immediately before the making of the order;
- (d) any person in whose favour a contact order is in force with respect to the child;
- (f) any person acting on behalf of any of those persons.

(12) If it is reasonably practicable to do so, an emergency protection order must name the child; and if it does not name him or her, must describe him or her as clearly as possible.

(13) A person who intentionally obstructs any person exercising the power under subsection (3) to remove, or prevent the removal of a child commits an offence.

Penalty: A fine of £2,500.

Power to include exclusion requirement in emergency protection order

26. (1) If the court makes an emergency protection order with respect to a child and the conditions specified in subsection (2) are satisfied, the court may include an exclusion requirement in the emergency protection order.

- (2) The conditions referred to in subsection (1) are that—
- (a) there is reasonable cause to believe that, if a person (“**the relevant person**”) is excluded from a dwelling-house in which the child lives, then—
 - (i) in the case of an order made on the ground mentioned in section 25(1)(a), the child will not suffer, or be likely to suffer, significant harm, even though he or she is not removed or does not remain as mentioned in sub-paragraph (i) or (ii) of that paragraph; or
 - (ii) in the case of an order made on the ground mentioned in section 25(1)(b), the enquiries referred to in that paragraph will cease to be frustrated; and
 - (b) another person living in the dwelling-house (whether a parent of the child or

some other person –

- (i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him or her; and
- (ii) consents to the inclusion of the exclusion requirement.

(3) Schedule 2 has effect with respect to exclusion requirements under this section and undertakings to the like effect.

Duration of emergency protection orders, etc.

27. (1) An emergency protection order has effect for a period, not exceeding 8 days, specified in the order.

(2) If—

- (a) the court making an emergency protection order would, but for this subsection, specify a period of 8 days as the period for which the order is to have effect; but
- (b) the last of those 8 days is Christmas Day, Good Friday, a public holiday or a Sunday,

the court may specify a period which ends at noon on the first later day which is not such a day.

(3) If an emergency protection order is made on an application under section 24(6), the period of 8 days mentioned in subsection (1) begins with the first day on which the child was taken into police protection under section 28.

(4) The person in whose favour an emergency protection order is made may, while the order has effect, apply to the court for the period during which the order is to have effect to be extended; and on such an application the court may extend that period for a period, not exceeding 7 days or the date when transport is available to return the child to his or her place of domicile (whichever is the later), it thinks fit, but—

- (a) the court may do so only if it has reasonable cause to believe that the child concerned will suffer, or be likely to suffer, significant harm if the order is not extended; and
- (b) an emergency protection order must not be extended more than once.

(5) Regardless of any enactment or rule of law that would otherwise prevent it from doing so, a court hearing an application for or with respect to an emergency protection order may take account of—

- (a) any statement contained in any report made to the court in the course of, or in connection with, the hearing; or
- (b) any evidence given during the hearing,

which is, in the opinion of the court, relevant to the application.

(6) Any of the following may apply to the court for an emergency protection order to be revoked—

- (a) the child concerned;
- (b) any parent of the child;
- (c) any person who is not a parent of the child but who has parental responsibility for him or her; or
- (d) any person with whom the child was living immediately before the making of the

order,

but no the application may be heard by the court before the expiry of the period of 72 hours beginning with the making of the order.

(7) No appeal may be made against the making of, or refusal to make, an emergency protection order or against any direction given by the court in connection with the an order, except—

- (a) if the person who would otherwise be entitled to apply for the order to be revoked was given notice (in accordance with rules of court) of the hearing at which the order was made, and was present at that hearing; or
- (b) in the case of an order the effective period of which has been extended under subsection (4).

(8) A court making an emergency protection order may direct that the person in whose favour the order is made, in exercising any powers by virtue of the order, be accompanied by a registered medical practitioner, if the person chooses.

Removal by police

28. (1) If a police officer has reasonable cause to believe that a child would otherwise suffer, or be likely to suffer, significant harm, the officer may—

- (a) remove the child to suitable accommodation and keep him or her there; or
- (b) take any reasonable steps to ensure that the child's removal from any hospital, or other place, in which he or she is then being accommodated is prevented,

and such a child is referred to in this Ordinance as having been taken into police protection.

(2) As soon as is reasonably practicable after taking a child into police protection, the police officer concerned must—

- (a) inform the ASCB of the steps that have been, and are proposed to be, taken with respect to the child under this section, the reasons for taking them and the place at which he or she is being accommodated;
- (b) inform the child (if he or she appears capable of understanding) of the steps that have been taken with respect to him or her under this section and the reasons for taking them, and of the further steps that may be taken with respect to the child under this section;
- (c) take any reasonably practicable steps to discover the wishes and feelings of the child;
- (d) secure that the case is inquired into by an officer designated for the purposes of this section by the officer in charge of the Ascension detachment (a "**designated officer**").

(3) As soon as is reasonably practicable after taking a child into police protection, the police officer concerned must any reasonably practicable steps to inform—

- (a) the parents of the child;
- (b) every individual who is not a parent of the child but who has parental responsibility for him or her; and
- (c) any other person with whom the child was living immediately before he or she was taken into police protection,

of the steps that have been taken with respect to the child under this section and the reasons for taking them, and of the further steps that may be taken with respect to the child under this

section.

(4) On completing any inquiry under subsection (2)(d), the designated officer must release the child from police protection unless the officer considers that there is still reasonable cause for believing that the child would suffer, or be likely to suffer, significant harm if released.

(5) No child may be kept in police protection for more than 72 hours.

(6) While a child is being kept in police protection, the designated officer may, after consultation with the ASCB, apply for an emergency protection order to be made under section 25 with respect to the child.

(7) While a child is being kept in police protection—

(a) neither the police officer concerned nor the designated officer has parental responsibility for the child; but

(b) the designated officer must do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the welfare of the child (having regard in particular to the length of the period during which the child will be so protected).

(8) If a child has been taken into police protection, the designated officer must make arrangements to allow or, if the child is in a place of safety, the ASCB must allow—

(a) the parents of the child;

(b) any individual who is not a parent of the child but who has parental responsibility for him or her;

(c) any person with whom the child was living immediately before he or she was taken into police protection;

(d) any person in whose favour a contact order is in force with respect to the child;

(f) any person acting on behalf of any of those persons,

to have such contact with the child as, in the opinion of the designated officer or that person as the case may be, is both reasonable and in the best interests of the child.

(9) A police station is not suitable accommodation for the purpose of subsection (1)(a).

ASCB's duty to investigate

29. (1) If the ASCB—

(a) is informed that a child is in police protection; or

(b) has reasonable cause to believe that a child is suffering, or likely to suffer, significant harm,

the ASCB must make or cause to be made any enquiries it considers necessary to enable it to decide whether it should take any action to safeguard or promote the welfare of the child.

(2) The enquiries must in particular be directed towards establishing whether any application should be made to the court with respect to the child.

(3) If enquiries are being made under subsection (1) with respect to a child, the ASCB must (with a view to enable it to determine what action, if any, to take with respect to

him or her) take all reasonably practicable steps—

- (a) to obtain access to the child; or
- (b) to ensure that access to him or her is obtained, on its behalf, by a person authorised by it for the purpose,

unless the ASCB is satisfied that it already has sufficient information with respect to the child.

(4) If, in the course of enquiries made under this section any member of the ASCB, or any person authorised to act on its behalf in connection with those enquiries, is refused access to the child concerned, or is denied information as to his or her whereabouts, the ASCB must apply for an emergency protection order or a child assessment order, unless it is satisfied that the child’s welfare can be satisfactorily safeguarded without its doing so.

(5) If, on the conclusion of any enquiries or review made under this section, the ASCB decides not to apply for an order mentioned in subsection (6), it must—

- (a) consider whether it would be appropriate to review the case at a later date; and
- (b) if it decides that it would be, determine the date on which that review is to begin.

(6) If, as a result of complying with this section, the ASCB concludes that it should take action to safeguard or promote the child’s welfare, it must take that action (so far as it is both within its power and reasonably practicable for it to do so).

Abduction of child

30. (1) This section applies to a child who is in police protection, and in this section “the responsible person” means any person who for the time being has care of the child by virtue of section 28.

(2) It is an offence for a person to—

- (a) take a child to whom this section applies away from the responsible person;
- (b) keep such a child away from the responsible person; or
- (c) induce, assist or incite such a child to run away or stay away from the responsible person.

Penalty: A fine of £5,000 or imprisonment for 6 months, or both.

Recovery of abducted or absconding child

31. (1) If it appears to a court that there is reason to believe that a child to whom section 28 applies—

- (a) has been unlawfully taken away or is being unlawfully kept away from the responsible person;
- (b) has run away or is staying away from the responsible person; or
- (c) is missing,

the court may make an order under this section (a “**recovery order**”).

(1A) Subsection (1) does not prevent a police officer who has reasonable cause to suspect that a child who has absconded from apprehending the child without a warrant and returning him or her or her to the responsible person.

(2) A recovery order—

- (a) operates as a direction to any person who is in a position to do so to produce the

- child on request to any authorised person;
- (b) authorises the removal of the child by any authorised person;
- (c) requires any person who has information as to the child's whereabouts to disclose that information, if asked to do so, to any authorised person; and
- (d) authorises a police officer to enter any premises specified in the order and search for the child.

(3) A court may make a recovery order on the application of—

- (a) the ASCB; or
 - (b) the designated officer, in the case of a child in police protection,
- and may do so in separate proceedings or in any proceedings under this Ordinance.

(4) A recovery order must name the child and the person who is the responsible person, and must not specify any premises under subsection (2)(d) unless it appears to the court that there are reasonable grounds for believing the child to be in them.

(5) A person who intentionally obstructs an authorised person exercising a power under subsection (2)(b) to remove a child commits an offence.

Penalty: A fine of £2,500.

(6) A person is not excused from complying with a request under subsection (2)(c) on the ground that complying might incriminate the person or his or her spouse of an offence; but a statement or admission made in complying is not admissible in evidence against either of them in proceedings for any offence other than perjury.

(7) In this section—

“authorised person” means—

- (a) any person specified by the court;
- (b) any police officer; and
- (c) any person who is authorised by the ASCB after the recovery order is made, to exercise any power under the order;

“the designated officer” has the same meaning as in section 28(2)(d);

“the responsible person” has the same meaning as in section 30(1).

(8) If a person is authorised as mentioned in paragraph (c) of the definition of “authorised person” in subsection (7)—

- (a) the authorisation must identify the recovery order; and
- (b) a person claiming to be so authorised must, if asked to do so, produce some duly authenticated document showing that he or she is so authorised.

PART VII PROCEEDINGS INVOLVING CHILDREN AND YOUNG PERSONS

General considerations

32. Every court in dealing with a child or young person who is brought before it, either as a suspected offender or otherwise, must have regard to the welfare of the child or young person.

Age of criminal responsibility

33. (1) It is to be conclusively presumed that no child under the age of 10 years can be guilty of an offence.

(2) It is not to be presumed that a child aged 10 or over is incapable of committing an offence.

Separation of children and young persons from adults in courts, etc.

34. (1) This section applies to a child or young person while he or she is—

- (a) detained in a police station;
- (b) being conveyed to or from any criminal court; or
- (c) waiting before or after attendance in any criminal court.

(2) Arrangements must be made for—

- (a) preventing such a child or young person from associating with an adult (not being a relative) who is charged with any offence other than an offence with which the child or young person is jointly charged; and
- (b) ensuring that, if the child or young person is a girl, she is under the care of a woman.

Bail or detention of children and young persons arrested

35. (1) This section applies to a person apparently under the age of 17 years who—

- (a) is apprehended, with or without warrant; and
- (b) cannot be brought forthwith before the Magistrates' Court.

(2) The appropriate officer must inquire into the case of a person to whom this section applies, and may release the person on a recognisance being entered into by him or her or his or her parent or guardian (with or without sureties), for an amount that will, in the opinion of the officer, secure the person's attendance upon the hearing of the charge.

(3) The appropriate officer must so release such a person unless—

- (a) the charge is one of murder or other grave crime;
- (b) it is necessary in the person's interest to remove him or her from association with any reputed criminal; or
- (c) the officer has reason to believe that the person's release would defeat the ends of justice.

(4) If a person to whom this section applies is released under this section on his or her parent or guardian entering into a recognisance to secure his or her attendance upon the hearing of a charge, the recognisance may be conditioned for the attendance at the hearing of the parent or guardian as well as the person charged.

(5) If a person to whom this section applies is not so released as mentioned in subsection (2), the appropriate officer must cause him or her to be detained until he or she can be brought before the Magistrates' Court.

(6) In this section—

“the appropriate officer” means a police officer of or above the rank of Inspector;

“**guardian**”, in relation to a child or young person, includes any individual who appears to have for the time being the actual care of him or her.

Detention of child or young person

36. (1) If a child or young person is in police detention all practicable steps must be taken to ascertain the identity of a person responsible for his or her welfare.

(2) If it is practicable to ascertain the identity of a person responsible for the welfare of a child or young person, that person must be informed, unless it is not practicable to do so—

- (a) that the child or young person has been arrested;
- (b) why he or she has been arrested;
- (c) where he or she is being detained; and
- (d) where the intimate search of a juvenile has been authorised under section 58(1) of the Police and Criminal Evidence Ordinance 2003 (St Helena)—
 - (i) that an intimate search has been so authorised;
 - (ii) where the intimate search will be carried out;
 - (iii) that the juvenile has the right to consult an advocate;
 - (iv) that the person has a right to be present when the search is carried out; and
 - (v) that if it is not practicable for the person to be present when the search is carried out, or if he or she refuses to attend, an application may be made to a Justice of the Peace for authority to carry out the search in the absence of that person.

(3) If information falls to be given under subsection (2), it must be given as soon as it is practicable to do so.

(4) For the purposes of this section the persons who may be responsible for the welfare of a child or young person are—

- (a) his or her parent or guardian;
- (b) any other person who has for the time being assumed responsibility for his or her welfare;

(5) If it is practicable to give a person responsible for the welfare of the child or young person the information required by subsection (2), that person must be given it as soon as it is practicable to do so.

Children in court during trials

37. (1) No child (other than an infant in arms) may be present in court during—

- (a) the trial of any other person charged with an offence; or
- (b) during any proceedings preliminary thereto,

except during any time his or her presence is required as a witness or otherwise for the purposes of justice.

(2) A court may make any order it thinks fit to secure the attendance of a child in court during any times his or her presence is required as a witness or otherwise for the purposes of justice.

(3) If any child is present in court when he or she is not permitted to be so under subsection (1), he or she must be ordered to be removed.

(4) A child is entitled to the free assistance of an interpreter in any court proceedings in which the child is involved and unable to understand or speak the language used in the court proceedings.

Clearing court while child or young person is giving evidence

38. (1) If a person who appears to the court to be a child or young person is called as a witness, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, the court may direct that any person be excluded from the court during the taking of the evidence of that witness.

(2) Subsection (1) does not authorise the exclusion of—

- (a) members or officers of the court;
- (b) parties to the case or their advocates; or
- (c) persons otherwise directly concerned in the case.

(3) The powers conferred on a court by this section are in addition to and do not affect any other powers of the court to hear proceedings in camera.

Remand or committal of child or young person

39. (1) Subject to subsection (3), if a court has power or would, apart from subsection (2) or (3), have power—

- (a) to remand a child or young person on bail or in custody; or
- (b) to commit him or her to custody for trial or sentence,

it may instead, after consultation with the Government, remand him or her to accommodation provided by the Government.

(2) A court must not remand a child or young person in custody unless—

- (a) he or she is charged with murder; or
- (b) it is of opinion that only his or her detention in custody would be adequate to protect members of the public from death or serious personal injury occasioned by offences committed by him or her.

(3) A court, on remanding or committing for trial a child or young person, must release him or her on bail unless—

- (a) either of the conditions in subsection (2) is fulfilled; or
- (b) it is of opinion that either—
 - (i) he or she will suffer, or be likely to suffer, significant harm; or
 - (ii) the public will not be adequately protected from harm from him or her,

if he or she is not remanded to accommodation provided by the Government.

(4) If a person is remanded to accommodation provided by the Government, any person acting on behalf of the Government may detain him or her.

(5) A court remanding a person to accommodation provided by the Government may, with the consent of the Government, require that person to comply with any conditions that could be imposed if he or she were then being granted bail.

(6) If a person is remanded to accommodation provided by the Government, the Magistrates' Court may, on the application of the Government, impose on that person any conditions that could be imposed under subsection (5) if the court were then remanding him or her to the accommodation.

(7) If a person is remanded to accommodation provided by the Government, the Magistrates' Court may, on the application of the Government or that person, vary or revoke any conditions or requirements imposed under this section.

(8) The functions of the Magistrates' Court under this section may be exercised by a single Justice of the Peace.

(9) Any reference in this section to consultation with the Government is to such consultation (if any) as is reasonably practicable in all the circumstances of the case.

Evidence by children

40. (1) A child's evidence in criminal proceedings must be given unsworn.

(2) A deposition of a child's unsworn evidence may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.

(3) Unsworn evidence admitted under this section may corroborate evidence (sworn or unsworn) given by another person.

(4) A child's evidence must be received unless it appears to the court that the child is incapable of giving intelligible testimony.

(5) The power of a court in any criminal proceedings to determine that a particular person is not competent to give evidence applies to children of tender years as it applies to other persons.

(6) If a child is called as a witness in any civil proceedings and does not, in the opinion of the court, understand the nature of an oath, his or her evidence may be heard by the court if, in its opinion, the child—

- (a) understands that it is his or her duty to speak the truth; and
- (b) has sufficient understanding to justify his or her evidence being heard.

(7) If a child giving evidence unsworn intentionally gives false evidence in circumstances in which he or she would, if it had been given on oath, have been guilty of perjury, he or she commits an offence.

Penalty: A fine of £2,500;

(8) A court by which a child is convicted of an offence under subsection (7) may exercise in relation to him or her any of the powers referred to in section 224(1) of the Criminal Procedure Ordinance, 1975 (St Helena).

Admissibility of hearsay evidence

41. In—

- (a) any civil proceedings before the Supreme Court; or
 - (b) family proceedings before the Magistrates' Court,
- evidence given in connection with the upbringing, maintenance or welfare of a child is admissible notwithstanding any rule of law relating to hearsay.

Powers in relation to certain offences

42. (1) If, in any proceedings relating to a violent or sexual offence, the court is satisfied that the attendance before it of any child or young person in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, it may proceed with and determine the case in the absence of the child or young person.

(2) If a Justice of the Peace is satisfied by the evidence of a registered medical practitioner that the attendance before a court of any child or young person in respect of whom a violent or sexual offence is alleged to have been committed would involve serious danger to his or her life or health, the justice—

- (a) may in accordance with rules of court take in writing the deposition of the child or young person (on oath, in the case of a young person);
- (b) must thereupon sign the deposition and add to it a statement of—
 - (i) his or her reason for taking it;
 - (ii) the time when and place where it was taken; and
 - (iii) the names of the persons (if any) present when it was taken; and
- (c) must transmit the deposition with his or her statement to the Registrar.

(3) If, in any proceedings in respect of a violent or sexual offence—

- (a) the court is satisfied by the evidence of a registered medical practitioner that the attendance before the court of any child or young person in respect of whom the offence is alleged to have been committed would involve serious danger to his or her life or health; and
- (b) any deposition of the child or young person tendered in evidence appears to have been taken in accordance with rules of court and purports to be signed by the justice by or before whom it purports to have been taken,

then, subject to subsection (4), the deposition is admissible in evidence either for or against the accused person without further proof of it.

(4) A deposition is not admissible in evidence against the accused person by virtue of subsection (3) unless it is proved that—

- (a) reasonable notice of the intention to take the deposition has been served upon him or her; and
- (b) he or she or his or her advocate had, or might have had if he or she had chosen to be present, an opportunity of cross-examining the child or young person making the deposition.

(5) For purposes of this section, “**violent or sexual offence**” means—

- (a) an offence which leads, or is intended or likely to lead, to a person's death or to physical injury to a person, or an offence which is required to be charged as arson; or
- (b) an offence under the Sexual Offences Act, 2003 (St Helena).

Identification of child or young person in media

43. (1) Subject to subsection (3), no report of any proceedings in any court,

either in Ascension or in St Helena, may be published in Ascension in any manner whatsoever, which—

- (a) reveals the name, address or school; or
- (b) includes any particulars calculated to lead to the identification,

of any child or young person concerned in those proceedings, either as being the person against or in respect of whom the proceedings are taken or as being a witness therein.

(2) Subject to subsection (3), no picture may be published in any newspaper or periodical or included in a relevant program as being or including a picture of any child or young person so concerned in any such proceedings.

(3) Subject to subsection (4), a court may in any case by order dispense with the requirements of subsection (1) or (2) to the extent specified in the order.

(4) A court must not exercise the power conferred by subsection (3) unless it is satisfied that it is in the interests of justice to do so.

(5) If a report or picture is published or included in a relevant program in contravention of this section, each of the following persons commits an offence:

- (a) in the case of a publication of a written report as part of, or of a picture in, a newspaper or periodical - any proprietor, editor or publisher of the newspaper or periodical;
- (b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical - the person who published it;
- (c) in the case of the inclusion of a report or picture in a relevant programme - any corporate body which is engaged in providing the service in which the programme is included and any person who has functions in relation to the programme corresponding to those of an editor of a newspaper.

Penalty: A fine of £5,000.

Findings of guilt, etc.

44. (1) The words “**conviction**” and “**sentence**” must not be used in relation to children and young persons dealt with summarily.

(2) Any reference in any enactment (whenever passed) to a person convicted, a conviction or a sentence is, in the case of a child or young person, to be construed as including a reference to a person found guilty of an offence, a finding of guilty or an order made upon such a finding, as the case may be.

(3) In any proceedings for an offence committed or alleged to have been committed by a person of or over the age of 21—

- (a) any offence of which he or she was found guilty while under the age of 14 must be disregarded for the purposes of any evidence relating to his or her previous convictions; and
- (b) he or she must not be asked, and if asked is not required to answer, any question relating to such an offence.

Power to impose penalty, etc. on parent of child or young person

45. (1) Subject to subsection (2), if—

- (a) a child or young person is convicted or found guilty of any offence for the

commission of which a fine or costs may be imposed or a compensation order may be made under section 125 of the Criminal Procedure Ordinance, 1975 (St Helena); and

- (b) the court is of opinion that the case would best be met by the imposition of a fine or costs or the making of such an order, whether with or without any other punishment,

the court must order that the fine, compensation or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person himself or herself.

- (2) The court must not make an order under subsection (1) if it is satisfied that—
- (a) the parent or guardian cannot be found; or
- (b) it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

(3) If a child or young person is convicted or found guilty of any offence, the court by which sentence is imposed on him or her or any order is made against him or her in respect of that offence may order his or her parent or guardian to give security for the good behavior of the child or young person.

(4) An order under this section must not be made against a parent or guardian unless he or she—

- (a) has been required to attend but has failed to do so; or
- (b) has been given an opportunity of being heard.

(5) If an order is made against a parent or guardian under this section—

- (a) he or she may appeal against it; and
- (b) any sums ordered to be paid by him or her under subsection (1), or payable by him or her on forfeiture of any security under subsection (3), may be recovered from him or her,

as if the order had been made on his or her conviction of the offence with which the child or young person was found guilty.

(6) In this section “**guardian**”, in relation to a child or young person, includes any individual who in the court’s opinion has the actual care of him or her.

Proceedings for offences

46. (1) Proceedings for an offence under this Part may not be instituted except by or with the consent of the Attorney General.

(2) If an offence under this Part committed by a corporate body is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body, or a person who was purporting to act in any such capacity, he or she as well as the corporate body commits that offence and is liable to be proceeded against and punished accordingly.

(3) If the affairs of a corporate body are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body.

- (4) *Omitted*

PART VIII
OFFENCES AGAINST CHILDREN AND YOUNG PERSONS

Cruelty to children and young persons

47. (1) Every person who, having attained the age of 17 years and having the actual custody, charge or care of any child or young person, wilfully assaults, ill-treats, neglects abandons or exposes the child or young person, or causes or procures him or her to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause that child or young person unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement) commits an offence.

Penalty: A fine of £2,000 or imprisonment for 2 years, or both.

- (2) For the purposes of this section—
- (a) the parent or other person legally liable to maintain a child or young person is deemed to have neglected him or her in a manner likely to cause injury to his or her health if, being able to do so, the parent or other person fails to provide adequate food, clothing, rest, medical aid or lodging for him or her;
 - (b) if it is proved that the death of an infant under 3 years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) while the infant was in bed with some other person who has attained the age of 17 years and was at the time of going to bed under the influence of drink or any drug, then that other person is deemed to have neglected that infant in a manner likely to cause injury to the infant's health;
 - (c) any person having attained the age of 17 years who gives or causes to be given, or sells or causes to be sold, to any child under the age of 10 years any intoxicating liquor, except upon the order of a duly qualified medical practitioner, or in case of sickness, apprehended sickness, or other urgent cause, is deemed to have ill-treated that child in a manner likely to cause injury to the child's health;
 - (d) any person, having attained the age of 17 years and having the custody, charge or care of any child under the age of 7 years, who allows that child to be in any room or yard containing a stove, coal-stove or open fire-place, not sufficiently protected to guard against the risk of that child being burnt or scalded, without taking reasonable precautions against the risk, and by reason thereof that child is killed or suffers serious injury, is deemed to have neglected that child in a manner likely to cause injury to that child's health.

(2A) Subsection (2)(d) and proceedings taken under it do not affect the liability of any person to be indicted for manslaughter or for any offence against the Offences against the Person Act, 1861 (UK).

- (3) A person may be convicted for an offence under this section —
- (a) even if the actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of some other person;
 - (b) despite the death of the child or young person in respect of whom the offence is committed.

(4) Upon the trial of any person who has attained the age of 17 years for infanticide or for the manslaughter of a child or young person of whom he or she has the custody, charge or care, the jury may, if satisfied that the person is guilty of an offence under this section, find him or her guilty of that offence.

(5) This section does not affect the right of any parent to administer reasonable punishment to a child or young person.

Begging and soliciting for prostitution

48. (1) It is an offence for a person—
 (a) to cause or procure any child or young person; or
 (b) having the custody, charge or care of a child or young person, to allow him or her,
 to be in any street, premises or place for the purpose of begging or receiving alms, soliciting for prostitution or inducing the giving of alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise.)

Penalty: A fine of £5,000 or imprisonment for 12 months, or both.

(2) If a person having the custody, charge or care of a child or young person is charged with an offence under this section and it is proved that—

(a) the child or young person was in any street, premises or place for any purpose as mentioned in subsection (1); and
 (b) the person charged allowed the child or young person to be in the street, premises or place,

the person is presumed to have allowed him or her to be in the street, premises or place for that purpose unless the contrary is proved.

Allowing children to be in brothels

49. (1) A person who has the custody, charge or care of a child who has attained the age of 4 years and allows that child to reside in or frequent a brothel commits an offence.

Penalty: A fine of £5,000 or imprisonment for 12 months, or both.

(2) This section does not affect the liability of a person to be indicted under the Sexual Offences Act, 2003, but upon the trial of a person under that Act the jury, if satisfied that the person is guilty of an offence under this section, may find him or her guilty of that offence.

Causing or encouraging prostitution

50. (1) A person who has the custody, charge or care of a child under the age of 18 years and causes or encourages the seduction, unlawful carnal knowledge, or prostitution of, or the commission of an indecent assault upon the child commits an offence.

Penalty: A fine or imprisonment for 2 years, or both.

(2) For the purposes of this section a person is deemed to have caused or encouraged the seduction, unlawful carnal knowledge, or prostitution of, or commission of an indecent assault upon, a child who has been seduced, unlawfully carnally known, or

indecently assaulted, or who has become a prostitute, if the person has knowingly allowed the child to consort with, or enter or continue in the employment of, any prostitute or person of known immoral character.

PART IX MISCELLANEOUS AND SUPPLEMENTAL

Employment of children

51. (1) A child must not be employed or engaged in any activity that may be detrimental to his or her health, education or development and is entitled to be protected from the activity.

(2) A child under the age of 15 years must not be employed or work on vessels, other than vessels upon which only members of the same family are employed:

(3) The master of every vessel must keep a register of all persons under the age of 16 years employed on board his or her vessel or a list of them in the articles of agreement, with, in each case, their respective dates of birth.

(4) This section does not apply to work done by children on school-ships or training-ships, provided that the work is approved and supervised by a public authority.

(5) For the purposes of this section the term “vessel” includes all ships and boats of any nature whatsoever, engaged in maritime navigation, whether publicly or privately owned, but excluding ships of war.

(6) A person who employs or engages a child, or causes a child to be employed or engaged, in any activity that may be detrimental to his or her health, education or development, commits an offence.

Penalty: A fine of £5,000 or imprisonment for 6 months, or both.

Representation of child in family proceedings

52. (1) If it appears to the court or the Attorney General that a child concerned in any family proceedings is not, but should be, represented in those proceedings, the court or the Attorney General may instruct an advocate to represent the child in the proceedings.

(2) If an advocate is instructed under subsection (1)—

- (a)* the child, if not a party, must be treated as a party to the proceedings; and
- (b)* the advocate must represent the child in the proceedings to ensure that the court is aware of the child’s wishes, in so far as the child is capable of expressing his or her wishes, and, subject to any directions of the court, must take all steps in connection with the proceedings that appear to him or her to be necessary in the interests of the child.

(3) This section does not affect any powers exercisable by the Attorney General apart from this section.

Search warrants

53. (1) If, on an application made by any person for a warrant under this section, it appears to a Justice of the Peace that a person attempting to exercise powers under an emergency protection order has been or is likely to be prevented from doing so by being refused entry to premises or refused access to a child, he or she may issue a warrant authorising any constable to assist that person in the exercise of those powers, using reasonable force if necessary.

(2) Every warrant under this section must be addressed to, and executed by, a police officer, who must be accompanied by—

- (a) the person applying for the warrant, if that person so desires and the justice issuing the warrant does not otherwise direct; and
- (b) if the justice so directs and the police officer so desires, a registered medical practitioner.

(3) If an application for a warrant under this section relates to a particular child, the application and any warrant granted on the application must name the child, if it is reasonably practicable to do so, and if it does not do so must describe him or her as clearly as possible.

(4) *Omitted*

Power of ASCB if person with parental responsibility is about to leave Ascension without child

54. (1) If the ASCB is satisfied that—

- (a) a person intends to leave Ascension; and
- (b) the person does not intend to take with him or her a child on Ascension in respect of whom the person has parental responsibility,

the ASCB may require that person to provide the ASCB with details, or the further details as the ASCB may require, of any arrangements that have been made for the actual custody or legal custody of the child during that person's absence from Ascension.

(2) A person must not—

- (a) fail to give any details; or
- (b) give false or misleading information,

when requested by the ASCB to give details in accordance with subsection (1).

(3) A person who fails to comply with subsection (2) commits an offence.

Penalty: A fine of £1,000.

Regulations

55. (1) The Governor may make regulations generally for carrying this Ordinance into effect.

(2) Without limiting subsection (1) or any other provision of this Ordinance, regulations under subsection (1) may make provision in respect of—

- (a) the provision of information to the ASCB/Government;
- (b) the impositions of penalties for contravening or failing to comply with any regulation;

- (c) the keeping of a register of sex offenders on Ascension; and
- (d) any other matters that are necessary or expedient for the effective administration of this Ordinance.

St Helena law

56. For the avoidance of doubt, none of the provisions of the St Helena Welfare of Children Ordinance apply to Ascension, either by operation of the St Helena Law Application Ordinance or otherwise.

Transitional provisions

57. (1) Notwithstanding the repeal in St Helena of the Child Care Ordinance, Cap. 82 and the Children and Young Persons Ordinance, Cap. 83, by section 167 of the Welfare of Children Ordinance, 2008—

- (a) any matter prescribed by the Governor in Council by Rule, Regulation or Order under either Ordinance prior to its repeal, to the extent that it was applicable to Ascension prior to its repeal, remains in force in so far as is not inconsistent with this Ordinance, until repealed and replaced by any Rule, Regulation or Order made under this Ordinance;
- (b) any order made under either Ordinance prior to its repeal, to the extent that it was applicable to Ascension prior to its repeal, remains in force until expiry of the order and is deemed to be made under this Ordinance.

SCHEDULE 1 (Sections 2 and 17)

FINANCIAL PROVISION FOR CHILDREN

Orders for financial relief against parents

1. (1) On an application made by a parent or guardian of a child, or by any person in whose favour a residence order is in force with respect to a child, the court may make any of the following orders—

- (a) an order requiring either or both parents of a child to make to the applicant for the benefit of the child, or to the child himself or herself, periodical payments, for the term, as specified in the order;
- (b) an order requiring either or both parents of a child to secure to the applicant for the benefit of the child, or to the child himself or herself, periodical payments, for the term, as so specified;
- (c) an order requiring either or both parents of a child to pay to the applicant for the benefit of the child, or to the child himself or herself, the lump sum so specified;
- (d) an order requiring a settlement to be made for the benefit of the child, and to the satisfaction of the court, of property to which either parent is entitled (either in possession or reversion) and which is specified in the order;
- (e) an order requiring either or both parents of a child to transfer to the applicant for the benefit of the child, or to the child himself or herself, property to which the parent is, or the parents are, entitled (either in possession or reversion) and which is specified in the order.

(2) An order under sub-paragraph (1)(a) or (b) may be varied or revoked by a subsequent order made on the application of any person by or to whom payments were

required to be made under the previous order.

(3) If one parent of a child lives in Ascension and the child lives outside Ascension with another parent or a guardian of the child, or with a person in whose favour a residence order is in force with respect to him or her, the court may, on any application by that other parent, guardian or person, make an order under this paragraph (except an order under sub-paragraph (1)(c) to (e)) against the parent living in Ascension).

(4) The powers conferred by this paragraph may be exercised at any time.

(5) If a court makes an order under this paragraph, it may at any time make a further the order under sub-paragraph (1)(a), (b) or (c) with respect to the child concerned if he or she has not reached the age of 18, but it must not make more than one order under sub-paragraph (1) (d) or (e) against the same person in respect of the same child.

Orders for financial relief for persons over 18

2. (1) The orders which the court may make under this paragraph are:

- (a) an order requiring the applicant's father or mother or both to make to the applicant the periodical payments, for the term, as specified in the order;
- (b) an order requiring the applicant's father or mother or both to pay to the applicant the lump sum as so specified.

(2) The court may make an order under this paragraph if, on an application by a person who has reached the age of 18, it appears to the court that—

- (a) the applicant is, will be or (if an order were made under this paragraph) would be receiving instruction at any educational establishment or undergoing instruction for a trade, profession or vocation, whether or not while in gainful employment; or
- (b) there are special circumstances which justify the making of the an order.

(3) An application must not be made under this paragraph by any person if, immediately before he or she attained the age of 16 a periodical payments order, or an order for making or securing periodical payments under any other enactment, was in force with respect to him or her.

(4) No order may be made under this paragraph at a time when the applicant's father and mother are living together.

(5) The powers conferred by this paragraph may be exercised at any time.

(6) If a court makes an order under this paragraph, it may at any time make a further such order.

Matters to which court is to have regard

3. (1) In deciding whether to exercise its powers under paragraph 1 or 2, and if so in what manner, the court must have regard to all the circumstances including—

- (a) the income, earning capacity, property and other financial resources which—
 - (i) in relation to paragraph 1, any parent of the child;
 - (ii) in relation to paragraph 2, the child's mother and father;

- (iii) the applicant for the order; and
- (iv) any other person in whose favour the court proposes to make the order, has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of those persons has or is likely to have in the foreseeable future;
- (c) the financial needs of the child;
- (d) the income, earning capacity (if any), property and other financial resources of the child;
- (e) any physical or mental disability of the child;
- (f) the manner in which the child was being, or was expected to be, educated or trained.

(2) In deciding whether to exercise its powers under paragraph 1 against a person who is not the mother or father of the child, and if so in what manner, the court must in addition have regard to—

- (a) whether that person had assumed responsibility for the maintenance of the child and, if so, the extent to which and basis on which he or she assumed that responsibility and the length of the period during which he or she met that responsibility;
- (b) whether he or she did so knowing that the child was not his or her child;
- (c) the liability of any other person to maintain the child.

(3) If the court makes an order under paragraph 1 against a man who is not the father of the child, it must record in the order that it is made on the basis that the man is not the child's father.

Duration of orders

4. (1) The term to be specified in a periodical payments order under paragraph 1(1)(a) or (b) may begin with the date of the making of an application for the order in question or any later date.

(2) The term must not in the first instance extend beyond the child's 17th birthday unless the court thinks it right in the circumstances of the case to specify a later date.

(3) The term must not in any event extend beyond the child's 18th birthday unless it appears to the court that—

- (a) the child is, will be or (if an order were made under this paragraph) would be receiving instruction at any educational establishment or undergoing instruction for a trade, profession or vocation, whether or not while in gainful employment; or
- (b) there are special circumstances which justify the making of an order for a term extending beyond that date.

(4) A periodical payments order under paragraph 1(1)(a) or 2(1)(a), notwithstanding anything in the order, ceases to have effect on the death of the person liable to make payments under the order.

(5) If a periodical payments order under paragraph 1(1)(a) or (b) requires payments to be made or secured to a parent of a child, the order ceases to have effect if the

parents of the child live together for a continuous period of more than 6 months.

Lump sums

5. (1) Without limiting paragraph 1, a lump sum order under paragraph 1(1)(c) may be made for the purpose of enabling any liabilities or expenses to be met which were reasonably incurred before the making of the order in connection with the birth of the child or in maintaining him or her.

(2) The power of the court under paragraph 1 or 2 to vary or revoke a periodical payments order for the making or securing of payments by a parent includes power under that paragraph to make an order for the payment of a lump sum by that parent.

(3) A lump sum order may provide for the payment of the lump sum by instalments, and the court may, on an application made by the person by or to whom the sum is required to be paid, vary that order by varying—

- (a)* the number of instalments payable;
- (b)* the amount of any instalment payable;
- (c)* the date on which any instalment becomes payable.

Variation etc. of periodical payments orders

6. (1) A periodical payments order may be varied or revoked by a subsequent order made on the application of—

- (a)* any person by or to whom the payments were required to be made under the previous order;
- (b)* if he or she has attained the age of 16 - the child himself or herself;
- (c)* if either parent has died - a guardian of the child; or
- (d)* in the case of a secured periodical payments order, if the parent liable to make payments under the order has died - the personal representatives of the deceased parent.

(2) In exercising its power to vary or revoke a periodical payments order, the court must have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order.

(3) The power of the court to vary a periodical payments order includes power to suspend any provision of the order temporarily and to revive any provision so suspended.

(4) If, on an application under paragraph 1 or 2 for the variation or revocation of a periodical payments order, the court varies the payments required to be made under that order, the court may provide that the payments as so varied are to be made from the date as the court may specify, not being earlier than the making of the application.

(5) If a periodical payments order under paragraph 1 ceases to have effect on the date on which the child attains the age of 16 or at any time after that date but before or on the date on which he or she attains the age of 18, the child may apply to the court for an order for its revival.

(6) If on the an application it appears to the court that—

- (a)* the child is, will be or (if an order were made under this paragraph) would be receiving instruction at any educational establishment or undergoing instruction

for a trade, profession or vocation, whether or not while in gainful employment;
or

- (b) there are special circumstances which justify the making of an order under this sub-paragraph,

the court may by order revive the order from a date the court specifies, not being earlier than the date of the application.

(7) An order that is revived by an order under sub-paragraph (6) may be varied or revoked under that sub-paragraph, on the application of any person by or to whom payments are required to be made under the revived order.

(8) If an application to vary a secured periodical payments order is made after the death of the parent liable to make payments under the order, the circumstances that the court is required to have regard under sub-paragraph (2) include the changed circumstances resulting from the death of the parent.

Variation etc. of previous orders

7. If a residence order is made with respect to a child at a time when there is in force an order made under an enactment other than this Ordinance and requiring a person to contribute to the child's maintenance, the court may on the application of—

- (a) any person required by the previous order to contribute to the child's maintenance; or
(b) any person in whose favour a residence order with respect to the child is in force, make an order revoking the previous order, or varying it by altering the amount of any sum payable under that order or by substituting the applicant for the person to whom any such sum is otherwise payable under that order.

Interim orders

8. (1) If the court has power under paragraph 1 or 2 to make any order, it may, at any time before it disposes of the matter, make an interim order—

- (a) requiring either or both parents to make the periodical payments, at times and for a term the court thinks fit; and
(b) giving any direction which the court thinks fit.

(2) An interim order under this paragraph may provide for payments to be made from a date the court specifies, not being earlier than the date of the making of the application under paragraph 1 or 2 or, where no the application is made, the commencement of the family proceedings in question.

(3) An interim order under this paragraph ceases to have effect when the matter is disposed of or, if earlier, on the expiry of the term specified under sub-paragraph (1)(a).

(4) An interim order may be varied by extending the term specified under sub-paragraph (1)(a).

Alteration of maintenance agreements

9. (1) If a maintenance agreement is for the time being subsisting and each of the parties to it is for the time being resident in Ascension, then, subject to sub-paragraph (3), either party may apply to the court for an order under this paragraph.

- (2) If the court is satisfied that—
- (a) by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different financial arrangements; or
 - (b) the agreement does not contain proper financial arrangements with respect to the child,

then subject to sub-paragraphs (3) and (4), the court may by order make the alterations in the agreement by varying or revoking any financial arrangements contained in it as appears to the court to be just having regard to all the circumstances.

(3) If the agreement is altered under this paragraph, it has effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(4) If the court decides to alter an agreement by an order under this paragraph by—

- (a) inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the child; or
- (b) increasing the rate of periodical payments required to be made or secured by one of the parties for the maintenance of the child,

then, in deciding the term for which under the agreement as altered by the order the payments, or the additional payments attributable to the increase, are to be made or secured for the benefit of the child, the court must apply the provisions of paragraph 4(1), (2) and (3) as if the order were an order under paragraph 1.

(5) This paragraph does not affect any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment to make an order containing financial arrangements, or any right of either party to apply for the an order in the proceedings.

Maintenance agreement - supplemental

10. (1) If a maintenance agreement provides for the continuation, after the death of one of the parties, of payments for the maintenance of the child and that party dies resident in Ascension, the surviving party or the personal representatives of the deceased party may, subject to paragraph 11, apply to the court for an order under paragraph 9.

(2) If a maintenance agreement is altered by the court on an application under this paragraph, the like consequences ensue as if the alteration had been made, immediately before the death, by agreement between the parties and for valuable consideration.

Variation etc. affecting deceased's estate

11. (1) An application for—

- (a) the variation or revocation of a secured periodical payments order after the death of the parent liable to make payments under that order; or
- (b) the alteration of a maintenance agreement by virtue of paragraph 10,

may not, except with the permission of the court, be made after the end of a period of 6 months from the date on which representation in regard to the estate of the deceased parent is first taken out.

(2) The personal representatives of the deceased parent are not liable for having distributed any part of the estate of the deceased after the expiration of the period of 6 months referred to in sub-paragraph (1) on the ground that they ought to have taken into account the possibility that the court might permit the an application to be made after that period.

(3) Sub-paragraph (2) does not affect any power to recover any part of the estate so distributed arising by virtue of the making of an order on an application referred to in sub-paragraph (1).

(4) In considering for the purposes of sub-paragraph (1) the question when representation was first taken out, a grant limited to trust property must be left out of account, and a grant limited to real estate must be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

Enforcement

12. (1) If the court makes a periodical payments order, it must order that the payments are to be made to the Registrar unless, upon representations expressly made in that behalf by the person to whom payments under the order fall to be made, it is satisfied that it is undesirable to do so.

(2) Any person for the time being under an obligation to make payments in pursuance of a periodical payments order must give notice of any change of address to the person (if any) specified in the order. A person who without reasonable excuse fails to give such a notice commits an offence.

Penalty: A fine of £1,000.

(3) Without affecting the foregoing provisions of this paragraph, the payment of any sum required to be paid by virtue of a financial provision order may be enforced in all respects as if it was a sum ordered to be paid in proceedings under the Civil Procedure Ordinance, 1968 (St Helena).

Interpretation

13. In this Schedule—

“**financial arrangements**”, in relation to a child, means provision in respect of the making or securing of payments, or the disposition or use of any property, for the maintenance or education of the child;

“**maintenance agreement**”, in relation to a child, means any agreement in writing made at any time between the parents of a child and containing financial arrangements relating to him or her;

“**child**” includes, in any case where an application is made under paragraph 2 or 6 in relation to a person who has reached the age of 18, that person;

“**parent**” includes any party to a marriage (whether or not subsisting) in relation to whom the child concerned is a child of the family.

SCHEDULE 2 *[Section 26(3)]*

EXCLUSION REQUIREMENTS

Power to include exclusion requirements in emergency protection orders

1. (1) For the purposes of this Ordinance, an exclusion requirement is any one or more of the following—

- (a) a provision requiring the relevant person to leave a dwelling-house in which he or she is living with the child;
- (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives; and
- (c) a provision excluding the relevant person from a defined area in which the dwelling-house in which the child lives is situated.

(2) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the relevant order.

(3) If the court makes a relevant order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.

(4) If the court attaches a power of arrest to an exclusion requirement of a relevant order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.

(5) Any period specified for the purposes of paragraph (2) or (4) may be extended by the court (on one or more occasions) on an application to vary or discharge the relevant order.

(6) If a power of arrest is attached to an exclusion requirement of a relevant order by virtue of paragraph (4), a police officer may arrest without warrant any person whom he or she has reasonable cause to believe to be in breach of the requirements.

(7) If, while a relevant order containing an exclusion requirement is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the order ceases to have effect in so far as it imposes the exclusion requirement.

Undertakings relating to relevant orders

2. (1) In any case where the court has power to include an exclusion requirement in a relevant order, the court may accept an undertaking from the relevant person.

(2) No power of arrest may be attached to an undertaking given under paragraph (1).

(3) An undertaking given to a court under paragraph (1)—

- (a) is enforceable as if it were an order of the court; and
- (b) ceases to have effect if, while it is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours.

(4) This Schedule has effect without affecting the powers of the court apart from this Schedule.

(5) In this Schedule—

- (a) “**relevant order**” means an interim care order or an emergency protection order; and
- (b) “**relevant person**” has the same meaning as in section 26, as the case may require.

CHILD WELFARE ORDINANCE, 2011

COURTS (WELFARE OF CHILDREN)(ASCENSION)(RULES)

(Section 8 of the Courts (Appeals and Rules) Ordinance, 2017 and sections 89 and 160 of the Constitution)

Citation and interpretation

1. (1) These Rules may be cited as the Courts (Welfare of Children)(Ascension)(Rules), 2012.

(2) In these Rules, “**the Court**” means the St Helena Supreme Court

Form of parental responsibility agreement

2. A parental responsibility agreement—

- (a) under section 10(1)(c) of the Child Welfare Ordinance, 2011 (acquisition of parental responsibility by biological father), must be made in Form CW/PRA1 set out in Schedule A to these Rules; and
- (b) under section 10A(1)(b) of that Ordinance (acquisition of parental responsibility by step-parent), must be made in form CW/PRA2 set out in Schedule A.

Recording of parental responsibility agreement

3. (1) A parental responsibility agreement must be recorded by the filing of the agreement, together with sufficient copies for each person with parental responsibility for the child, in the Court.

(2) Upon the filing of documents under sub-rule (1), an officer of the Court must seal the copies and send one to each person with parental responsibility for the child.

(3) The record of an agreement under sub-rule (1) must be made available, during office hours, for inspection by any person upon—

- (a) written request to an officer of the Court; and
- (b) payment of any fee prescribed in rules under the Courts (Appeals and Rules) ordinance, 2017.

Other forms

4. The Forms set out in Schedule B to these Rules must be used for the purposes to which they are expressed to relate, with any modifications the circumstances require.

SCHEDULE A
(Rule 2)

FORM CW/PRA1

ASCENSION

**Date recorded
at the St Helena Supreme Court**

PARENTAL RESPONSIBILITY AGREEMENT
(Section 10(1)(c) Child Welfare Ordinance 2012)

Court Seal

This is a Parent Parental Responsibility Agreement regarding

The Child: *Full Name:*

Gender _____

Date of birth

Date of 18th birthday

Between *Name:* _____

Child's Mother: *Address:*

and _____ *Name:*

**The biological
Father:** *Address:*

We declare: *We are the biological parents of the above child and we agree that the above mentioned biological father shall have parental responsibility of the child (in addition to those already having parental responsibility).*

Signed (**Mother**)

Signed (**Biological Father**)

Date:

Date:

**Certificate
Of witness**

The following evidence of
identity was produced by the
person signing above:

The following evidence of
identity was produced by the
person signing above:

Signed in the presence of:

Signed in the presence of:

Name of witness

Name of witness

Address

Address

Signature of witness

Signature of

witness

A Justice of the Peace/
Magistrate

A Justice of the Peace/
Magistrate

FORM CW/PRA2

ASCENSION

Date recorded

at the St Helena Supreme Court

STEP-PARENT PARENTAL RESPONSIBILITY AGREEMENT

(Section 10A(1)(b) Child Welfare Ordinance 2012)

Court Seal

This is a Step - Parent Parental Responsibility Agreement regarding

The Child: *Full Name:*

Gender

Date of birth

Date of 18th birthday

Between

Name:

Child's Parent:

Address:

And

Name:

***The other**

Biological Parent: *Address:*
 (with parental
 responsibility)

Name:

and

The Step-Parent: *Address:*

We declare: *We are the biological parents and step - parent of the above child and we agree that the above mentioned step - parent shall have parental responsibility of the child (in addition to those already having parental responsibility).*

Signed (Parent)	*Signed (Other biological Parent)	Signed (Step-Parent)
_____ Date:	_____ Date:	_____ Date:
The following evidence of Identity was produced by the person signing above:	The following evidence of Identity was produced by the person signing above:	The following evidence of Identity was produced by the person signing above:
_____ Signed in the presence of: <i>Name of witness</i>	_____ Signed in the presence of: <i>Name of witness</i>	_____ Signed in the presence of: <i>Name of witness</i>
_____ <i>Address</i>	_____ <i>Address</i>	_____ <i>Address</i>
_____ <i>Signature of witness</i>	_____ <i>Signature of witness</i>	_____ <i>Signature of witness</i>
_____ A Justice of the Peace/ Magistrate	_____ A Justice of the Peace/ Magistrate	_____ A Justice of the Peace/ Magistrate

**If there is only one parent with parental responsibility, please delete this section*

SCHEDULE B
(Rule 4)

FORM A
APPLICATION BY BIOLOGICAL FATHER FOR PARENTAL RESPONSIBILITY <i>(Section 10(1)(b) of the Child Welfare Ordinance, 2011)</i>
To the Honourable the Chief Justice
<p>I <i>(Name)</i> of <i>(Address)</i>..... am the biological father of:</p> <p><i>(Name of Child)</i>..... of <i>(Address)</i>..... and APPLY for an order declaring that I shall have parental responsibility for the child on the grounds set out in the accompanying affidavit.</p>
Dated this, 20.....
<p>_____</p> <p><i>(Signature)</i> Applicant.</p>

FORM B
APPLICATION BY A STEP-PARENT FOR PARENTAL RESPONSIBILITY <i>(Section 10A(1)(a) of the Child Welfare Ordinance, 2011)</i>
To the Honourable the Chief Justice
<p>I <i>(Name)</i> of <i>(Address)</i>..... am the step-parent of:</p> <p><i>(Name of Child)</i>..... of <i>(Address)</i>..... and APPLY for an order declaring that I shall have parental responsibility for the child on the grounds set out in the accompanying affidavit.</p>
Dated this, 20.....
<p>_____</p>

(Signature)
Applicant.

FORM C
In the St. Helena Supreme Court. APPLICATION FOR ORDER TO MAKE CHILD WARD OF COURT <i>(Section 16 of the Child Welfare Ordinance, 2011)</i>
To the Honourable the Chief Justice
I (<i>Name</i>) of (<i>Address</i>)..... APPLY for an order declaring that (<i>Name of Child</i>)..... of (<i>Address</i>)..... shall be made a ward of court. Thereafter I APPLY for a S17 Order be made; (<i>specify nature of order sought</i>)* <i>Order</i> This application is made on the grounds set out in the accompanying affidavit(s) made by..... and Dated this, 20.....
_____ (<i>Signature</i>) Applicant. *Insert whichever of the following is or are appropriate, as the case may be- (a) <i>Residence Order</i> (b) <i>Contact Order</i> (c) <i>Prohibited steps Order</i> (d) <i>Specific issues Order</i> (e) <i>Financial provisions Order</i> (f) <i>Parental rights Order</i>

FORM D
APPLICATION FOR CHILD ASSESSMENT ORDER <i>(Section 24 of the Child Welfare Ordinance, 2011)</i>
To the Honourable the Chief Justice
I (<i>Name</i>) of (<i>Address</i>)..... APPLY on behalf of the Attorney General/Ascension Safeguarding of Children Board for a child assessment order in respect of (<i>Name of Child</i>) of (<i>Address</i>) I am satisfied on the grounds set out in the accompanying affidavit(s) made by and that—

<p>(a) there is reasonable cause to suspect that the child is suffering, or likely to suffer, significant harm; and</p> <p>(b) an assessment of the state of the child’s health or development, or of the way in which he or she has been treated, is required to enable the Department to determine whether or not the child is suffering, or likely to suffer, significant harm; and</p> <p>(c) it is unlikely that the an assessment will be made, or be satisfactory, in the absence of an assessment order.</p>
<p>Dated this, 20..... .</p>
<p>_____</p> <p>(Signature)</p> <p>Applicant</p>

<p>FORM E</p> <p>APPLICATION FOR EMERGENCY PROTECTION ORDER</p> <p><i>(Section 25 of the Child Welfare Ordinance, 2011)</i></p>
<p>To the Honourable the Chief Justice</p>
<p>I (Name) of (Address)..... hereby apply for an emergency protection order in respect of:</p> <p>(Name of Child)</p> <p>of (Address).....</p> <p>I am satisfied on the grounds set out in the accompanying affidavit(s) made by and that—</p> <p>(a) there is reasonable cause to believe that the child will suffer, or be likely to suffer, significant harm if—</p> <p>(i) he or she is not removed to accommodation provided by or on behalf of the applicant; or</p> <p>(ii) he or she does not remain in the place in which he or she is then being accommodated; or</p> <p>(b) in the case of an application made by the ASCB—</p> <p>(i) enquiries are being made with respect to the child under section 36; and</p> <p>(ii) the enquiries are being frustrated by access to the child being unreasonably refused to a person authorised by the ASCB to seek access in connection with the enquiries; and</p> <p>(iii) the ASCB has reasonable cause to believe that the access is required as a matter of urgency.</p>
<p>Dated this, 20..... .</p>
<p>_____</p>

(Signature)
Applicant

FORM F
APPLICATION FOR EXTENSION OF EMERGENCY PROTECTION ORDER
<i>(Section 27(4) of the Child Welfare Ordinance, 2011)</i>
To the Honourable the Chief Justice
<p>I (Name) of (Address)..... APPLY for extension / revocation* (<i>delete whichever is not applicable</i>) of the emergency protection order granted on (Date)..... in respect of (Name of Child) of (Address) on the grounds set out in the accompanying affidavit(s) made by and</p>
Dated this, 20.....
<p>_____ (Signature) Applicant</p>

FORM G
APPLICATION FOR RECOVERY ORDER
<i>(Section 30 of the Child Welfare Ordinance, 2011)</i>
To
<p>I (Name) of (Address)..... hereby apply for a recovery order in respect of: (Name of Child) (Responsible person in relation to the child): I am satisfied on the grounds set out in the accompanying affidavit(s) made by and that the child—</p> <ul style="list-style-type: none"> (a) has been unlawfully taken away or is being unlawfully kept away from the responsible person; or (b) has run away or is staying away from the responsible person; or (c) is missing.
Dated this, 20.....

 (Signature)
 Applicant

CHILD WELFARE ORDINANCE, 2011

ASCENSION SAFEGUARDING OF CHILDREN BOARD REGULATIONS, 2013 (Sections 19(2) and 20(2))

Citation and commencement

1. These Regulations may be cited as the Ascension Safeguarding of Children Board Regulations, 2013 and come into force on 20th February 2013.

Constitution of the Board

2. The Ascension Safeguarding of Children Board established by section 19(1) of the Ordinance is to include the following persons or their representatives –

- (a) The Administrator;
- (b) The Senior Medical Officer;
- (c) The Police Inspector;
- (d) The Head Teacher of Two Boats School;
- (e) The Social Work Advisor to the Administrator;
- (f) Crown Counsel;
- (g) One member appointed by the Administrator from a Voluntary Organisation which is involved in children's activities on Ascension.

Functions of the Board

3. For the purposes of achieving its objectives as prescribed by section 20 of the Ordinance, the functions of the Board are to –

- (a) review policies and procedures with respect to-
 - (i) the action to be taken in areas of concern with respect to safeguarding and promotion of welfare of children;
 - (ii) training of persons who work with children;
 - (iii) recruitment and supervision of persons who work with children;
 - (iv) investigation of allegations concerning persons who work with children;
- (b) participate in the planning of services for children;
- (c) communicate the need to safeguard and promote the welfare of children;
- (d) review procedures to ensure a co-ordinated response to unexpected child deaths;
- (e) monitor the effectiveness of what is being done by each person or body represented on it, to safeguard children, and
- (f) collect and analyse information about child deaths.

The following is not a legislative document but is included for information:

ASCENSION
DISABLED YOUNG PERSONS (16-18 YEAR OLDS) POST-SCHOOL
TRAINING POLICY

Summary

Ascension Island Government (AIG) acknowledges that in order not to discriminate against disabled children there is a need to have in place suitable arrangements to account for the small number of children with disability who remain on the Island after they have completed their formal education at Two Boats School and until they reach 18 years of age.

Policy

Purpose

The purpose of this Policy is to understand and plan for the current and future needs of disabled young people between the ages of 16 and 18 years to help them achieve their potential and live ordinary lives while ensuring the necessary controls are in place to limit the impact upon operations and resources and deliver a value for money programme to tax payers. This Policy will set out the procedures that will be in place to identify the needs of each disabled young person and the level of reasonable adjustment that will be balanced against AIG's ability to deliver suitable provision given our small scale and isolated location.

The Law

There is no legal requirement to provide post school training/work experience for 16- 18 year olds. However AIG recognises the wider community benefit of providing formal, structured training or work experience for those who remain on Ascension, to help them transition from school to their future workplace. This will normally be set up as a youth training/work experience scheme. Where such a scheme is offered it is important that AIG does not discriminate within the target group.

The St Helena, Ascension and Tristan da Cunha Constitutional Order 2009 provides at S137(2) that "no person shall be treated in a discriminatory manner by any organ or officer of the executive or judicial branches of government or any person acting in the performance of the functions of the Ascension Public Service or any public authority."

“Discriminatory” is defined as affording different treatment to different persons on any ground such as....disability.

The Constitution does allow for a law to grant lawful authority to discriminate so long as the law itself has an objective and reasonable justification and is proportional. There is no law that allows Government to discriminate when setting up a youth training scheme for young people.

Definition of Disabled Young Person

A young person has a disability, for the purpose of this policy, if they have a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day to day activities.

Disability can be physical or mental impairment (educational). Young people have special educational needs (SEN) if they have a learning difficulty which calls for special educational provision to be made for them. A young person has a learning difficulty if, whilst attending Two Boats School, they had special educational provision made for them such as special classes or an assistant support teacher.

The AIG Training Scheme

AIG is currently reviewing the future of its youth training/work experience scheme. The previous island-wide scheme was not flexible enough to make the necessary adjustments to accommodate disabled young persons.

A replacement scheme will be introduced in mid 2015 and will comply with this policy.

In the interim, where no youth training scheme is provided to school leavers, AIG may at their discretion provide a training/work experience programme for disabled young persons in accordance with the goals of this Policy.

Procedure

Education Statement

It is important to gather as much information as to the needs of the disabled young person as possible. Three months prior to the end of the relevant school year, the Headmaster of Two Boats School will prepare a report (The Education Statement) for AIG setting out the difficulties encountered and what reasonable adjustment /provisions the school made for the young person.

Assessment of Young Person

The needs of young people will be individual to their disability and personal circumstances and therefore individual assessment will take place to ensure that AIG have a clear understanding of the disability and SEN needs.

The assessment will be conducted by the Administrator with the assistance of the Headmaster, the Social Worker and the Young Person's parents. Family involvement is seen as crucial in determining the needs of the young person and identifying any adjustments that are needed in the youth training/work experience programme.

Programme Assessment Report

Ascension has no existing framework for dealing with disabled children. In the absence of this framework it is anticipated that the young person will undertake as close as possible a training programme as able bodied school leavers. Therefore a training/work experience programme assessment report will need to be prepared. This report will ascertain what additional support will be needed to achieve this goal. The Administrator will obtain a written report from the Directors involved in the programme which will set out the gaps identified and offer possible solutions to meet

the aims of this policy. A key element of this report will be addressing the Health and Safety concerns in the work place.

Reasonable adjustment

The programme assessment report will recommend reasonable adjustments and set out the operational and financial impact of those adjustments. These adjustments must look to balance the individual needs of the young person with the limited budget and resources of AIG. Examples of reasonable adjustment are:

- Additional support staff at the place of training
- Shorter training day/week with payment pro rata
- Assistance with travel arrangements
- Involving the family for part or all of the training day
- Social Worker support/training for staff responsible for the young person
- Tailoring of specific tasks within the training programme.

AIG will appoint a programme co-ordinator to design a programme and consult with the families and the young persons to ensure they have input into the recommendations being made. All party involvement will promote the effective targeting of AIG resources,

ensuring the recommendations will make the biggest impact on the life of the young person while recognising AIG's need to deliver this policy in a cost effective and accountable manner. AIG will seek to ensure that no one AIG department is required to take on a disproportionate burden for accommodating the disabled young person.

Decision making

The Administrator shall have the final decision on whether a training programme will be offered and, if so, what adjustments will be necessary and what AIG resources will be allocated. When making this decision the Administrator will have in mind the two competing interests of providing the right level of support for the young person and delivering a cost effective solution.

The Administrator will seek the input of the Directors, Team Leaders and staff who have been identified as being involved in the delivery of the final programme. He may authorise payment of a small responsibility allowance to the member of staff charged with looking after the disabled young person. He must also outline his final decision to the parents of the young person and invite them to make written representations within 7 days thereafter.

Flexibility

In recognising the challenges that might arise, any programme may be varied with the consent of the Administrator after he has sought the comments of the parents of/and the young person.

Appeal

Where the parents of a disabled young person are unhappy with the decision made by the Administrator, they may apply in writing to HOGO in St Helena to have the decision reviewed. The HOGO's decision will be duly respected by both parties.

Limitations to this policy

AIG recognises that not all disabilities can be catered for in a training programme. While this policy strives to include all disabled children, AIG acknowledges that there will be cases of severe disability that cannot be accommodated or where health and safety concerns cannot be satisfactorily addressed by reasonable adjustments. In instances where it is decided that no reasonable adjustment can properly cater for the disability, AIG will not offer the training/work experience programme but will work closely with the parents of the young person to provide support, assistance and respite where possible.

Administrator

Ascension Island Government

23 October 2014
