



ST HELENA

REVISED EDITION OF THE LAWS, 2017

FAMILY, EDUCATION AND WELFARE

WELFARE OF CHILDREN ORDINANCE, 2008¹

Ordinance 14 of 2008

In force 1 March 2010

Amended by Ordinances 12 of 2011, 11 of 2013, 3 of 2016, 14 of 2017, 15 of 2017 (in force 20 December 2017, 16 of 2017 (in force 20 December 2017) and G.N. 44 of 18 May 2010

Subsidiary legislation:

WELFARE OF CHILDREN REGULATIONS, 2010

[Page 125]

Legal Notice 5 of 2010

Amended by Legal Notice 13 of 2018

COURTS (WELFARE OF CHILDREN)(FORMS) RULES, 2010

[Page 175]

Legal Notice 6 of 2010

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

WELFARE OF CHILDREN (ADOPTION) REGULATIONS, 2015

[Page 192]

Legal Notice 24 of 2015 (In force 7 October 2015)

**WELFARE OF CHILDREN (OFFICIAL FOSTER CARE)
REGULATIONS, 2017**

[Page 195]

Legal Notice 1 of 2017 (In force 16 January 2017)

**WELFARE OF CHILDREN (CHILDREN'S RESIDENTIAL HOME)
REGULATIONS, 2018**

[Page 208]

Legal Notice 12 of 2018 (In force 4 June 2018)

¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 4 June 2018.

WELFARE OF CHILDREN ORDINANCE, 2008

ARRANGEMENT OF SECTIONS

PART I PRELIMINARY

1. Citation and commencement
2. Interpretation

PART II WELFARE AND RIGHTS OF THE CHILD

3. Welfare of child
4. Child's right to stay with parents
5. Child's right to parental responsibility
6. Child's right to be maintained
7. Child's right to protection
8. Assistance for disabled children

PART III PARENTAL RESPONSIBILITY AND GUARDIANSHIP

Division 1 - Parental Responsibility

9. Meaning of "parental responsibility"
10. Parental responsibility: general provisions
11. Parental responsibility of biological parents
12. Acquisition of parental responsibility by biological father

Division 2 - Guardianship

13. Appointment of guardian by Supreme Court
14. Appointment of guardian by parent, etc.
15. Termination of appointment

Division 2A - Special Guardianship Orders

- 16A. Special guardianship orders
- 16B. Special guardianship orders: making
- 16C. Special guardianship orders: effect
- 16D. Special guardianship orders: variation and discharge

Division 3 - Supplemental

16. Duration of orders
17. Restriction on further applications

PART IV ORDERS WITH RESPECT TO CHILDREN

- 18. Orders with respect to children
- 19. Section 18 orders: further provisions
- 20. Leave to apply for section 18 order
- 21. Restrictions on making section 18 orders
- 22. Duration of orders
- 23. Effect of residence order
- 24. Enforcement of residence orders
- 25. Financial provision orders
- 26. Jurisdiction
- 27. Wardship
- 28. Restriction on further applications

PART V GENERAL FUNCTIONS OF DEPARTMENT

Division 1- General

- 29. General duties of Department
- 30. Functions of Department in relation to children in danger or need
- 31. Duties of Department where it looks after children

Division 2- Provision of Accommodation for Children

- 32. Provision of accommodation
- 33. Manner in which accommodation may be provided
- 33A. Registration of official foster carers
- 33B. Disqualifications
- 34. Secure accommodation

Division 3 - Supplemental

- 35. Regulations
- 36. Investigations
- 37. Reports

PART VI SAFEGUARDING OF CHILDREN BOARD

- 38. Establishment of the Safeguarding of Children Board
- 39. Functions and procedure of SCB
- 40. Funding of SCB
- 41. SCB: supplementary

PART VII CARE AND SUPERVISION

- 42. Care and supervision orders
- 42A. Simultaneous applications

43. Effect of care order
44. Parental contact, etc. with children in care
45. Supervision orders
46. Interim orders
47. Power to include exclusion requirement in interim care order
48. Revocation and variation, etc. of care orders and supervision orders
49. Duration of care orders
50. Orders, etc. pending appeal
51. Restrictions on applications

PART VIII PROTECTION OF CHILDREN

52. Child assessment orders
53. Emergency protection orders
54. Power to include exclusion requirement in emergency protection order
55. Duration of emergency protection orders, etc.
56. Removal by police
57. Department's duty to investigate
58. Discovery of children in need of protection
59. Abduction of child in care
60. Recovery of abducted or absconding child

PART IX CHILDREN'S HOMES

61. Introductory
62. Registration of children's homes
63. Disqualifications
64. Regulations as to children's homes
65. Welfare of children in homes
66. Duties of Department
67. Appeals

PART X PRIVATE FOSTERING, CHILD-MINDING AND DAY CARE

Division 1- Private Fostering

68. Privately fostered children
69. Disqualifications
70. Restrictions on private fostering
71. Regulations as to private fostering
72. Fostering limit
73. Financial assistance for privately fostered children
74. Welfare of privately fostered children

Division 2 - Child-minding and Day Care

75. Child-minding and day care
76. Registration

- 77. Disqualification
- 78. Emergency cancellation, etc.
- 79. Certification of persons looking after older children

Division 3- General

- 80. Inspection of premises
- 81. Appeals

PART XI
PROCEEDINGS INVOLVING CHILDREN AND YOUNG PERSONS

- 82. General considerations
- 83. Age of criminal responsibility
- 84. Separation of children and young persons from adults in courts, etc.
- 85. Bail or detention of children and young persons arrested
- 86. Detention of child or young person
- 87. Children in court during trials
- 88. Clearing court while child or young person is giving evidence
- 89. Remand or committal of child or young person
- 90. Evidence by children
- 91. Admissibility of hearsay evidence
- 92. Powers in relation to certain offences
- 93. Identification of child or young person in media
- 94. Findings of guilt, etc.
- 95. Power to impose penalty, etc. on parent of child or young person
- 96. Power to make supervision order in criminal proceedings
- 97. Proceedings for offences

PART XII
ADOPTION

Division 1- Adoption Orders

- 98. Adoption orders
- 99. Child to live with adopters before order is made
- 100. Adoption by married couple
- 101. Adoption by one person
- 102. Parental agreement
- 103. Freeing child for adoption
- 104. Progress reports to former parents
- 105. Revocation of section 103 order
- 106. Notification to Department of adoption application
- 107. Report where child placed by Department
- 108. Restrictions on making adoption order
- 109. Interim orders
- 110. Care, etc. of child on refusal of adoption order
- 111. Restrictions on removal where adoption agreed or application made under section 103
- 112. Restrictions on removal where applicant provided home for 5 years
- 113. Return of child taken away in breach of section 111 or 112

- 114. Return of child placed for adoption by Department
- 115. Meaning of “protected child”
- 116. Removal of protected child from unsuitable surroundings
- 117. Notice and information to be given to Department

Division 2 - Status of Adopted Children

- 118. Meaning of “adoption”
- 119. Interpretation
- 120. Status conferred by adoption
- 121. Adoptive relatives
- 122. Rules of construction for instruments concerning property
- 123. Dispositions depending on date of birth
- 124. Property devolving with peerages, etc. on adoption
- 125. Protection of trustees and personal representatives
- 126. Construing other laws
- 127. Pensions
- 128. Insurance

Division 3 - Registration of Adoption Orders

- 129. Adopted Children Register

PART XIII
LEGITIMACY

Division 1 - Interpretation

- 130. Meaning of “legitimated person”
- 131. Interpretation

Division 2 - Legitimation by Marriage

- 132. Legitimacy of children of certain void marriages
- 133. Legitimation by subsequent marriage of parents
- 134. Legitimation of adopted child

Division 3- Property Rights of Legitimated Children

- 135. Rights of legitimated persons and others to take interest in property
- 136. Dispositions depending on date of birth
- 137. Protection of trustees and personal representatives
- 138. Personal rights and obligations
- 139. Re-registration of birth of legitimated person
- 140. Titles, etc.

Division 4 - Property Rights of Illegitimate Children

- 141. Interpretation
- 142. Presumptions with respect to illegitimate children

143. Protection of trustees and personal representatives

PART XIV OFFENCES AGAINST CHILDREN AND YOUNG PERSONS

144. Cruelty to children and young persons
 145. Begging and soliciting for prostitution
 146. Allowing children to be in brothels
 147. Causing or encouraging prostitution
 148. Causing or allowing children to be in bars of licensed premises
 149. Safety of children at entertainments

PART XV ATTACHMENT OF EARNINGS ORDER

150. Interpretation
 151. Effect and contents of attachment of earnings orders
 152. Application for attachment of earnings order
 153. Compliance with order by employer
 154. Application of sums received by Clerk of Peace
 155. Obligation of payer and employers to notify changes of employment and earnings
 156. Variation or termination of attachment of earnings order
 157. *Omitted*

PART XVA EMPLOYMENT OF CHILDREN

- 157A. Interpretation
 157B. Employment of children
 157C. Illicit activities
 157D. Regulations as to employment of children

PART XVI MISCELLANEOUS AND SUPPLEMENTAL

158. Employment of children
 159. Representation of child in family proceedings
 160. Appeals to Supreme Court
 161. Inspection of premises
 162. Search warrants
 163. Power of Department if parent, etc. about to leave child in St Helena
 164. Stop orders
 165. Governor may withhold passport
 166. Regulations
 167. *Omitted*
 168. Transitional provisions

Schedule 1: Financial provision for children

Schedule 2: Children looked after by Department

Schedule 3: Contributions towards maintenance

Schedule 4: Supervision orders
 Schedule 5: Exclusion requirements
 Schedule 6: *Omitted*

AN ORDINANCE to modernise the law relating to the welfare and rights of children to bring it in line with the principles contained in the United Nations Convention on the Rights of the Child; and for connected and incidental purposes.

PART I PRELIMINARY

Short title and commencement

1. This Ordinance may be cited as the Welfare of Children Ordinance, 2008 and comes into force on a date the Governor appoints by notice in the *Gazette*.

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 such duties had parental responsibilities for the child (whether or not the person has parental responsibility for such child);

“**care order**” means an order under section 42(1)(a) and, unless the context requires otherwise, includes an interim care order under section 46;

“**child**” means a person under 18 years of age, except that in Part XI and Part XIV “**child**” means a person under 16 years of age;

“**child assessment order**” means an order under section 52(1);

“**child-minder**” has the meaning given by section 75(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, not being a child who is placed with those parties as foster carers by the Department, who has been treated by both of those parties as a child of their family;

“**children’s home**” has the meaning given by section 61;

“**civil proceedings**” means proceedings other than criminal proceedings;

“**contact order**” means an order under section 18(1)(b);

“**court**” means—

- (a) the St Helena Supreme Court; or
- (b) where the context so permits, and subject to any rules of court made under section 89(2) of the Constitution, the St Helena Magistrates’ Court;

“**day care**” means any form of care or supervised activity provided for children during the day (whether or not it is provided on a regular basis);

“**Department**” means the Directorate, Department, or other formal grouping of personnel in the Government of St Helena which is for the time being charged with responsibility for social and welfare services;

“**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 such other disability as may be prescribed;
- “domestic premises”** means premises which are wholly or mainly used as a private dwelling;
- “emergency protection order”** means an order under section 53(1);
- “exclusion requirement”** has the meaning given by paragraph 1 of Schedule 5;
- “family proceedings”** means any proceedings in relation to wardship, maintenance or the upbringing of children;
- “father”** means biological father or adopted father;
- “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, the child’s health or development is 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;
 - (b) a hospital; or
 - (c) a residential care home, nursing home or psychiatric home;
- “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;
- “mother”** means biological mother or adoptive mother;
- “official foster carer”** has the meaning given by section 33(2);
- “parent”** in relation to a child, means—
- (a) the child’s biological father, whether married to his or her biological mother or not;
 - (b) the child’s biological mother, whether married to his or her biological father or not; or
 - (c) the child’s adoptive father or adoptive mother;
- “parental responsibility”** has the meaning given by section 9;
- “parental responsibility agreement”** means an agreement referred to in section 12(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 56(1);
- “prescribed”** means prescribed by regulations under this Act;
- “privately fostered child”** and **“to foster a child privately”** have the meaning given by section 68(1);
- “prohibited steps order”** has the meaning given by section 18(1)(c);
- “Registrar”** means the Registrar of the Supreme Court;
- “registered children’s home”** means a children’s home registered under Part IX;
- “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 18(1)(a);
- “responsible person”**, in relation to a child who is the subject of a supervision order, has the meaning given by paragraph 1 of Schedule 4;
- “SCB”** means the St Helena Safeguarding of Children Board established under section 38;
- “school”** has the same meaning as in the Education Ordinance, 2008;
- “section 18 order”** has the meaning given by section 18(2);
- “secure accommodation”** means accommodation provided for the purpose of restricting liberty;
- “specific issue order”** has the meaning given by section 18(1)(d);
- “supervised child”** means the child with respect to whom a supervision order is made;

“supervision order” means an order under section 42(1)(b);

“supervisor” means—

- (a) if the supervision order places the supervised child under the supervision of a probation officer - the probation officer for the time being assigned to the child in accordance with probation rules;
- (b) if the supervision order places the supervised child under the supervision of the Department - the officer of the Department for the time being assigned to the child by the Department;

“United Nations Convention on the Rights of the Child” 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;

“usual fostering limit” means the limit imposed by section 72(2);

“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) Any reference to—

- (a) a child being in need is to be construed in accordance with section 30(5);
- (b) a child in the care of the Department is to a child with respect to whom a care order is in force;
- (c) a child being looked after by the Department is to be construed in accordance with section 31(1).

(3) Any register to be kept by the Department under this Ordinance may be kept in electronic format; and where such 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, the Department, 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 is the paramount consideration.

(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 is to be had to the provisions of the United Nations Convention on the Rights of the Child with appropriate modifications to suit the circumstances in St Helena that are not specifically mentioned in this Ordinance.

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

(5) Regard is to 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 is to 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 the child’s 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, sex, 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 the child’s 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 is to 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 is to be had to the child’s right—
- (a) to leisure which is not morally harmful and to participate in sports and cultural and artistic activities;
 - (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 United Nations Convention on the Rights of the Child with appropriate modifications to suit the circumstances in St Helena, that are not specifically mentioned in this Ordinance.

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 such 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 be maintained

6. (1) It is the duty of a parent, guardian or any person with custody of a child to maintain that child, and in particular that duty gives a child the right to—

- (a) education;
- (b) immunisation;
- (c) a balanced diet;
- (d) clothing;
- (e) shelter; and
- (f) medical attention.

(2) A person's duty to maintain a child under subsection (1) ceases when that child is 16 years or older and is either in full-time employment or married.

Child's right to protection

7. 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.

Assistance for disabled children

8. (1) The parents or guardians of, or other persons having parental responsibility for, disabled children must take appropriate steps to see that those children are—

- (a) assessed as early as possible as to the extent and nature of their disabilities; and
- (b) offered appropriate treatment.

(2) The Government must, subject to available resources, take appropriate steps to encourage and ensure—

- (a) that disabled children are afforded equal opportunities to education;
- (b) the extension to disabled children and their parents, guardians or other persons having parental responsibility or caring for them, of assistance for which application is made and which is appropriate to their condition and to the circumstances of their parents, guardians or other persons having parental responsibility or caring for them;
- (c) that the assistance referred to in paragraph (b) is provided free of charge, whenever possible, taking into account the financial resources of the parents or guardians of, or of other persons having parental responsibility or caring for, disabled children; and
- (d) that the assistance referred to in paragraph (b) is designed to ensure that disabled children have effective access to and receive education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to their achieving the fullest possible social integration and individual development.

(3) The Governor in Council may make regulations with respect to—

- (a) the making of applications for assistance;
- (b) the granting and refusal of assistance;
- (c) the conditions subject to which assistance may be granted; or
- (d) such other matters as may be necessary or expedient for the purpose of giving

effect to this section.

PART III PARENTAL RESPONSIBILITY AND GUARDIANSHIP

Division 1 - Parental Responsibility

Meaning of “parental responsibility”

9. (1) In this Ordinance, and in any enactment passed or made after the commencement 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 may have in relation to the child (such as a statutory duty to maintain the child); or
- (b) any rights which, in the event of the child’s death, the person (or any other person) may have 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

10. (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 the person’s 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 the parental responsibility for the child.

(6) If the parents of a child are deceased, parental responsibility may, on application to the court, and on the recommendation of a social services officer, be passed on to relatives of either parent or to any person designated by the Court.

(7) If a person has care of a child but does not have parental responsibility for him or her, the person 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.

Parental responsibility of biological parents

11. (1) If a child's biological parents were married to each other at the time of the child's 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 the child's 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

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

- (a) the biological father acquires parental responsibility for the child upon marrying the biological mother of the child at any time after his or her birth;
- (aa) the biological father acquires parental responsibility for the child upon becoming registered as the child's father under—
 - (i) section 10(1) of the Births and Deaths (Registration) Ordinance, 1853 (and under this provision as applied to births in Ascension and Tristan Da Cunha);
 - (ii) section 6 of the Registration Ordinance 1949 (Falklands);
 - (iii) section 10(1)(a), (b) or (c) and section 10A(1) of the Births and Deaths Registration Act 1953 (UK);
 - (iv) sections 18(1)(a), (b)(i) or (c), 18(2)(b) and 20(1)(a) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965;
 - (v) Article 14(3)(a), (b) or (c) of the Births and Deaths Registration (Northern Ireland) Order 1976;
 - (vi) section 10 of the Births and Deaths Registration Act, 1992 (South Africa);
- (b) the court may, on the application of the biological father, order that he or she 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 such agreements are to be recorded, it is recorded in the prescribed manner.

(3) Subject to section 23(1), an order under subsection (1) 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.

Division 2 - Guardianship

Appointment of guardian by Supreme Court

13. (1) If an application with respect to a child is made to the Supreme Court by any person, the court may by order appoint that person to be the child's guardian if—

- (a) the child has no parent with parental responsibility for him or her; or
- (b) a residence order has been made with respect to the child in favour of a parent or guardian of the child who has died while the order was in force.

(2) The power conferred by subsection (1) may also be exercised in any family proceedings in the Supreme 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) A guardian of a child may not be appointed except in accordance with this section or section 14.

Appointment of guardian by parent, etc.

14. (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 practically possible, 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—

- (a) 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; or
- (b) immediately before the death of any person making such an appointment, a residence order in his or her favour was in force with respect to the child,

the appointment takes effect on the death of that person.

(6) If, on the death of any person making an appointment under this section—

- (a) the child concerned has a parent with parental responsibility for him or her; and
- (b) immediately before the death no residence order in favour of that person was in force with respect to the child,

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 such 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 such disclaimers are to be recorded, it is recorded in the prescribed manner.

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

Termination of appointment

15. (1) An appointment of a guardian under section 13 or 14 may be brought to an end at any time by order of the Supreme 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 14 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 14 (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 the person; or
- (b) at the person's direction, in his or her presence and in the presence of 2 witnesses who each attest the signature.

(4) An appointment under section 14 (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 St Helena,

unless a contrary intention appears by the appointment.

(5) An appointment under section 14 (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 14 made in a will or codicil is revoked if the will or codicil is revoked.

(7) An appointment under section 13 or 14, unless it is brought to an end earlier, continues in force until the child reaches the age of 18.

Division 2A - Special Guardianship Orders

Special guardianship orders

16A. (1) A special guardianship order is an order appointing one or more individuals to be a child's special guardian or special guardians.

(2) A special guardian must—

- (a) be aged 18 years or older; and
- (b) not be a parent of the child in question.

(3) The individuals who are entitled to apply for a special guardianship order with respect to a child are—

- (a) any guardian of the child;
- (b) any individual in whose favour a residence order is in force with respect to the child;
- (c) any individual listed in section 19(2)(b), (c), (d) or (e);
- (d) a relative with whom the child has lived for a period of at least one year immediately preceding the application.

(4) The court may make a special guardianship order with respect to any child on the application of an individual who—

- (a) is entitled to make such an application with respect to the child; or
- (b) has obtained the leave of the court to make the application,

or on the joint application of more than one such individual.

(5) Section 21(3) applies in relation to an application for leave to apply for a special guardianship order as it applies in relation to an application for leave to apply for a section 18 order.

(6) The court may also make a special guardianship order with respect to a child in any family proceedings in which a question arises with respect to the welfare of the child if—

- (a) an application for the order has been made by an individual who falls within

- subsection (4)(a) or (b), or more than one such individual jointly; or
- (b) the court considers that a special guardianship order should be made even though no such application has been made.

(7) No individual may make an application under subsection (4) or (6)(a) unless, before the beginning of the period of 3 months ending with the date of the application, he or she has given written notice of his or her intention to make the application to the Social Work Manager.

(8) On receipt of such a notice, the Social Work Manager must investigate the matter and prepare a report for the court dealing with the suitability of the applicant to be a special guardian and any other matter which the Social Work Manager considers to be relevant.

(9) The court may itself ask the Social Work Manager to conduct such an investigation and prepare such a report.

(10) The Social Work Manager may make such arrangements as he or she sees fit for any person to act on his or her behalf in connection with conducting an investigation or preparing a report referred to in subsection (8) or (9).

(11) The court may not make a special guardianship order unless it has received a report dealing with the matters referred to in subsection (8).

(12) Section 20 applies in relation to special guardianship orders as it applies in relation to section 18 orders.

Special guardianship orders: making

16B. (1) Before making a special guardianship order, the court must consider whether, if the order were made—

- (a) a contact order should also be made with respect to the child;
- (b) any section 18 order in force with respect to the child should be varied or discharged;
- (c) if a contact order made with respect to the child is not discharged, any enforcement order relating to that contact order should be revoked.

(2) On making a special guardianship order, the court may also—

- (a) give leave for the child to be known by a new surname;
- (b) grant the leave required by section 16C(3)(b), either generally or for specified purposes.

Special guardianship orders: effect

16C. (1) The effect of a special guardianship order is that while the order remains in force a special guardian appointed by the order has parental responsibility for the child in respect of whom it is made.

(2) Subsection (1) does not affect—

- (a) the operation of any enactment or rule of law which requires the consent of more than one person with parental responsibility in a matter affecting the child; or

- (b) any rights which a parent of the child has in relation to the child's adoption or placement for adoption.

(3) While a special guardianship order is in force with respect to a child, no person may—

- (a) cause the child to be known by a new surname; or
- (b) remove the child from St Helena,

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(4) Subsection (3)(b) does not prevent the removal of a child, for a period of less than 3 months, by a special guardian of the child.

(5) If the child with respect to whom a special guardianship order is in force dies, his or her special guardian must take reasonable steps to give notice of that fact to—

- (a) each parent of the child with parental responsibility; and
- (b) each guardian of the child,

but if the child has more than one special guardian, and one of them has taken such steps in relation to a particular parent or guardian, any other special guardian need not do so as respects that parent or guardian.

Special guardianship orders: variation and discharge

16D. (1) The court may vary or discharge a special guardianship order on the application of—

- (a) the special guardian (or any of them, if there are more than one);
- (b) any parent or guardian of the child concerned;
- (c) any individual in whose favour a residence order is in force with respect to the child;
- (d) any individual not falling within any of paragraphs (a) to (c) who has, or immediately before the making of the special guardianship order had, parental responsibility for the child;
- (e) the child himself or herself; or
- (f) the Social Work Manager.

(2) In any family proceedings in which a question arises with respect to the welfare of a child in respect of whom a special guardianship order is in force, the court may also vary or discharge the special guardianship order if it considers that the order should be varied or discharged, even though no application has been made under subsection (1).

(3) The following must obtain the leave of the court before making an application under subsection (1)—

- (a) the child;
- (b) any parent or guardian of the child;
- (c) any individual falling within subsection (1)(d) who immediately before the making of the special guardianship order had, but no longer has, parental responsibility for the child.

(4) If the person applying for leave to make an application under subsection (1) is the child, the court may only grant leave if it is satisfied that the child has sufficient

understanding to make the proposed application under subsection (1).

(5) The court may not grant leave to a person falling within subsection (3)(b) or (c) unless it is satisfied that there has been a significant change in circumstances since the making of the special guardianship order.

Special guardianship orders: supplementary

16E. (1) In proceedings in which any question of making, varying or discharging a special guardianship order arises, the court must (in the light of any provision made by virtue of subsection (3))—

- (a) draw up a timetable with a view to determining the question without delay; and
- (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that the timetable is adhered to.

(2) Subsection (1) applies also in relation to proceedings in which any other question with respect to a special guardianship order arises.

(3) A special guardianship order, or an order varying one, may contain provisions which are to have effect for a specified period.

(4) Section 19(7) (other than paragraph (c)) applies in relation to special guardianship orders and orders varying them as it applies in relation to section 18 orders.

Division 3 - Supplemental

Duration of orders

16. An order under this Part with respect to a child ceases to be in force after the child has reached the age of 18.

Restriction on further applications

17. 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 a specified kind may be made with respect to the child concerned by any person named in the order without the leave of the court (that is, the leave of any court having jurisdiction to hear the application in question).

PART IV ORDERS WITH RESPECT TO CHILDREN

Orders with respect to children

18. (1) The orders which the court may make with respect to a child under this section are as follows:

- (a) a “**residence order**”, that is, an order settling the arrangements to be made as to the person with whom the child is to live;
- (b) a “**contact order**”, that is, an 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 is, an 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, is taken by any person without the consent of the court;
- (d) a **“specific issue order”**, that is, an 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.

(2) In this Ordinance **“a section 18 order”** means any of the orders mentioned in subsection (1) and any order varying or discharging such an order.

(3) The court may make any order under this section on the application of a person who is entitled to apply for the order, or has obtained the leave of the court to do so.

(4) The court may make any order under this section in any family proceedings in which a question arises with respect to the welfare of a child—

- (a) on the application of a person who is entitled to apply for the order, or has obtained the leave of the court to do so; or
- (b) if the court considers that the order should be made even though no such application has been made.

Section 18 orders: further provisions

19. (1) The following persons are entitled to apply to the court for any order under section 18 with respect to a child—

- (a) any parent or guardian of the child;
- (b) any person in whose favour a residence order has been made with respect to the child.

(2) The following persons are entitled to apply for a residence order or a contact order with respect to a child—

- (a) any party to a marriage (whether or not subsisting) in relation to whom the child is a child of the family;
- (b) any person with whom the child has lived for a period of at least 3 years;
- (c) if a residence order is in force with respect to the child - any person who has the consent of each person in whose favour the order was made;
- (d) if the child is in the care of the Department - any person who has the consent of the Department;
- (e) in any case not mentioned in paragraph (c) or (d) - any person who has the consent of each person (if any) having parental responsibility for the child;
- (f) any person falling within a category of person prescribed by rules of court in relation to the kind of order in question.

(3) A person who would not otherwise be entitled (under the previous provisions of this section) to apply for the variation or discharge of a section 18 order may do so if—

- (a) the order was made on his or her application; or
- (b) in the case of a contact order, he or she is named in the order.

(4) No application may be made by the Department for a residence order or a contact

order.

(5) If the court has power to make an order under section 18, it may do so at any time during the course of the proceedings in question even though it is not in a position to dispose finally of those proceedings.

(6) If a residence order is made in favour of 2 or more persons who do not themselves all live together, the order may specify the periods during which the child is to live in the different households concerned.

(7) An order under section 18 may—

- (a) contain directions about how it is to be carried into effect;
- (b) impose conditions to be complied with by any person—
 - (i) in whose favour the order is made;
 - (ii) who is a parent of the child concerned;
 - (iii) who is not a parent of the child but has parental responsibility for him or her; or
 - (iv) with whom the child is living, and to whom the conditions are expressed to apply;
- (c) be made to have effect for a specified period, or contain provisions which are to have effect for a specified period;
- (d) make any incidental, supplemental or consequential provision the court thinks fit.

(8) Any reference in this Ordinance to the person in whose favour a residence order is made is a reference to the person named in the order as the person with whom the child concerned is to live.

Leave to apply for section 18 order

20. (1) If the person applying for leave to make an application for an order under section 18 is not the child concerned, the court must, in deciding whether or not to grant such leave, have particular regard to—

- (a) the nature of the proposed application;
- (b) the applicant's connection with the child;
- (c) any risk there might be of the proposed application disrupting the child's life to such an extent that he or she would be harmed by it; and
- (d) if the child is placed with the applicant as a foster carer by the Department, the Department's plans for the child's future and the wishes and feelings of the child's parents.

(2) If the person applying for leave to make an application for an order under section 18 is the child concerned, the court must not grant such leave unless it is satisfied that the child has sufficient understanding to make the proposed application.

Restrictions on making section 18 orders

21. (1) A court must not make any order under section 18, other than a residence order, with respect to a child who is in the care of the Department.

(2) A court must not make a residence order or a contact order in favour of the

Department.

(3) A person who is, or was at any time within the last 6 months, a foster carer of a child may not apply for leave to apply for a section 18 order with respect to the child unless—

- (a) he or she has the consent of the Department;
- (b) he or she is a relative of the child; or
- (c) the child has lived with the foster carer for at least 3 years preceding the application.

(4) The period of 3 years mentioned in subsection (3)(c) need not be continuous but must have begun not more than 5 years before the making of the application.

(5) A court must not—

- (a) make any order under section 18, other than one varying or revoking such an order, with respect to a child who has reached the age of 16; or
- (b) make any order under section 18 which is to have effect for a period which will end after the child has reached the age of 16,

unless it is satisfied that the circumstances of the case are exceptional.

Duration of orders

22. (1) An order under this Part with respect to a child does not continue in force after the child has reached the age of 18.

(2) Any order under section 18 with respect to a child ceases to have effect on the making of a care order with respect to the child.

(3) Any order under section 18 with respect to a child remains in force until the child reaches the age of 16, unless—

- (a) it is made at a time when the child has reached that age (in which case it remains in force until he or she reaches the age of 18); or
- (b) it is to have effect beyond that age by virtue of section 21(5)(b).

(4) If—

- (a) a residence order has been made with respect to a child; and
- (b) as a result of the order the child lives, or is to live, with one of 2 parents who each have parental responsibility for him or her,

the residence order ceases to have effect if the parents live together for a continuous period of more than 6 months.

(5) A contact order which requires the parent with whom a child lives to allow the child to visit, or otherwise have contact with, his or her other parent ceases to have effect if the parents live together for a continuous period of more than 6 months.

Effect of residence order

23. (1) If a court makes a residence order in favour of the father of a child it must, if the father would not otherwise have parental responsibility for the child, also make an order under section 12 giving him that responsibility; and the order must not be revoked while the

residence order remains in force.

(2) If a court makes a residence order in favour of any person who is not a parent or guardian of the child concerned, the person has parental responsibility for the child while the residence order remains in force.

(3) If a person has parental responsibility for a child by virtue of subsection (2), he or she does not have the right to—

- (a) agree, or refuse to agree, to the making of an adoption order with respect to the child; or
- (b) appoint a guardian for the child.

(4) If a residence order is in force with respect to a child, no person may—

- (a) cause the child to be known by a new surname; or
- (b) remove the child from St Helena,

without either the written consent of every person who has parental responsibility for the child or the leave of the court; but this subsection does not prevent the person in whose favour the order is made removing the child from St Helena for a period of less than one month.

(5) When making a residence order with respect to a child, the court may grant the leave required by subsection (4)(b), either generally or for specified purposes.

Enforcement of residence orders

24. If—

- (a) a residence order made by the Magistrates' Court in favour of any person is in force with respect to a child;
- (b) any other person is in breach of the arrangements settled by the order; and
- (c) a copy of the order has been served on that other person,

the order may, without affecting any other remedy which may be available, be enforced as if it were an order of the Magistrates' Court requiring that other person to give up the child to the person in favour of whom the residence order is made.

Financial provision orders

25. Schedule 1 has effect for the purpose of enabling the court to make financial provision for children in certain family proceedings.

Jurisdiction

26. (1) Any powers of the Magistrates' Court under this Ordinance are exercisable even though any party to the proceedings is residing outside St Helena, except that it must not entertain an application under paragraph 9 of Schedule 1 unless both the parties to the agreement in question are resident in St Helena.

(2) The Magistrates' Court must not entertain any application involving the administration or application of any property belonging to or held in trust for a child or the income of such property.

(3) The Magistrates' Court must not make any order under paragraph 1 of Schedule 1 other than—

- (a) an order under paragraph 1(1)(a) or (c); or
- (b) an order varying, revoking or reviving an order under paragraph 1(1)(a).

(4) The amount of any lump sum to be paid by a lump sum order made by the Magistrates' Court must not exceed £2,500; but the Magistrates' Court may make a lump sum order not exceeding that amount even though the parent was required to pay a lump sum by a previous order under this Part.

(5) *Not used*

(6) The Magistrates' Court must not make any order under paragraph 9 of Schedule 1 except—

- (a) in a case where the agreement contains no provision for periodical payments by either of the parties - an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the child;
- (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments - an order increasing or reducing the rate of, or terminating, any of those payments,

and must not in any case make an order on an application under paragraph 10 of that Schedule.

(7) If an application is made to the Magistrates' Court for an order under this Ordinance, and the court considers that the matter is one which would be more conveniently dealt with by the Supreme Court, the court must refuse to make the order, and no appeal lies from that refusal; but the court may exercise its powers under paragraph 8 of Schedule 1 to make interim orders.

(8) In any proceedings in the Supreme Court relating to or comprising the same subject matter as an application that is refused under subsection (7), the application must, if the Supreme Court so orders, be reheard and determined by the Magistrates' Court.

Wardship

27. (1) Subject to subsection (2), no child becomes a ward of court except by an order made by the Supreme Court.

(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.

(4) No application may be made by the Department under subsection (1) unless the Department has obtained the leave of the Supreme Court, which must not be granted unless the Court is satisfied that—

- (a) the result which the Department wishes to achieve could not be achieved through

- the making of any other order for which the Department is entitled to apply (assuming that any requisite leave were granted); and
- (b) there is reasonable cause to believe that, if a wardship order is not granted with respect to the child, the child will suffer, or be likely to suffer, significant harm.

(5) The making of a care order with respect to a child who is a ward of court brings the wardship to an end.

Restriction on further applications

28. 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 Ordinance 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 (that is, the leave of any court having jurisdiction to hear the application in question).

PART V GENERAL FUNCTIONS OF DEPARTMENT

Division 1 - General

General duties of Department

29. (1) The Department is responsible for—
- (a) promoting the welfare and rights of children in St Helena;
 - (b) promoting awareness of the views and interests of children in St Helena;
 - (c) providing, or making arrangements for the provision of, training in child care and parenting; and
 - (d) providing and disseminating information and advice on child care, parenting and other matters affecting the welfare and rights of children.
- (2) In exercising its functions under this Ordinance, the Department must, for the purpose of promoting the welfare and rights of children, take reasonable steps designed to reduce the need to bring—
- (a) proceedings for care and supervision orders with respect to children;
 - (b) criminal proceedings against children;
 - (c) any family or other proceedings with respect to children which might lead to them being placed in the Department's care; or
 - (d) proceedings under the inherent jurisdiction of the Supreme Court with respect to children.
- (3) In exercising its functions under this Ordinance, the Department 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) consider and research any matter relating to the interests of children;
 - (d) publish a report on any matter considered or researched by it under this section.
- (4) The Department is to be concerned in particular under this section 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.

(5) The Department 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 (3)(c).

Functions of Department in relation to children in danger or need

30. (1) The Department must, in accordance with the following provisions of this Ordinance, take such steps as 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 Department may provide, or arrange with voluntary organisations or other persons for the provision of, all or any of the services specified in subsection (3) 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) The services referred to in subsection (2) are—

- (a) accommodation for children who require it in the circumstances specified in section 32;
- (b) advice, guidance and counselling;
- (c) occupational, social, cultural or recreational facilities;
- (d) home help;
- (e) assistance with travelling to and from home for the purpose of taking advantage of any service provided under subsection (2) or any similar service;
- (f) publishing information about any service provided under subsection (2) or any similar service.

(4) Any public authority other than the Department may, in the exercise of its statutory functions, co-operate with the Department in the provision by the Department of any of the services specified in subsection (3).

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

- (a) without the provision for the child of services under this Part, 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 such standard;
- (b) the child's health or development is likely to be significantly impaired, or further impaired, without the provision for him or her of such services; or
- (c) the child is disabled.

Duties of Department where it looks after children

31. (1) For the purposes of this Ordinance the Department is looking after a child if—

- (a) the child is in the care of the Department; or
- (b) the Department provides accommodation (other than accommodation in a hospital) for the child under this Ordinance or any other enactment for a continuous period of more than 24 hours.

(2) Without affecting its duty to provide accommodation under section 32(1), if the Department is looking after a child it must—

- (a) safeguard and promote the child's welfare;
- (b) maintain the child (apart from providing accommodation for him or her);
- (c) advise, assist and befriend the child with a view to promoting the child's welfare after he or she ceases to be looked after by the Department; and
- (d) make use of such services available for children cared for by their own parents as appear to the Department reasonable in the child's case.

(3) If the Department is looking after or proposing to look after a child, it must—

- (a) before making any decision with respect to the child, so far as reasonably practicable, ascertain the wishes and feelings regarding the matter to be decided of—
 - (i) the child;
 - (ii) the child's parents;
 - (iii) any other individual who has parental responsibility for the child; and
 - (iv) any other person whose wishes and feelings the Department considers to be relevant; and
- (b) in making any such decision, give due consideration—
 - (i) (having regard to the child's age and understanding) to such wishes and feelings of the child as it has been able to ascertain;
 - (ii) to such wishes and feelings of any person mentioned in paragraph (a)(ii), (iii) or (iv) as it has been able to ascertain;
 - (iii) to the child's religious persuasion; and
 - (iv) to the child's cultural background.

(4) The Department may disregard any requirement of subsection (2) or (3) with respect to any child whom it is looking after, if it is satisfied that it is necessary to do so in order to protect the public from serious injury.

(5) Schedule 2 makes further provision for children looked after by the Department.

(6) Schedule 3 makes provision in relation to contributions towards the maintenance of children who are being looked after by the Department.

Division 2 - Provision of Accommodation for Children

Provision of accommodation

32. (1) The Department must provide accommodation for a child in the following circumstances—

- (a) if the child is in the care of the Department;

- (b) if the child is in need because—
 - (i) no person has parental responsibility for the child;
 - (ii) the child is lost or has been abandoned; or
 - (iii) a person who has been caring for the child is prevented from providing him or her with suitable accommodation or care;
- (c) if—
 - (i) the child is removed or kept away from home under Part VII; or
 - (ii) the child is remanded under section 89 to accommodation provided by the Department;
- (d) if the child is the subject of a supervision order imposing a residence requirement.

(2) The Department may provide accommodation for a child if it considers that to do so would safeguard or promote his or her welfare.

(3) Subject to subsections (5) and (6), the Department must not provide accommodation for a child under subsection (1)(b) or (2) if any person objects who—

- (a) has parental responsibility for the child; and
- (b) is willing and able to provide accommodation for the child, or to arrange for accommodation to be provided for him or her.

(4) Subject to subsections (5) and (6), any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the Department under subsection (1)(b) or (2).

(5) Subsections (3) and (4) do not apply while any person—

- (a) in whose favour a residence order is in force with respect to the child; or
 - (b) who has care of the child by virtue of an order made in the exercise of the Supreme Court's inherent jurisdiction with respect to children,
- agrees to the child being looked after in accommodation provided by or on behalf of the Department; and if there is more than one such person, all of them must agree.

(6) Subsections (3) and (4) do not apply if a child who has reached the age of 16 agrees to being provided with accommodation under this section.

(7) The powers of the Department to provide accommodation under this Ordinance do not affect any functions of the Department under any other enactment.

Manner in which accommodation may be provided

33. (1) The Department may provide accommodation for a child by—

- (a) placing the child, on such terms as to payment by the Department and otherwise as the Department decides, with—
 - (i) a family;
 - (ii) a relative of the child; or
 - (iii) any other suitable person,
- (b) maintaining the child in a home provided and managed by the Department;
- (c) maintaining the child in a registered children's home; or
- (d) making such other arrangements as seem appropriate to the Department.

(2) Any person with whom a child has been placed under subsection (1)(a) is referred

to in this Ordinance as “**an official foster carer**” unless the person is—

- (a) a parent of the child;
- (b) a person who is not a parent of the child but has parental responsibility for him or her; or
- (c) if the child is in care and there was a residence order in force with respect to him or her immediately before the care order was made, a person in whose favour the residence order was made.

(3) Unless it would not be reasonably practicable or consistent with the child’s welfare, the Department must make arrangements so that any child whom it is looking after can live with—

- (a) a parent of the child; or
- (b) another individual who has parental responsibility for the child; or
- (c) if the child is in the care of the Department and a residence order was in force with respect to him or her immediately before the care order was made - a person with whom the child was to live under the residence order, or
- (d) a relative, friend or other person connected with the child.

(4) Unless it would not be reasonably practicable or consistent with the child’s welfare, the Department must secure that—

- (a) any accommodation provided by it for a child is near his or her home;
- (b) if the Department is also providing accommodation for a brother or sister of the child, they are accommodated together;
- (c) if the child is disabled, the accommodation is not unsuitable for his or her needs.

Registration of official foster carers

33A. (1) The Department must maintain a register of official foster carers.

(2) A person who wishes to register himself or herself as an official foster carer, may apply to the Department in the prescribed manner.

(3) The Department may—

- (a) register the applicant on such conditions as it thinks fit;
- (b) require the applicant to fulfil such conditions as it thinks fit before registering; or
- (c) refuse the applicant’s application for registration.

(4) The Department may, as it thinks fit, suspend or cancel the registration of an official foster carer or impose any conditions, if it is satisfied that—

- (a) there has been a breach of any regulation made under section 35 or any condition subject to which an application was granted;
- (b) the official foster carer or a person residing at his or her home has been charged with or convicted of a serious offence; or
- (c) the welfare of children placed with the official foster carer requires such action to be taken.

(5) Before exercising its powers under subsection (3)(c) or (4), the Department must give the applicant a reasonable opportunity to present his or her views to the Department in person or in writing, as the Department thinks fit.

(6) If the Department exercises its powers under subsection (3)(c) or (4), it must inform the applicant in writing of the reason for its decision.

Disqualifications

33B. (1) A person who is disqualified by regulations under section 69(1) from fostering a child privately is deemed unsuitable to be an official foster carer unless the person has disclosed to the Department the fact that he or she is so disqualified and has obtained its written consent.

(2) A person who fails to disclose that he or she is disqualified under subsection (1) commits an offence.

Penalty: A fine of £5,000.

(3) If the Department refuses to give its consent under this section, it must inform the applicant in writing of the reason for its refusal.

Secure accommodation

34. (1) Subject to this section and section 89(4), a child who is being looked after by the Department must not be placed, and, if placed, must not be kept, in accommodation provided for the purpose of restricting liberty ("**secure accommodation**") unless it appears—

- (a) that—
 - (i) the child has a history of absconding and is likely to abscond from any other description of accommodation; and
 - (ii) if the child absconds, he or she will suffer, or be likely to suffer, significant harm; or
- (b) that if the child is kept in any other kind of accommodation he or she is likely to injure himself or herself or other persons.

(2) A child must not be kept in secure accommodation after the end of any period that is prescribed, unless a juvenile court has by an order made on the application of the Department authorised the child to be kept there.

- (3) Subject to subsection (5), on an application under subsection (2) the court must—
 - (a) make the order applied for if (and only if) it is satisfied that—
 - (i) the condition specified in subsection (1)(a) or (b); and
 - (ii) any further prescribed conditions, are fulfilled; and
 - (b) in the order specify the maximum period (which must not exceed the prescribed period) for which the child may be kept in secure accommodation without a further order under subsection (2).

(4) If the court adjourns the hearing of an application under subsection (2), it may make an interim order permitting the child to be kept in secure accommodation during the period of the adjournment.

- (5) The court must not make an order under subsection (2) unless—
 - (a) it is satisfied that the Department has taken all such steps as are reasonable and

- practicable to notify any person who has parental responsibility for the child of the Department's intention to make the application; and
- (b) if the child is not legally represented in that court, the child has been informed of the right to apply for legal aid and given an opportunity to do so, and has refused or failed to apply.
- (6) This section—
- (a) does not apply to a child remanded under section 89 to accommodation provided by the Department;
- (b) does not apply to any prescribed description of children; and
- (c) has effect in relation to children of a prescribed description subject to any prescribed modifications.

(7) The making of an order under this section does not affect any other power of a court to make any other order or to give directions relating to the child to whom the order relates.

Division 3 - Supplemental

Regulations

35. (1) The Governor in Council may make regulations with respect to—
- (a) the exercise of the Department's functions under this Ordinance; and
- (b) the activities of voluntary organisations, official foster carers and others under arrangements made by the Department with them for the provision of services specified in section 30(3).
- (2) Regulations under this section may in particular prescribe—
- (a) the notice to be given to any child and to other persons of action taken or intended to be taken by the Department or by any body or person referred to in subsection (1)(b) with respect to the child;
- (b) the procedure to be followed in connection with any such action;
- (c) the records of any such action to be maintained by the Department or such a body or person.

Investigations

36. (1) If, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care order or a supervision order to be made with respect to the child, the court may direct the Department to undertake the investigation of the child's circumstances.

(2) If the court gives a direction under this section the Department must, when undertaking the investigation, consider whether it should—

- (a) apply for a care order or a supervision order with respect to the child; or
- (b) take any other action with respect to the child.

(3) If the Department undertakes an investigation under this section and decides not to apply for a care order or a supervision order with respect to the child concerned, it must inform the court of—

- (a) its reasons for so deciding; and
- (b) any other action which it has taken, or proposes to take, with respect to the child, and must so inform the court before the end of the period of 8 weeks beginning with the date of the direction, or any shorter period the court directs.

Reports

37. (1) When considering any question with respect to a child under this Ordinance the court may ask the Department to arrange for an officer of the Department, or may ask a probation officer, 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 Department or the probation officer, as the case may be, must comply with the request.

(2) A report made pursuant to subsection (1) is made to the court at a hearing of the application unless it is in writing, in which case—

- (a) a copy of the report must be given to each party to the proceedings or to his or her advocate either before or during a hearing of the application; and
- (b) if the court thinks fit, the report, or such part of the report as the court requires, must be read aloud at a hearing of the application.

(3) The court may and, if requested to do so at the hearing by a party to the proceedings or his or her advocate, must require the officer by whom the report was made to give evidence of or with respect to the matters referred to in the report and, if the officer gives such evidence, any party to the proceedings may give or call evidence with respect to any such matter or any matter referred to in the officer's evidence.

(4) The court may take account of—

- (a) any statement contained in a report made at a hearing of an application or of which copies have been given to the parties or their advocates in accordance with subsection (2)(a); and
 - (b) any evidence given by the officer under subsection (3),
- in so far as the statement or evidence is, in the opinion of the court, relevant to the application, notwithstanding any enactment or rule of law to the contrary.

PART VI SAFEGUARDING OF CHILDREN BOARD

Establishment of the Safeguarding of Children Board

38. (1) The Governor must establish a Safeguarding of Children Board (“**the SCB**”) for St Helena, to be known as “the St Helena Safeguarding of Children Board”.

(2) The SCB must include such persons or their representatives, and the representatives of such bodies, that exercise functions or are engaged in activities relating to children as the Governor in Council may by regulations prescribe.

Functions and procedure of SCB

39. (1) The objective of the SCB is to—

- (a) co-ordinate what is done by each person or body represented on it for the

- (b) purposes of safeguarding and promoting the welfare of children in St Helena; and ensure the effectiveness of what is done by each such person or body for those purposes.

(2) The SCB is to have such functions in relation to its objective as the Governor in Council may by regulations prescribe (which may in particular include functions of review or investigation).

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

Funding of SCB

40. (1) The SCB is 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 SCB.

SCB: supplementary

41. (1) The Governor in Council may by regulations make provision as to the functions of the Department in relation to the SCB.

(2) A Government Department or public officer must, in exercising its or his or her functions relating to the SCB, have regard to any guidance given to them for the purpose by the Governor in Council.

PART VII CARE AND SUPERVISION

Care and supervision orders

42. (1) On the application of the Department or authorised person, a court may make an order—

- (a) placing the child in the care of the Department (a “**care order**”); or
- (b) putting the child under the supervision of the Department or, with the consent of the Department, of a probation officer (a “**supervision order**”).

(2) A court must not make a care order or a supervision order unless it is satisfied that—

- (a) the child is suffering, or likely to suffer, significant harm; and
- (b) the harm, or likelihood of harm, is attributable to—
 - (i) the care given to the child, or likely to be given to him or her if the order were not made, not being what it would be reasonable to expect a parent to give to the child; or
 - (ii) the child being beyond parental control.

(3) No care order or supervision order may be made with respect to a child who has reached the age of 17 (or 16, in the case of a child who is married).

(4) An application under this section may be made on its own or in any family proceedings.

(5) The court may—

- (a) on an application for a care order - make a supervision order; or
- (b) on an application for a supervision order - make a care order.

(6) If an authorised person proposes to make an application under this section he or she must—

- (a) if it is reasonably practicable to do so; and
- (b) before making the application,

consult the Department.

(7) An application made by an authorised person must not be entertained by the court if, at the time when it is made, the child concerned is—

- (a) the subject of an earlier application for a care order, or supervision order, which has not been disposed of; or
- (b) subject to a care order or supervision order.

(8) If the question of whether harm suffered by a child is significant turns on the child's health or development, his or her health or development is to be compared with that which could reasonably be expected of a similar child.

(9) In this section—

“authorised person” means any person authorised by order of the Governor in Council to bring proceedings under this section and any officer of a body which is so authorised.

Simultaneous applications

42A. (1) When an application for a care order is pending before the court, an application under section 98 or section 103 may be made to the same court and proceeded with concurrently with the application for the care order.

(2) If an application of either or both of the kinds referred to in subsection (1) is made, and the result of the original proceedings is the making of a care order, the court must proceed forthwith to determine the application under section 98 or 103, as the case may be, unless the court determines that to do so would be incompatible with the principles set out in section 3.

Effect of care order

43. (1) When a care order is made with respect to a child, it is the duty of the Department to receive the child into its care and to keep him or her in its care while the order remains in force.

(2) While a care order is in force with respect to a child, the Department—

- (a) has parental responsibility for him or her; and
- (b) may determine the extent to which a parent or guardian of the child may meet his or her parental responsibility for the child, subject to—
 - (i) the following provisions of this section; and

- (ii) any right, duty, power, responsibility or authority which a parent or guardian has in relation to the child and his or her property by virtue of an enactment other than this section.

(3) The Department must not exercise its power under subsection (2)(b) unless it is satisfied that it is necessary to do so in order to safeguard or promote the welfare of the child.

(4) Nothing in subsection (2)(b) prevents a parent or guardian of the child who has care of the child from doing what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting his or her welfare.

(5) While a care order is in force with respect to a child, the Department, except with the leave of the court—

- (a) must not cause the child to be brought up in any religious persuasion other than that in which he or she would have been brought up if the order had not been made; or
- (b) does not have the right to—
 - (i) agree or refuse to agree to the making of an adoption order with respect to the child; or
 - (ii) appoint a guardian for him or her.

(6) Except with the leave of the court, no person may, while a care order is in force with respect to a child—

- (a) cause the child to be known by a new surname; or
- (b) remove him or her from St Helena,

without the written consent of every person who has parental responsibility for the child.

(7) Subsection (6)(b) does not—

- (a) prevent the removal of such a child by the Department for a period of less than 3 months; or
- (b) apply to arrangements for such a child to live outside St Helena (which are governed by paragraph 6 of Schedule 2).

Parental contact, etc. with children in care

44. (1) If a child is in the care of the Department, the Department must, subject to this section, allow the child reasonable contact with—

- (a) his or her parents;
- (b) any guardian of the child;
- (c) if there was a residence order in force with respect to the child immediately before the care order came into force - the person in favour of whom the order was made; and
- (d) if, immediately before the care order was made, an individual had care of the child by virtue of an order made in the exercise of the Supreme Court's inherent jurisdiction with respect to children - that individual.

(2) On an application made by the Department or the child, the court may make any order it considers appropriate with respect to the contact that is to be allowed between the child and any named person.

(3) On an application made by any person—
 (a) mentioned in subsection (1)(a) to (d); or
 (b) who has obtained the leave of the court to make the application,
 the court may make any order it considers appropriate with respect to the contact which is to be allowed between the child and that person.

(4) On an application made by the Department or the child, the court may make an order authorising the Department to refuse to allow contact between the child and any person mentioned in subsection (1)(a) to (d) and named in the order.

(5) When making a care order with respect to a child, or in any family proceedings in connection with a child who is in the care of the Department, the court may make an order under this section, even though no application for such an order has been made with respect to the child, if it considers that the order should be made.

(6) The Department may refuse to allow the contact that would otherwise be required by virtue of subsection (1) or an order under this section if—

- (a) it is satisfied that it is necessary to do so in order to safeguard or promote the welfare of the child; and
- (b) the refusal—
 - (i) is decided upon as a matter of urgency; and
 - (ii) does not last for more than 7 days.

(7) An order under this section may impose any conditions the court considers appropriate.

(8) The court may vary or revoke any order made under this section on the application of the Department, the child concerned or the person named in the order.

(9) An order under this section may be made either at the same time as the care order itself or later.

- (10) Before making a care order with respect to any child the court must—
 - (a) consider the arrangements which the Department has made, or proposes to make, for affording any person contact with the child; and
 - (b) invite the parties to the proceedings to comment on those arrangements.

Supervision orders

- 45. (1) While a supervision order is in force it is the duty of the supervisor—
 - (a) to advise, assist and befriend the supervised child;
 - (b) to take such steps as are reasonably necessary to give effect to the order; and
 - (c) if—
 - (i) the order is not wholly complied with; or
 - (ii) the supervisor considers that the order may no longer be necessary, to consider whether or not to apply to the court for its variation or revocation.

- (2) Schedule 4 makes further provision with respect to supervision orders.

Interim orders

46. (1) If—

- (a) in any proceedings on an application for a care order or supervision order, the proceedings are adjourned; or
- (b) the court gives a direction under section 36(1),

the court may make an interim care order or an interim supervision order with respect to the child concerned.

(2) A court must not make an interim care order or interim supervision order unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 42(2).

(3) If, in any proceedings on an application for a care order or a supervision order, a court makes a residence order with respect to the child concerned, it must also make an interim supervision order with respect to the child unless it is satisfied that his or her welfare will be satisfactorily safeguarded without an interim order being made.

(4) An interim order has effect for the period specified in the order, but in any event ceases to have effect on whichever of the following events first occurs—

- (a) *Repealed*
- (b) *Repealed*
- (c) in a case within subsection (1)(a) - the disposal of the application;
- (d) in a case within subsection (1)(b) - the disposal of an application for a care order or supervision order made by the Department with respect to the child;
- (e) in a case which falls within subsection (1)(b) and in which—
 - (i) the court has given a direction under section 36(1); but
 - (ii) no application for a care order or supervision order has been made with respect to the child -
 the expiry of the period fixed by that direction.

(5) *Repealed*

(6) If a court makes an order under or by virtue of this section it must, in determining the period for which an interim order is to be in force, consider whether any party who was, or might have been, opposed to the making of the order was in a position to argue his or her case against the order in full.

(7) If the court makes an interim order, it may give such directions (if any) as it considers appropriate with regard to the medical or psychiatric examination or other assessment of the child; but if the child is of sufficient understanding to make an informed decision he or she may refuse to submit to the examination or other assessment.

(8) A direction under subsection (6) may be to the effect that there is to be no such examination or assessment, or no such examination or assessment unless the court directs otherwise; and such a direction may be—

- (a) given when the interim order is made or at any time while it is in force; and
- (b) varied at any time on the application of the Department, the child or any person with parental responsibility for him or her.

Power to include exclusion requirement in interim care order

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

(2) The conditions referred to in subsection (1) are that—

- (a)* the court is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 42(2)(a) and (b)(i);
- (b)* there is reasonable cause to believe that, if a person (“**the relevant person**”) is excluded from a dwelling-house in which the child lives, the child will cease to suffer, or be likely to suffer, significant harm; and
- (c)* that 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 the child; and
 - (ii)* consents to the inclusion of the exclusion requirement.

(3) Schedule 5 has effect with respect to exclusion requirements under this section and undertakings to the like effect.

Revocation and variation, etc. of care orders and supervision orders

48. (1) A care order may be revoked by the court on the application of—

- (a)* any person who has parental responsibility for the child;
- (b)* the child himself or herself; or
- (c)* the Department.

(2) A supervision order may be varied or revoked by the court on the application of—

- (a)* any person who has parental responsibility for the child;
- (b)* the child himself or herself; or
- (c)* the supervisor.

(3) On the application of a person who is not entitled to apply for the order to be revoked, but who is a person with whom the child is living, a supervision order may be varied by the court in so far as it imposes a requirement which affects that person.

(4) If a care order is in force with respect to a child the court may, on the application of any person entitled to apply for the order to be revoked, substitute a supervision order for the care order.

(5) When a court is considering whether to substitute one order for another under subsection (4) any provisions of this Ordinance which would otherwise require section 42(2) to be satisfied at the time when the proposed order is substituted or made is to be disregarded.

Duration of care orders

49. (1) Unless previously revoked, and subject to subsection (2), a care order (other than an interim order) continues in force until the child concerned reaches the age of 18.

- (2) A care order with respect to a child ceases to have effect—
 - (a) if the child is adopted;
 - (b) on the making of any of the following orders with respect to the child—
 - (i) a residence order;
 - (ii) an order under section 13.

Orders, etc. pending appeal

- 50. (1)** If—
- (a) a court dismisses an application for a care order or a supervision order; and
 - (b) at the time when the court dismisses the application, an interim care order is in force with respect to the child,

the court may make an order pending appeal, that is, a supervision order or (if the application was for a care order) a care order with respect to the child to have effect for a period, not exceeding the appeal period, specified in the order.

(2) If a court revokes a care order or a supervision order, it may direct that the order continues to have effect for a period, not exceeding the appeal period, specified in the order.

(3) An order or direction under subsection (1) or (2) may be made subject to any directions or further directions the court may see fit to include in the order or direction.

(4) On an appeal against any decision of a court on which an order or direction under subsection (1) or (2) is made, or on an application in connection with a proposed appeal against such a decision, the appellate court may extend the period for which the order or direction is to have effect, but not so as to extend it beyond the end of the appeal period.

- (5) In this section “**the appeal period**” means—
- (a) if an appeal is made against the decision in question - the period between the making of the decision and the determination of the appeal;
 - (b) otherwise - the period during which an appeal may be made against the decision.

Restrictions on applications

- 51. (1)** If an application has been made for —
- (a) the revocation of a care order;
 - (b) the revocation of a supervision order; or
 - (c) the substitution of a supervision order for a care order;

no further application of any of those kinds (except in relation to an interim order) may be made with respect to the child concerned without the leave of the court, unless the period between the disposal of the previous application and the making of the further application exceeds 6 months.

(2) If an application for an order under section 42 has been refused, the applicant may not make a further application for such an order without the leave of the court, unless the period between the disposal of the previous application and the making of the further application exceeds 6 months.

(3) On disposing of any application for an order under this Part, the court may (whether or not it makes any other order in response to the application) order that no

application for an order under this Ordinance of a specified kind may be made with respect to the child concerned by any person named in the order without the leave of the court.

(4) References in this section to the leave of the court are to the leave of any court having jurisdiction to hear the application in question.

PART VIII PROTECTION OF CHILDREN

Child assessment orders

52. (1) On the application of the Department or authorised person for an order to be made under this section with respect to a child, the Magistrates' 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 likely to suffer, significant harm; and
- (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 such an assessment will be made, or be satisfactory, in the absence of an assessment order under this subsection.

(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 it is the duty of any person who is in a position —

- (a) to produce the child to any person named in the order; and
- (b) to comply with any directions relating to the assessment of the child the court thinks fit to specify 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 a period or periods specified in the order.

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

(10) A person making an application for a child assessment order must take such steps as are reasonably practicable 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;
- (e) any person who is allowed to have contact with the child by virtue of an order under section 44;
- (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

53. (1) If a 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 be likely to suffer, significant harm if—
 - (i) the child is not removed to accommodation provided by or on behalf of the applicant; or
 - (ii) the child 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 Department—
 - (i) enquiries are being made with respect to the child under section 36; and
 - (ii) such enquiries are being frustrated by access to the child being unreasonably refused to a person authorised by the Department to seek access in connection with the enquiries; and
 - (iii) the Department has reasonable cause to believe that such 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 Department.

(3) An emergency protection order authorises—

- (a) the removal of the child at any time to accommodation provided by or on behalf of the Department 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,

but the Department must only exercise the power given by paragraph (a) or (b) in order to safeguard the welfare of the child.

(4) An emergency protection order gives the Department parental responsibility for the child; and the Department must take, and must 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 directions that are appropriate with respect to—

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

(6) If a court makes an emergency protection order, it may give any directions that are appropriate with respect to the medical or psychiatric 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 such examination or assessment; or
- (b) no such 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 having 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 Department has exercised the power given by subsection (3)(a) or (b), but
- (c) it appears to the Department 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,

it must return the child or allow him or her to be removed.

(9) If the Department 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 Department (with the agreement of the court) considers appropriate.

(10) If the Department 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 Department must, subject to any directions under subsection (5), allow the child reasonable contact with—

- (a) the child's 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;
- (e) any person who is allowed to have contact with the child by virtue of an order under section 44;
- (f) any person acting on behalf of any of those persons.

(12) Whenever it is reasonably practicable to do so, an emergency protection order must name the child; and if the order does not name the child, it 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 the child, commits an offence.

Penalty: A fine of £2,500.

Power to include exclusion requirement in emergency protection order

54. (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 paragraph (a) of section 53(1) - 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 paragraph (b) of section 53(1) - 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 the child; and
 - (ii) consents to the inclusion of the exclusion requirement.

(3) Schedule 5 has effect with respect to exclusion requirements under this section and undertakings to the like effect.

Duration of emergency protection orders, etc.

55. (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 56(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 56.

(4) The Department may, while an emergency protection 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, as 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 Magistrates' 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 such 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 such 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 an officer of the Department, in exercising any powers by virtue of the order, be accompanied by a medical practitioner, if he or she chooses.

Removal by police

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

- (a) remove the child to suitable accommodation and keep him or her there; or
- (b) take any steps that are reasonable to ensure that the child's removal from any hospital, or other place, in which the child 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 Department 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 the child 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 the child under this section and the reasons for taking them, and of the further steps that may be taken with respect to him or her under this section;
- (c) take any steps that are reasonably practicable 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 Director of Police (a “**designated officer**”); and
- (e) if the child was taken into police protection by being removed to accommodation which is not provided by or on behalf of the Department, secure that the child is moved to accommodation which is so provided.

(3) As soon as is reasonably practicable after taking a child into police protection, the police officer concerned must take any steps that are reasonably practicable 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 he or she 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 Department, apply on behalf of the Department for an emergency protection order to be made under section 53 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 or, if the child is in accommodation provided by or on behalf of the Department, the Department 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;
 - (e) any person who is allowed to have contact with the child by virtue of an order under section 44;
 - (f) any person acting on behalf of any of those persons,
- to have such contact (if any) with the child as, in the opinion of the designated officer or the Department, 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).

Department's duty to investigate

- 57. (1)** If the Department—
- (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 Department must make or cause to be made any enquiries the Department considers necessary to enable it to decide whether it should take any action to safeguard or promote the welfare of the child.

(2) If the Department has obtained an emergency protection order with respect to a child, the Department must make or cause to be made any enquiries it considers necessary to enable it to decide what action it should take to safeguard or promote the welfare of the child.

(3) The enquiries required by subsections (1) and (2) must in particular be directed towards establishing—

- (a) whether the Department should make any application to the court, or exercise any of its other powers under this Ordinance, with respect to the child;
- (b) whether, in the case of a child with respect to whom an emergency protection order has been made, or who is not in accommodation provided by or on behalf of the Department, it would be in the best interests of the child (while an emergency

protection order remains in force) for him or her to be in such accommodation; and

- (c) whether, in the case of a child who has been taken into police protection, it would be in his or her best interests to ask for an application to be made under section 56(6).

(4) If enquiries are being made under subsection (1) with respect to a child, the Department must (with a view to enable it to determine what action, if any, to take with respect to him or her) take such steps as are reasonably practicable—

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

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

(5) If, as a result of any enquiries made under this section, it appears to the Department that there are matters connected with the education of the child that should be investigated, it must consult the Director of Education and Employment.

(6) If, in the course of enquiries made under this section any officer of the Department, or any person authorised by the Department 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 Department must apply for an emergency protection order, a child assessment order, a care order or a supervision order unless it is satisfied that the child's welfare can be satisfactorily safeguarded without doing so.

(7) If, on the conclusion of any enquiries or review made under this section, the Department 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.

(8) If, as a result of complying with this section, the Department 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).

Discovery of children in need of protection

58. (1) If it appears to a court making an emergency protection order that adequate information as to the child's whereabouts is not available to the Department but is available to another person, it may include in the order a provision requiring that person to disclose, if asked to do so by the Department, any information that person has as to the child's whereabouts.

(2) No person is excused from complying with such a requirement 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.

(3) An emergency protection order may authorise a police officer to enter premises specified in the order and search for the child with respect to whom the order is made.

(4) If the court is satisfied that there is reasonable cause to believe that there may be another child on those premises with respect to whom an emergency protection order ought to be made, it may make an order authorising a police officer to search for that other child on those premises.

(5) Whenever it is reasonably practicable to do so, an order under subsection (4) must name the child; and if it does not name the child it must describe him or her as clearly as possible.

(6) If—
 (a) an order has been made under subsection (4);
 (b) the child concerned has been found on the premises; and
 (c) the Department is satisfied that the grounds for making an emergency protection order exist with respect to the child,
 the order has effect as if it were an emergency protection order.

(7) If an order has been made under subsection (4), the Department must notify the Clerk of the Peace of its effect; and the Clerk of the Peace must make a note of it against the entry relating to the order in the court register.

(8) A person who intentionally obstructs any person exercising any power conferred by subsection (3) or (4) commits an offence.
 Penalty: A fine of £2,500.

Abduction of child in care

59. (1) This section applies to a child who is—
 (a) in the care of the Department;
 (b) the subject of an emergency protection order; or
 (c) 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 the care order, the emergency protection order or section 56, as the case may be.

(2) It is an offence for a person knowingly and without lawful authority or reasonable excuse 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

60. (1) If it appears to a court that there is reason to believe that a child to whom section 59 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) This section 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 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 Department; 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, but 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) No person is 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 authorised by the Department, after the recovery order is made, to exercise any power under the order;

“the designated officer” has the same meaning as in section 56;

“the responsible person” has the same meaning as in section 59.

(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 IX CHILDREN'S HOMES

Introductory

61. (1) For the purposes of this Ordinance “**children’s home**” means (subject to the following provisions of this section) a home which provides, or usually provides or is intended to provide, permanent care and accommodation wholly or mainly for more than 3 children at any one time.

(2) A child is not cared for and accommodated in a children’s home when he or she is cared for and accommodated by—

- (a) a parent of the child;
- (b) a person who is not a parent of the child but who has parental responsibility for him or her; or
- (c) a relative of the child.

(3) A child must not be treated as cared for and accommodated in a children’s home when—

- (a) any person mentioned in subsection (2)(a) or (b) is living at the home; or
- (b) the person caring for him or her is doing so in his or her personal capacity and not in the course of carrying out his or her duties in relation to the home.

(4) A home is not a children’s home if it is a home provided and managed by the Department.

(5) A home is not a children’s home by reason only that the person by whom it is carried on is exceeding the usual fostering limit to the extent that the person is permitted to do so by section 72(3) or (4).

Registration of children’s homes

62. (1) The Department must maintain a register of children’s homes.

(2) Subject to subsection (3), if a child is at any time cared for and accommodated in a children’s home that is not a registered children’s home, a person who carries on, or is concerned in the management of, the home commits an offence, unless the person has a reasonable excuse.

Penalty: A fine of £5,000.

(3) A person who carries on, or is concerned in the management of, a children’s home on the date on which this Ordinance comes into force, is responsible for ensuring that the home is registered with the Department within 3 months of the coming into force of this Ordinance and does not commit an offence under subsection (2) unless the person fails to register the home within that period and continues to carry on the home.

(4) A person who wishes to register a children’s home may apply to the Department in the prescribed manner.

(5) The Department may—

- (a) register the home on such conditions as it thinks fit;
- (b) require the applicant to fulfill such conditions as it thinks fit before registering the home; or
- (c) refuse the application for registration.

(6) The Department may, as it thinks fit, suspend or cancel the registration of a children's home, vary the conditions subject to which registration of the home was granted, or impose additional conditions, if it is satisfied that—

- (a) there has been a breach of any regulation made under section 64 or any condition subject to which an application was granted;
- (b) a person carrying on, or concerned in the management of the home, has been charged with or convicted of an offence under this Ordinance or any other offence; or
- (c) the welfare of children at the home requires such action to be taken.

(7) Before exercising its powers under subsection (5)(c) or (6), the Department must give the applicant or person carrying on, or concerned in the management of the home, as the case may be, a reasonable opportunity to present his or her views to the Department in person or in writing, as the Department thinks fit.

(8) If the Department exercises its powers under subsection (5)(c) or (6), it must inform the applicant or person carrying on, or concerned in the management of the home, as the case may be, in writing of—

- (a) the reason for its decision;
- (b) the right of appeal under section 67; and
- (c) the time within which the appeal may be made.

Disqualifications

63. (1) A person who is disqualified by regulations under section 69(1) from fostering a child privately must not carry on, or be otherwise concerned in the management of or have any financial interest in, a children's home unless the person has disclosed to the Department the fact that he or she is so disqualified and has obtained its written consent.

(2) A person must not employ in a children's home a person who is disqualified as mentioned in subsection (1) unless the employer has disclosed to the Department the fact that that person is so disqualified and has obtained the written consent of the Department.

(3) Subject to subsection (4), a person who contravenes subsection (1) or (2) commits an offence.

Penalty: A fine of £5,000.

(4) In proceedings for an offence under subsection (2) it is a defence for the person accused to prove that the person did not know, and had no reasonable grounds for believing, that the person who was being employed was disqualified by regulations under section 69(1).

(5) If the Department refuses to give its consent under this section, it must inform the applicant in writing of—

- (a) the reason for its refusal;
- (b) the right of appeal under section 67; and

- (c) the time within which the appeal may be made.

Regulations as to children's homes

64. (1) The Governor in Council may make regulations—

- (a) as to the placing of children in children's homes;
- (b) as to the conduct of such homes; and
- (c) for securing the welfare of children in such homes.

(2) Regulations under this section may in particular—

- (a) prescribe standards to which the premises used for children's homes are to conform;
- (b) impose requirements as to the accommodation, staff and equipment to be provided in such homes, and as to the arrangements to be made for protecting the health of children in such homes;
- (c) provide for the control and discipline of children in such homes;
- (d) require the furnishing to the Department of information as to the facilities provided for—
 - (i) the parents of children in the homes;
 - (ii) individuals who are not parents of such children but who have parental responsibility for them; and
 - (iii) other persons connected with such children, to visit and communicate with the children;
- (e) prohibit (except in accordance with section 34) the use of accommodation for the purpose of restricting the liberty of children in such homes;
- (f) impose requirements as to the keeping of records and giving of notice with respect to children in such homes;
- (g) impose requirements as to the facilities which are to be provided for giving religious instruction to children in such homes;
- (h) require notice to be given to the Department of any change of the person in charge of a children's home.

(3) Regulations under this section may provide that a contravention of, or failure to comply with, any specified provision of the regulations without reasonable excuse is an offence, punishable on summary conviction by a fine not exceeding £2,500.

Welfare of children in homes

65. (1) If a child is accommodated in a children's home, it is the duty of the person carrying on the home—

- (a) to safeguard and promote the child's welfare;
- (b) to make such use of the services and facilities available for children cared for by their own parents as appears to that person reasonable in the case of the child; and
- (c) advise, assist and befriend him or her with a view to promoting his or her welfare when he or she ceases to be so accommodated.

(2) Before making any decision with respect to any such child, the person carrying on the home must, so far as reasonably practicable, ascertain the wishes and feelings regarding the matter to be decided of—

- (a) the child;

- (b) his or her parents;
 - (c) any other individual who is not a parent of the child but who has parental responsibility for him or her; and
 - (d) any other person whose wishes and feelings the person carrying on the home considers to be relevant.
- (3) In making any such decision the person concerned must give due consideration—
- (a) having regard to the child's age and understanding, to such wishes and feelings of the child as he or she has been able to ascertain;
 - (b) to such other wishes and feelings mentioned in subsection (2) as he or she has been able to ascertain;
 - (c) to the child's religious persuasion; and
 - (d) to the child's cultural background.

Duties of Department

66. (1) The Department must satisfy itself that any person carrying on a children's home is satisfactorily safeguarding and promoting the welfare of children accommodated in the home.

- (2) The Department must arrange—
- (a) for every children's home to be inspected from time to time, and
 - (b) for children who are accommodated in children's homes to be visited from time to time in the interests of their welfare.

Appeals

67. (1) An appeal lies to the Supreme Court against any of the following decisions of the Department under this Part—

- (a) the refusal of an application for registration under section 62;
- (b) the conditions subject to which such an application is granted;
- (c) the suspension or cancellation of such registration, the variation of the conditions of registration or the imposition of an additional condition;
- (d) the refusal of consent under section 63(1) or (2).

(2) No appeal may be brought by a person more than 28 days after notice of the decision is given to the person.

- (3) On an appeal against a decision of the Department, the Supreme Court may—
- (a) affirm the decision;
 - (b) direct that the decision does not have effect;
 - (c) vary any condition;
 - (d) direct that any condition ceases to have effect; or
 - (e) direct that any conditions it thinks fit has effect in respect of the home.

(4) The Department must comply with any directions of the Supreme Court given under this section.

PART X
PRIVATE FOSTERING, CHILD-MINDING AND DAY CARE

Division 1 - Private Fostering

Privately fostered children

68. (1) For the purposes of this Part a child is “**privately fostered**” if (subject to the following provisions of this Part)—

- (a) the child is either under the age of 16 or disabled; and
- (b) he or she is cared for and provided with accommodation by someone other than—
 - (i) a parent of the child; or
 - (ii) an individual who is not a parent of the child but who has parental responsibility for him or her; or
 - (iii) a relative of the child,

and “**to foster a child privately**” means to look after the child in circumstances in which he or she is privately fostered.

(2) A child is not privately fostered if the person caring for and accommodating him or her—

- (a) has done so for a period of less than 28 days; and
- (b) does not intend to do so for any longer period.

(3) A child is not privately fostered while he or she is being looked after by the Department.

(4) A child is not privately fostered while he or she is in the care of any person in premises in which—

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

is for the time being living.

(5) A child is not privately fostered while he or she is in the care of any person in—

- (a) a children’s home;
- (b) a residential care home or psychiatric home;
- (c) a hospital; or
- (d) a school in which the child is receiving full-time education,

unless that person is caring for the child in a personal capacity and not in the course of carrying out duties in relation to the establishment in question.

(6) A child is not privately fostered while he or she is—

- (a) in the care of any person in compliance with a supervision order: residence requirement; or
- (b) placed in the care of a person who proposes to adopt the child under arrangements made by the Department.

Disqualifications

69. (1) The Governor in Council must by regulations provide for the

disqualification of persons from fostering a child privately.

(2) Regulations under subsection (1) may in particular provide for a person to be so disqualified if—

- (a) an order of a prescribed kind has been made at any time with respect to the person;
- (b) an order of a prescribed kind has been made at any time with respect to any child who has been in his or her care;
- (c) a requirement of a prescribed kind has been imposed at any time with respect to any such child, under or by virtue of any legislative provision;
- (d) the person has been convicted of any offence of a prescribed kind, or has been placed on probation or discharged absolutely or conditionally for any such offence;
- (e) a prohibition has been imposed on the person at any time under section 70 or under any other prescribed provision;
- (f) the person's rights and powers with respect to a child have at any time been vested in a prescribed authority under a prescribed provision.

(3) A person must not foster a child privately if the person is disqualified by regulations under subsection (1) from doing so, unless the person has disclosed to the Department the fact that he or she is so disqualified and has obtained its written consent.

(4) A person must not foster a child privately if—

- (a) he or she lives in the same household as a person who is disqualified from registration by virtue of regulations under this section; or
 - (b) he or she lives in a household at which any such person is employed,
- unless he or she has disclosed to the Department the fact that that person is so disqualified and has obtained its written consent.

(5) Subject to subsection (7), a person who contravenes subsection (4) or (5) commits an offence.

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

(6) A person who contravenes subsection (5) does not commit an offence if the person proves that he or she did not know, and had no reasonable grounds for believing, that any person living or employed in the household was disqualified by regulations under subsection (1).

(7) If the Department refuses to give its consent under this section, it must inform the applicant in writing of—

- (a) the reason for its refusal;
- (b) the right of appeal under section 81; and
- (c) the time within which the appeal may be made.

Restrictions on private fostering

70. (1) This section applies to a person who proposes to foster a child privately, or is fostering a child privately.

(2) If the Department is of the opinion that—

- (a) a person to whom this section applies is not a suitable person to foster a child;
- (b) the premises in which the child will be or is being accommodated are not suitable; or
- (c) it would be prejudicial to the welfare of the child for him or her to be, or continue to be, accommodated by that person in those premises,

the Department may by notice in writing impose a prohibition on the person under subsection (3).

(3) A prohibition imposed on any person under this subsection may prohibit the person from fostering privately—

- (a) any child in any premises;
- (b) any child in premises specified in the notice; or
- (c) a child identified in the notice in premises so specified.

(4) The Department may by notice in writing impose on a person to whom this section applies requirements (including a requirement varying a previous requirement) as to—

- (a) the number, age and sex of the children who may be privately fostered by the person;
- (b) the standard of the accommodation and equipment to be provided for the children;
- (c) the arrangements to be made with respect to the health and safety of the children; and
- (d) particular arrangements which must be made with respect to the provision of care for the children.

(5) A requirement under subsection (4)—

- (a) may be limited to a particular child or class of children; and
- (b) except in the case of a requirement under subsection (4)(a), may be limited by the Department so as to apply only when the number of children fostered by the person exceeds a specified number.

(6) The Department may, on the application of the person concerned or without any application—

- (a) if it is satisfied that a prohibition or requirement under this section is no longer justified, cancel it; or
- (b) vary or remove a requirement under this section or impose an additional requirement.

(7) If the Department imposes a prohibition or requirement on a person under this section, the notice must state—

- (a) the reason for the prohibition or requirement;
- (b) the right of appeal under section 81; and
- (c) the time within which the appeal may be made.

(8) A person who fosters a child privately in contravention of a prohibition under subsection (3) commits an offence.

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

(9) A person who fails without reasonable excuse to comply with a requirement

under subsection (4) commits an offence.

Penalty: A fine of £2,500.

Regulations as to private fostering

71. (1) The Governor in Council may by regulations make provision as to—

- (a) securing the private fostering of a child in urgent cases;
- (b) the circumstances in which notification is required to be given in connection with children who are, have been or are proposed to be fostered privately;
- (c) the manner and form in which such notification is to be given;
- (d) the placing of children in private foster care;
- (e) the conduct of private foster homes; and
- (f) the securing of the welfare of children in private foster homes.

(2) Regulations under this section may in particular—

- (a) require any person who is, or proposes to be, involved (whether or not directly) in arranging for a child to be fostered privately to notify the Department;
- (b) require any parent of a child, and any person who is not a parent of the child but has parental responsibility for him or her, who knows that it is proposed that the child should be fostered privately, to notify the Department;
- (c) require any parent of a child who is privately fostered, and any person who is not a parent of the child but has parental responsibility for him or her, to notify the Department of any change in the child's address;
- (d) require any person who proposes to foster a child privately to notify the Department of the proposal;
- (e) require any person who is fostering a child privately, or proposes to do so, to notify the Department of any offence of which the person has been convicted in St Helena or elsewhere;
- (f) require any person who is fostering a child privately to notify the Department of any change in the person's address;
- (g) require any person who is fostering a child privately to notify the Department of any person who begins, or ceases, to be a member of the person's household;
- (h) require any person who has been fostering a child privately, but has ceased to do so, to notify the Department (indicating, if the child has died, that that is the reason).

(3) It is an offence for a person ('A') to—

- (a) fail without reasonable excuse to give a notification required by regulations under this section—
 - (i) within the prescribed time; or
 - (ii) within a reasonable time; or
- (b) make, or cause or procure another person to make, any statement in any such notification which A knows to be false or misleading in a material particular.

Penalty: A fine of £5,000.

(4) Proceedings for an offence under subsection (3) may be brought at any time within 6 months from the date when evidence of the offence came to the knowledge of the Department.

Fostering limit

- 72. (1)** For the purposes of this section, a person fosters a child if—
- (a) the person is an official foster carer in relation to the child; or
 - (b) he or she fosters the child privately.
- (2)** Subject to the following provisions of this section a person must not foster more than 3 children (“**the usual fostering limit**”).
- (3)** A person may exceed the usual fostering limit if the children concerned are all brothers or sisters (or brothers and sisters) of one another.
- (4)** A person may exceed the usual fostering limit if he or she is exempted from it by the Department.
- (5)** If the Department exempts a person under subsection (4), it must inform the person by notice in writing—
- (a) that he or she is so exempted;
 - (b) of the children (described by name) whom he or she may foster; and
 - (c) of any condition to which the exemption is subject.
- (6)** The Department may at any time by notice in writing—
- (a) vary or cancel an exemption under subsection (4); or
 - (b) impose, vary or cancel a condition to which the exemption is subject.
- (7)** In exercising its functions under subsections (4) to (6) the Department must have regard in particular to—
- (a) the number of children whom the person proposes to foster;
 - (b) the arrangements which the person proposes for their care and accommodation;
 - (c) the intended and likely relationship between the person and the children;
 - (d) the period of time for which the person proposes to foster the children; and
 - (e) whether the welfare of the children (and that of any other children who are or will be living in the accommodation) will be safeguarded and promoted.
- (8)** A person ceases to be treated as fostering, and is treated as carrying on a children’s home, if—
- (a) the person exceeds the usual fostering limit; or
 - (b) if the person is exempted under subsection (4), he or she fosters a child not named in the exemption and in so doing exceeds the usual fostering limit, except where the children concerned are all brothers or sisters (or brothers and sisters) of one another.

Financial assistance for privately fostered children

- 73. (1)** The Government may give, or make arrangements for the giving of, financial assistance to any person for or in connection with the private fostering of a child.
- (2)** The Governor in Council may make regulations with respect to—
- (a) the making of applications for financial assistance under this section;
 - (b) the granting and refusal of financial assistance under this section;

- (c) the conditions subject to which financial assistance under this section may be granted; or
- (d) any other matters necessary or expedient for the purpose of giving effect to this section.

Welfare of privately fostered children

- 74. (1)** The Department must—
- (a) cause a child who is being privately fostered to be visited by an authorised officer of the Department at such regular intervals as it thinks fit;
 - (b) satisfy itself that the welfare of children who are, or are proposed to be, privately fostered is being, or will be, satisfactorily safeguarded and promoted, and
 - (c) secure that such advice is given to those concerned with them as appears to the Department to be needed.
- (2)** If the Department is not satisfied that the welfare of any child who is, or is proposed to be, privately fostered is being or will be satisfactorily safeguarded or promoted, it must—
- (a) unless the Department considers that it would not be in the child's best interests, take any steps reasonably practicable to secure that the care and accommodation of the child are undertaken by—
 - (i) a parent of the child;
 - (ii) an individual who is not a parent of the child but who has parental responsibility for the child; or
 - (iii) a relative of the child; and
 - (b) consider the extent to which (if at all) it should exercise any of its functions under this Ordinance with respect to the child.

Division 2 - Child-minding and Day Care

Child-minding and day care

- 75. (1)** For the purposes of this section and the following provisions of this Part—
- (a) a person acts as a child-minder if—
 - (i) he or she looks after one or more children under the age of 8, for reward; and
 - (ii) the period, or the total of the periods, which he or she spends so looking after children in any day exceeds 2 hours;
 - (b) a person does not provide day care for children unless the period, or the total of the periods, during which children are looked after exceeds 2 hours in any day.
- (2)** A person who—
- (a) is the parent or a relative of a child;
 - (b) has parental responsibility for a child; or
 - (c) is an official foster carer of a child or is fostering a child privately,
- does not act as a child-minder when looking after that child.
- (3)** A person ('A') who is employed to look after a child by—
- (a) a parent of the child;
 - (b) a person who is not a parent of the child but has parental responsibility for him or

her; or

(c) a relative of the child who has assumed responsibility for his or her care, does not act as a child-minder when looking after that child wholly or mainly in the home of the person so employing A.

(4) A person who is so employed by 2 different employers does not act as a child-minder when looking after any of the children concerned wholly or mainly in the home of either of the person's employers.

(5) A person does not act as a child-minder or provide day care in relation to a child while the child is being looked after in a school.

(6) A person does not provide day care in relation to a child while the child is being looked after in—

- (a) a children's home;
- (b) a residential care home or psychiatric home;
- (c) a hospital.

(7) The exception in subsection (5) or (6) only applies if the child concerned is being looked after in accordance with provision for day care made by—

- (a) the person carrying on the establishment in question; or
- (b) a person employed to work at that establishment and authorised to make that provision,

as part of the establishment's activities.

(8) If day care for children under the age of 8 is provided in particular premises on less than 6 days in any year, the provision of such day care is to be disregarded for the purposes of this Ordinance if the person making it has notified the Department in writing before the first occasion on which the premises are so used in that year.

(8A) In subsection (8) “**year**” means the year beginning with the day on which the day care is first provided in the premises, and any subsequent year.

(9) In this section and the following provisions of this Part—
“domestic premises” means any premises which are wholly or mainly used as a private dwelling;

“premises” includes a vehicle.

Registration

76. (1) The Department must keep—

- (a) a register of persons who act as child-minders on domestic premises; and
- (b) a register of persons who provide day care for children under the age of 8 on premises other than domestic premises,

and must make each register available for inspection by the public during normal working hours.

(2) If a person provides day care for children under the age of 8 on different premises, the person must be separately registered with respect to each of those premises.

(3) Subject to subsection (4), a person who—

- (a) acts as a child-minder on domestic premises; or
- (b) provides day care for children under the age of 8 on any premises (other than domestic premises),

without being registered by the Department as such, as the case may be, commits an offence.
Penalty: A fine of £5,000.

(4) A person who, immediately before the commencement of this Ordinance, acted as a child-minder or provided day care, must apply to be registered with the Department as a child-minder or day care provider, as the case may be, within 3 months of the coming into force of this Ordinance and does not commit an offence under subsection (3) unless he or she acts as child-minder or provides day care after the expiration of that period of 3 months without being registered.

(5) A person who wishes to register a child-minder or a day care provider may apply to the Department in the prescribed manner.

(6) Subject to regulations made under section 77, a person ('A') is qualified for registration for child-minding or for providing day care on particular premises if—

- (a) A, and every other person looking after children on any premises on which A is or is likely to be child-minding, or every person looking after children on the premises on which day care is to be provided, respectively, is suitable to look after children under the age of 8;
- (b) every person living or employed on the premises in question is suitable to be in regular contact with children under the age of 8;
- (c) the premises in question are suitable to be used for looking after children under the age of 8, having regard to their condition and the condition and appropriateness of any equipment on the premises and to any other factor connected with the situation, construction or size of the premises;
- (d) A is complying with regulations relevant to child-minders or day care respectively, and with any conditions imposed by the Department.

(7) The Department may—

- (a) register the applicant on such conditions as it thinks fit;
- (b) require the applicant to fulfill such conditions as it thinks fit; or
- (c) refuse the application for registration.

(8) The registration of a person under this section expires at the end of each calendar year, but may be renewed on or before 31st January of the following year upon payment of the prescribed fee.

(9) The Department may, as it thinks fit, suspend or cancel the registration of a person, vary the conditions subject to which registration was granted, or impose additional conditions, if it is satisfied that—

- (a) there has been a breach of any regulation or any condition subject to which registration was granted;
- (b) the registrant has been convicted of an offence under this Ordinance or any other offence; or
- (c) the welfare of children requires such action to be taken.

(10) Before exercising its powers under subsection (7)(c) or (9), the Department must give the applicant child-minder, or person carrying on, or concerned in the management of the premises, as the case may be, a reasonable opportunity to present his or her views to the Department in person or in writing, as the Department thinks fit.

(11) If the Department exercises its powers under subsection (7)(c) or (9), it must inform the applicant child-minder or person carrying on, or concerned in the management of the premises, as the case may be, in writing of—

- (a) the reason for its decision;
- (b) the right of appeal under section 81; and
- (c) the time within which the appeal may be made.

Disqualification

77. (1) The Governor in Council may by regulations make provision with respect to the disqualification of persons from registration under section 76.

(2) Regulations under subsection (1) may in particular provide for a person to be so disqualified if—

- (a) an order of a prescribed kind has been made at any time with respect to the person;
- (b) an order of a prescribed kind has been made at any time with respect to any child who has been in the person's care;
- (c) a requirement of a prescribed kind has been imposed at any time with respect to any such child, under or by virtue of any legislative provision;
- (d) the person has been convicted of any offence of a prescribed kind, or has been placed on probation or discharged absolutely or conditionally for any such offence;
- (e) a prohibition has been imposed on the person at any time under section 70 or under any other prescribed provision;
- (f) the person's rights and powers with respect to a child have at any time been vested in a prescribed authority under a prescribed provision.

(3) A person ('A') is disqualified from registration under section 76 if—

- (a) A lives in the same household as a person who is so disqualified by virtue of regulations under this section; or
- (b) A lives in a household at which any such person is employed,

unless A has disclosed to the Department the fact that that person is so disqualified and has obtained its written consent.

(4) A person who is disqualified from registration under section 76 must not act as a child-minder on domestic premises.

(5) A person who is disqualified from registration under section 76 must not—

- (a) provide day care for children under the age of 8; or
- (b) be concerned in the management of or have any financial interest in the provision of such day care,

unless the person has disclosed to the Department the fact that he or she is so disqualified and has obtained its written consent.

(6) A person ('A') must not employ, in connection with the provision of day care for children under the age of 8, a person who is disqualified from registration under section 71 unless A has disclosed to the Department the fact that that person is so disqualified and has obtained its written consent.

(7) Subject to subsection (8), a person who contravenes subsection (4), (5) or (6) commits an offence.

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

- (8) A person ('A') who contravenes—
 (a) subsection (5) by virtue of subsection (4); or
 (b) subsection (6),

does not commit an offence if A proves that he or she did not know, and had no reasonable grounds for believing, that the person referred to in subsection (4) or the person whom A was employing, as the case may be, was disqualified.

(9) If the Department refuses to give its consent under this section, it must inform the applicant in writing of—

- (a) the reason for its refusal;
 (b) the right of appeal under section 81; and
 (c) the time within which the appeal may be made.

Emergency cancellation, etc.

78. (1) The Magistrates' Court may, on the application of the Department, make an order—

- (a) cancelling the registration of a person who is registered under section 76; or
 (b) removing a condition or imposing a condition on that person,

if the court is satisfied that a child who is being, or may be, looked after by that person is suffering, or likely to suffer, significant harm, or that in the course of child-minding or the provision of day care by that person a child is suffering, or likely to suffer, significant harm, as the case may be.

(2) An application under subsection (1) may be made *ex parte* and must be supported by a written statement of the Department's reasons for making it.

(3) A cancellation, variation, removal or imposition under subsection (1) has effect from the date on which the order is made, and the Department must as soon as practicable serve a copy of the order and a copy of the statement referred to in subsection (2) on the registered person.

(4) If the court imposes or varies a condition under this section, the condition, or the condition as varied, is to be treated for all purposes (except those of section 81) as if it had been imposed by the Department.

Certification of persons looking after older children

79. (1) The Department must maintain a register of persons who are certified by it as being fit and proper to look after children who have attained the age of 8 years but have not attained the age of 14 years.

(2) Subject to subsection (4), a person must not look after a child who has attained the age of 8 years but has not attained the age of 15 years for more than 5 hours in any one week unless the person has parental responsibility for the child or is first certified by the Department as being fit and proper to do so.

(3) Subject to subsection (4), a person who contravenes subsection (2), unless he or she has a reasonable excuse, commits an offence.

Penalty: A fine of £5,000.

(4) A person who, immediately before the commencement of this Ordinance, looked after a child who has attained the age of 8 years but has not attained the age of 15 years, for more than 5 hours in any one week, must apply to be certified with the Department as being fit and proper to do so within 3 months of the coming force of this Ordinance and does not commit an offence under subsection (3) unless he or she looks after a child who has attained the age of 8 years but has not attained the age of 15 years, for more than 5 hours in any one week after the expiration of that period of 3 months without being so certified.

(5) A person who wishes to be certified under this section may apply to the Department in the prescribed manner and pay the prescribed fee.

(6) The Department may, if it considers an applicant to be fit and proper to look after a child who has attained the age of 8 years but has not attained the age of 15 years, for more than 5 hours in any one week, issue a certificate to that effect to the applicant.

(7) The Department may, as it thinks fit, cancel the certification of a person if it is satisfied that the person is no longer a fit and proper person to look after a child who has attained the age of 8 years but has not attained the age of 15 years, for more than 5 hours in any one week.

(8) Before refusing an application under this section or exercising its powers under subsection (7), the Department must give the applicant or person, as the case may be, a reasonable opportunity to present his or her views to the Department in person or in writing, as the Department thinks fit.

(9) If the Department refuses an application under this section or exercises its powers under subsection (7), it must inform the applicant or person, as the case may be, in writing of—

- (a) the reason for its decision;
- (b) the right of appeal under section 81; and
- (c) the time within which the appeal may be made.

Division 3 - General

Inspection of premises

80. Without affecting section 100, the Department must arrange for regular and frequent inspections by officers authorised by it of—

- (a) any domestic premises on which child-minding is at any time carried on; or
- (b) any premises on which day care for children under the age of 8 is at any time

provided,
and must require those authorised officers to file with the Department a report of each inspection, describing the quality of the service provided by the child-minder or day care provider, as the case may be, and the condition of the relevant premises and containing any other information the Department thinks fit.

Appeals

81. (1) An appeal lies to the Magistrates' Court against any of the following decisions of the Department under this Part—

- (a) the refusal of consent required under section 69(3) or (4);
- (b) the imposition of a prohibition or requirement, or the refusal to remove a prohibition or requirement, under section 70;
- (c) the refusal of an application for registration under section 76 or certification under section 79;
- (d) the conditions subject to which such an application is granted;
- (e) the cancellation of such registration or certification, the variation of the conditions of registration or the imposition of an additional condition;
- (f) the refusal of consent under section 77(3), (5) and (6).

(2) No such appeal may be brought by a person more than 28 days after notice of the decision is given to the person.

(3) On an appeal against a decision of the Department the Magistrates' Court may—

- (a) confirm the decision;
- (b) direct that the decision does not have effect;
- (c) vary any requirement under section 70;
- (d) direct that any such condition ceases to have effect; or
- (e) direct that any conditions the court thinks fit has effect in respect of the registration.

PART XI PROCEEDINGS INVOLVING CHILDREN AND YOUNG PERSONS

General considerations

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

Age of criminal responsibility

83. (1) It is to be conclusively presumed that a child under the age of 10 years is incapable of committing an offence.

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

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

- 84.** (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

- 85.** (1) This section applies to a person apparently under the age of 17 years who—
- (a) is arrested, 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 the person or his or her parent or guardian (with or without sureties), for such an amount as 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 released as mentioned in subsection (2), the appropriate officer must cause him or the person 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

- 86.** (1) If a child or young person is in police detention, such steps as are

practicable 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) if the intimate search of a juvenile has been authorised under section 58(1) of the Police and Criminal Evidence Ordinance 2003—
 - (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;
- (c) if the child or young person is being looked after by the Department - the Department.

(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.

(6) If it appears that at the time of the child's arrest a supervision order under any provision of this Ordinance is in force in respect of him or her, the person responsible for his or her supervision must also be informed as described in subsection (2) as soon as it is reasonably practicable to do so.

Children in court during trials

87. (1) No child (other than an infant in arms) is permitted to be present in court during—

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

except during any time the child's 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 the child's presence is required as a witness or otherwise for the purposes of justice.

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

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

Clearing court while child or young person is giving evidence

88. (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

89. (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 Department, remand him or her to accommodation provided by the Department.

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

- (a) he or she is charged with murder; or
- (b) the court 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) the court 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 Department.

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

(5) A court remanding a person to accommodation provided by the Department may, with the consent of the Department, require that person to comply with any such conditions

as could be imposed if the person were then being granted bail.

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

(7) If a person is remanded to accommodation provided by the Department, the Magistrates' Court may, on the application of the Department 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 Department is to such consultation (if any) as is reasonably practicable in all the circumstances of the case.

Evidence by children

90. (1) A child's evidence in criminal proceedings is 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,—

- (a) the child understands that it is his or her duty to speak the truth; and
- (b) the child 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, the child commits an offence.

Penalty: A fine of £2,500, or imprisonment for 12 months, or both.

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

Admissibility of hearsay evidence

- 91.** In—
- (a) any civil proceedings before the Supreme Court;
 - (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

92. (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 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 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—

- (a) that reasonable notice of the intention to take the deposition has been served upon him or her; and
- (b) that 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 (UK).

Identification of child or young person in media

93. (1) Subject to subsection (3), no report of any proceedings in any court either in St Helena or Ascension may be published in St Helena 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 in them.

(2) Subject to subsection (3), no picture may be published in any newspaper or periodical or included in a relevant programme 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 programme in contravention of this section, each of the following persons—

- (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 having functions in relation to the programme corresponding to those of an editor of a newspaper,
- commits an offence.

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

Findings of guilt, etc.

94. (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 must, in the case of a child or young person, 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 is to 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 must not be required to answer, any question relating to such an offence.

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

95. (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; 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—

- (a) that the parent or guardian cannot be found; or
- (b) that 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 his or her good behaviour.

(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 the parent or guardian 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.

Power to make supervision order in criminal proceedings

96. (1) Subject to section 224 of the Criminal Procedure Ordinance, 1975 (detention of young offenders), where a child or a young person is found guilty of any offence by or before any court, that court or the court to which his or her case is remitted may make a supervision order in respect of him or her, that is, an order placing him or her under the supervision of—

- (a) the Department;
- (b) an officer of the Department designated for the purpose by the Department; or
- (c) if the Department consents in the particular case - a probation officer.

(2) If a court makes a supervision order under this section while another such order, or a care order or a supervision order under section 42, made by any court is in force in respect of the child or young person, it may also revoke the earlier order.

(3) Schedule 4 has effect with respect to supervision orders under subsection (1).

Proceedings for offences

97. (1) Proceedings for an offence under this Part must 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 corporate 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 corporate body.

(4) *Omitted*

PART XII ADOPTION

Division 1- Adoption Orders

Adoption orders

98. (1) An adoption order is an order by the court vesting the parental responsibility relating to a child in the adopters, made—

- (a) on their application; or
- (b) on their behalf by the Department.

(2) An adoption order does not affect the parental responsibility so far as it relates to any period before the making of the order.

(3) The making of an adoption order operates to extinguish—

- (a) any parental responsibility relating to the child which—
 - (i) is vested in a person (not being one of the adopters) who was the parent or guardian of the child immediately before the making of the order; or
 - (ii) is vested in any other person by virtue of the order of any court; and
- (b) any duty arising by virtue of an agreement or the order of a court to make payments, so far as the payments are in respect of the child's maintenance for any period after the making of the order or any other matter comprised in the parental responsibility and relating to such a period.

(4) Subsection (3)(b) does not apply to a duty arising by virtue of an agreement which—

- (a) constitutes a trust; or
 - (b) expressly provides that the duty is not to be extinguished by the making of an adoption order.
- (5) An adoption order cannot be made in relation to a child who is or has been married.
- (6) An adoption order may contain such terms and conditions as the court thinks fit.
- (7) An adoption order may be made even if the child is already an adopted child.

Child to live with adopters before order is made

99. (1) If—
- (a) the applicant, or one of the applicants, is a parent, step-parent or relative of the child; or
 - (b) the child was placed with the applicants by the Department or pursuant to an order of the court,
- an adoption order cannot be made unless the child is at least 16 weeks old and at all times during the preceding 10 weeks had his or her home with the applicants or one of them, whether as a result of being placed with the applicants or one of them by the Department, or otherwise.

(2) If subsection (1) does not apply, an adoption order cannot be made unless the child is at least 12 months old and at all times during the preceding 6 months had his or her home with the applicants or one of them.

(3) An adoption order cannot be made unless the court is satisfied that sufficient opportunities to see the child with the applicant or, in the case of an application by a married couple, both applicants together in the home environment have been afforded to the Department.

Adoption by married couple

100. (1) An adoption order may be made on the application of a married couple where each has attained the age of 18 years but an adoption order cannot otherwise be made on the application of more than one person.

(2) An adoption order cannot be made on the application of a married couple unless at least one of them is domiciled in St Helena, the United Kingdom or such other place as the Court may approve.

Adoption by one person

101. (1) An adoption order may be made on the application of one person if he or she has attained the age of 21 years and—

- (a) is not married; or
- (b) is married and the court is satisfied that—
 - (i) his or her spouse cannot be found;
 - (ii) the spouses have separated and are living apart, and the separation is likely

- to be permanent; or
- (iii) his or her spouse is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.

(2) An adoption order cannot be made on the application of one person unless the person is domiciled in St Helena, the United Kingdom or such other place as the Court may approve.

(3) An adoption order cannot be made on the application of the mother or father of the child alone unless the court is satisfied that—

- (a) the other natural parent is dead or cannot be found; or
- (b) there is some other reason justifying the exclusion of the other natural parent, and if such an order is made the reason justifying the exclusion of the other natural parent must be recorded by the court.

Parental agreement

102. (1) An adoption order cannot be made unless—

- (a) the child is free for adoption by virtue of an order made under section 103; or
- (b) in the case of each parent or guardian of the child the court is satisfied that—
 - (i) he or she freely, and with full understanding of what is involved, agrees unconditionally to the making of an adoption order (whether or not he or she knows the identity of the applicants); or
 - (ii) his or her agreement to the making of the adoption order should be dispensed with on a ground specified in subsection (2).

(2) The grounds mentioned in subsection (1)(b)(ii) are that the parent or guardian—

- (a) cannot be found or is incapable of giving agreement; or
- (b) the welfare of the child requires that consent be dispensed with.

(3) Agreement is ineffective for the purposes of subsection (1)(b)(i) if given by the mother less than 6 weeks after the birth of the child.

(4) *Repealed*

Freeing child for adoption

103. (1) If, on an application by the Department, a court is satisfied in the case of each parent or guardian of the child that—

- (a) he or she freely, and with full understanding of what is involved, agrees generally and unconditionally to the making of an adoption order; or
- (b) his or her agreement to the making of an adoption order should be dispensed with on a ground specified in section 102(2),

the court must make an order declaring the child free for adoption.

(2) An application cannot be made under subsection (1) unless—

- (a) it is made with the consent of a parent or guardian of a child; or
- (b) the Department is applying for dispensation under subsection (1)(b) of the agreement of each parent or guardian of the child, and the child is in the care of the Department.

(3) An agreement required under subsection (1)(a) cannot be dispensed with under subsection (1)(b) unless—

- (a) the child is already placed for adoption; or
- (b) the court is satisfied that it is likely that the child will be placed for adoption.

(4) An agreement by the mother of the child is ineffective for the purposes of this section if given less than 6 weeks after the child's birth.

(5) On the making of an order under this section, parental responsibility relating to the child vests in the Department, and section 98(2) and (3) apply as if the order were an adoption order and the Department was the adopter.

(6) Before making an order under this section, the court must satisfy itself, in relation to each parent or guardian of the child who can be found, that he or she has been given an opportunity of making, if he or she so wishes, a declaration that he or she prefers not to be involved in future questions concerning the adoption of the child; and any such declaration must be recorded by the court.

(7) Before making an order under this section in the case of an illegitimate child whose father is not its guardian, the court must satisfy itself in relation to any person claiming to be the father that either—

- (a) he has no intention of applying for an order granting parental responsibility under section 12(1)(b); or
- (b) if he did apply for custody under section 12(1)(b) the application would be likely to be refused.

Progress reports to former parents

104. (1) This section and section 105 apply to any person ("**the former parent**"), who was required to be given an opportunity of making a declaration under section 103(6) but did not do so.

(2) Within the 14 days following the date 12 months after the making of the order under section 103 the Department, unless the Department has previously by notice to the former parent informed him or her that an adoption order has been made in respect of the child, must by notice to the former parent inform him or her—

- (a) whether an adoption order has been made in respect of the child; and
- (b) if not, whether the child has his or her home with a person with whom he or she has been placed for adoption.

(3) If at the time when the former parent is given notice under subsection (2) an adoption order has not been made in respect of the child, it is thereafter the duty of the Department to give notice to the former parent of the making of an adoption order (if and when made), and meanwhile to give the former parent notice whenever the child is placed for adoption or ceases to have his or her home with a person with whom he or she has been placed for adoption.

(4) If at any time the former parent by notice makes a declaration to the Department that he or she prefers not to be involved in future questions concerning the adoption of the

child—

- (a) the Department must secure that the declaration is recorded by the court which made the order under section 103; and
- (b) the Department is released from the duty of complying further with subsection (3) as respects that former parent.

Revocation of section 103 order

105. (1) The former parent, at any time more than 12 months after the making of the order under section 103, if—

- (a) no adoption order has been made in respect of the child; and
- (b) the child does not have his or her home with a person with whom he or she has been placed for adoption,

may apply to the court which made the order for a further order revoking it on the ground that he or she wishes to resume the parental rights and duties.

(2) While the application is pending the Department must not place the child for adoption without the leave of the court.

(3) If an order freeing a child for adoption is revoked under this section—

- (a) parental responsibility relating to the child is vested in the individual or, as the case may be, in the individuals in whom it vested immediately before that order was made; and
- (b) if the parental responsibility vested in the Department immediately before the order freeing the child for adoption was made, that parental responsibility is vested in the individual, or as the case may be, the individuals in whom they vested immediately before they were vested in the Department; and
- (c) any duty extinguished by virtue of section 98(3)(b) is thereupon revived,

but the revocation does not affect any parental responsibility so far as it relates to any period before the date of the revocation.

(4) Subject to subsection (5), if the application is dismissed on the ground that to allow it would contravene the principle embodied in section 3—

- (a) the former parent who made the application is not entitled to make any further application under subsection (1) in respect of the child; and
- (b) the Department is released from the duty of complying further with section 104(3) as respects that parent.

(5) Subsection (4)(a) does not apply if the court which dismissed the application gives leave to the former parent to make a further application under subsection (1), but such leave must not be given unless it appears to the court that because of a change in circumstances or for any other reason it is proper to allow the application to be made.

Notification to the Department of adoption application

106. (1) An adoption order must not be made in respect of a child who was not placed with the applicant by the Department unless the applicant has, at least 3 months before the date of the order, given notice to the Department of the intention to apply for the adoption order.

(2) On receipt of such a notice the Department must investigate the matter and submit to the court a report of the investigation.

(3) Under subsection (2), the Department must in particular investigate so far as is practicable, the suitability of the applicant, and any other matters relevant to the operation of section 3 in relation to the application.

Report where child placed by Department

107. If an application for an adoption order relates to a child placed by the Department, the Department must—

- (a) submit to the court a report on the suitability of the applicants and any other matters relevant to the operation of section 3; and
- (b) assist the court in any manner the court directs.

Restrictions on making adoption order

108. The court must not proceed to hear an application for an adoption order in relation to a child if a previous application for an adoption order made in relation to the child by the same person was refused by any court unless—

- (a) in refusing the previous application the court directed that this subsection should not apply; or
- (b) it appears to the court that because of a change in circumstances or for any other reason it is proper to proceed with the application.

Interim orders

109. (1) If on an application for an adoption order the requirements of sections 102(1) and 106(1) are complied with, the court may postpone the determination of the application and make an order vesting parental responsibility for the child in the applicants for a probationary period not exceeding 2 years upon such terms for the maintenance of the child and otherwise as the court thinks fit.

(2) If the probationary period specified in an order under subsection (1) is less than 2 years, the court may by a further order extend the period for a further period but not exceeding 2 years in all.

Care, etc. of child on refusal of adoption order

110. (1) If on an application for an adoption order in relation to a child the court refuses to make the adoption order, then—

- (a) if it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may order that the child is to be under the supervision of the Department;
- (b) if it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parents or to any other individual, the court may by order commit the child to the care of the Department.

(2) If the court makes an order under subsection (1)(b) the order may require the payment by either parent to the Department, while the Department has the care of the child, of any weekly or other periodical sum towards the maintenance of the child the court thinks reasonable.

Restrictions on removal where adoption agreed or application made under section 103

111. (1) While an application for an adoption is pending in a case where a parent or guardian of the child has agreed to the making of the adoption order, (whether or not he or she knows the identity of the applicant), the parent or guardian must not, against the will of the person with whom the child has his or her home, remove the child from the actual custody of that person except with the leave of the court.

- (2) If an application is pending for an order freeing a child for adoption and—
- (a) the child is in the care of the Department; and
 - (b) the application was not made with the consent of each parent or guardian of the child,

a parent or guardian of the child must not, against the will of the person with whom the child has his or her home, remove the child from the actual custody of that person except with the leave of the court.

(3) A person who contravenes this section commits an offence.
Penalty: A fine of £1,000.

Restrictions on removal where applicant provided home for 5 years

112. (1) While an application for an adoption order in respect of a child made by the person with whom the child has had his or her home for the 5 years preceding the application is pending, a person must not, against the will of the applicant, remove the child from the applicant's actual custody except—

- (a) with the leave of a court;
- (b) under authority conferred by an enactment; or
- (c) on the arrest of the child.

(2) If a person (“**the prospective adopter**”) gives notice to the Department that he or she intends to apply for an adoption order in respect of a child who for the preceding 5 years has had his or her home with the prospective adopter, no person may, against the will of the prospective adopter, remove the child from the prospective adopter's actual custody, except—

- (a) with the leave of a court;
- (b) under authority conferred by an enactment; or
- (c) on the arrest of the child,

before the earlier of—

- (i) when the prospective adopter applies for the adoption order; or
- (ii) at the end of the period of 3 months from the receipt of the notice by the Department.

(3) In any case where subsection (1) or (2) applies and—

- (a) the child was in the care of the Department before he or she began to have his or her home with the applicant or, as the case may be, the prospective adopter; and

(b) the child remains in the care of the Department, the Department must not remove the child from the actual custody of the applicant or of the prospective adopter except—

- (i) in accordance with section 114; or
- (ii) with the leave of a court.

(4) Subsection (2) does not apply to any further notice served by the prospective adopter on the Department in respect of the same child—

- (a) during the period referred to in paragraph (e) of that subsection; or
- (b) within 28 days after its expiry.

(5) A person who contravenes subsection (1) or (2) commits an offence.
Penalty: A fine of £1,000.

Return of child taken away in breach of section 111 or 112

113. (1) A court may on the application of—

- (a) a person from whose actual custody a child has been removed in breach of section 111 or 112; or
- (b) the Department,

order the person who has so removed the child to return the child to the person from whose actual custody the child has been removed.

(2) A court may on the application of—

- (a) a person who has reasonable grounds for believing that another person is intending to remove a child from the applicant's actual custody in breach of section 111 or 112; or
- (b) the Department,

by order direct that other person not to remove the child from the actual custody of the first-mentioned person in breach of section 111 or 112.

(3) If, in the case of an order made under subsection (1), the court is satisfied that the child has not been returned to the applicant, the court may make an order authorising an officer of the court to search any premises specified in the order for the child and, if the officer finds the child, to return the child to the applicant.

(4) If a Justice of the Peace is satisfied by information on oath that there are reasonable grounds for believing that a child to whom an order under subsection (1) relates is in premises specified in the information, he or she may issue a search warrant authorising a police officer to search the premises for the child; and if a police officer acting pursuant to a warrant under this section finds the child, he or she must return the child to the person on whose application the order under subsection (1) was made.

(5) An order under subsection (3) may be enforced in like manner as a warrant for committal.

Return of child placed for adoption by Department

114. (1) Subject to subsection (2), at any time after a child has been delivered into the actual custody of any person pursuant to arrangements made by the Department for the

adoption of the child by that person, and before an adoption order has been made on the application of that person in respect of the child—

- (a) that person may give notice to the Department of the person's intention not to retain the actual custody of the child; or
- (b) the Department may give that person notice that the Department does not intend to allow the child to remain in the person's actual custody.

(2) A notice must not be given under subsection (1)(b) in respect of a child in relation to whom an application has been made for an adoption order except with the leave of the court to which the application has been made.

(3) If—

- (a) a notice is given to the Department by a person or by the Department to a person under subsection (1); or
- (b) an application for an adoption order made by a person in respect of a child placed in his or her actual custody by the Department is refused by the court or withdrawn,

that person must, within 7 days after the date on which—

- (i) notice was given; or
- (ii) the application was refused or withdrawn,

as the case may be, cause the child to be returned to the Department.

(4) If the period specified in an interim order made under section 109 (whether as originally made or as extended under subsection (2) of that section) expires without an adoption order having been made in respect of the child, subsection (3) above applies as if the application for an adoption order upon which the interim order was made had been refused at the expiration of that period.

(5) If an application for an adoption order is refused the court may, if it thinks fit, at any time before the expiry of the period of 7 days mentioned in subsection (3) above, order that period to be extended for a period, not exceeding 6 weeks, specified in the order.

(6) A person who fails to comply with subsection (3) commits an offence.
Penalty: A fine of £1,000.

Meaning of “protected child”

115. (1) If a person gives notice pursuant to section 109(1) to the Department of the person's intention to apply for an adoption order in respect of a child, the child is for the purposes of this Part a protected child while he or she has his or her home with that person.

(2) A protected child ceases to be a protected child—

- (a) on the appointment of a guardian for him or her under this Ordinance;
- (b) on the notification to the Department that the application for an adoption order has been withdrawn;
- (c) on the making of any of the following orders in respect of the child—
 - (i) an adoption order;
 - (ii) an order under section 110;
 - (iii) an order vesting parental responsibility for the child in any person; or
 - (iv) on his or her attaining the age of 18 years,

whichever occurs first.

Removal of protected child from unsuitable surroundings

116. (1) If the court is satisfied, on the complaint of the Department, that a protected child is being kept or is about to be received—

- (a) by a person who is unfit to have care of the child; or
- (b) in any premises or any environment detrimental or likely to be detrimental to the child,

the court may make an order for the child to be removed to the care of the Department—

- (i) until the child can be restored to a parent, relative or guardian of the child; or
- (ii) until other arrangements can be made with respect to the child.

(2) If a child is removed under this section, the Department must, if practicable, inform a parent or guardian of the child, or any person who acts as his or her guardian.

Notice and information to be given to Department

117. (1) If a person who has a protected child in his or her actual custody changes his or her permanent address the person must—

- (a) not less than 2 weeks before the change; or
- (b) if the change is made in an emergency, not later than one week after the change, give notice specifying the new address to the Department.

(2) If a protected child dies, the person in whose actual custody the child was at his or her death must within 48 hours give notice of the child's death to the Department.

(3) A person who fails to comply with this section commits an offence.
Penalty: A fine of £1,000.

Division 2 - Status of Adopted Children

Meaning of “adoption”

118. (1) In this Division “**adoption**” means adoption by an adoption order.

(2) This Division does not apply in respect of a person adopted under the law as in force before the commencement of this Ordinance, and that law continues to apply in respect of such persons.

Interpretation

119. (1) In this Division, unless the context otherwise requires—
“**disposition**” includes the conferring of a power of appointment and any other disposition of an interest in or right over property;
“**power of appointment**” includes a discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration.

(2) This Division applies to an oral disposition as if contained in an instrument made

when the disposition was made.

(3) For the purposes of this Division, the death of the testator is the date at which a will or codicil is to be regarded as made.

(4) For the purposes of this Division, provisions of the law of intestate succession applicable to the estate of a deceased person are to be treated as if contained in an instrument executed by the person (while of full capacity) immediately before his or her death.

(5) References in this Division to dispositions of property include references to a disposition by the creation of an entailed interest.

Status conferred by adoption

120. (1) An adopted child is to be treated in law—

- (a) if the adopters are a married couple - as if the child had been born as a child of the marriage (whether or not he or she was in fact born after the marriage was solemnized);
- (b) in any other case - as if the child had been born to the adopter in wedlock (but not as a child of any actual marriage of the adopter).

(2) An adopted child is, subject to subsection (3), to be treated in law as if he or she were not the child of any person other than the adopters or adopter.

(3) In the case of a child adopted by one of its natural parents as sole adoptive parent, subsection (2) has no effect as respects entitlement to property depending on relationship to that parent, or anything else depending on that relationship.

(4) This section prevents an adopted child from being illegitimate.

(5) This section has effect from the date of the adoption.

(6) Subject to this Division, this section—

- (a) applies for the construction of enactments or instruments passed or made before the adoption or later, and so applies subject to any contrary indication; and
- (b) has effect as respects things done, or events occurring, after the adoption.

Adoptive relatives

121. A relationship existing by virtue of section 120 may be referred to as an adoptive relationship, and—

- (a) a male adopter may be referred to as the adoptive father;
- (b) a female adopter may be referred to as the adoptive mother;
- (c) any other relative of any degree under an adoptive relationship may be referred to as an adoptive relative of that degree,

but this section does not prevent the term “**parent**”, or any other term not qualified by the word “**adoptive**” being treated as including an adoptive relative.

Rules of construction for instruments concerning property

122. (1) Subject to any contrary indication, the rules of construction contained in this section apply to any instrument, other than an instrument existing before the commencement of this Ordinance, so far as it contains a disposition of property.

(2) In applying section 120(1) to a disposition which depends on the date of birth of a child or children of the adoptive parent or parents, the disposition is to be construed as if—

- (a) the adopted child had been born on the date of adoption;
- (b) 2 or more children adopted on the same date had been born on that date in the order of their actual births,

but this does not affect any reference to the age of a child.

(3) Examples of phrases in wills on which subsection (2) can operate are—

- 1. Children of A “living at my death or born afterwards”.
- 2. Children of A “living at my death or born afterwards before any one of such children for the time being in existence attains a vested interest and who attain the age of 21 years”.
- 3. As in example 1 or 2, but referring to grandchildren of A instead of children of A.
- 4. A for life “until he or she has a child”, and then to his or her child or children.

Note: Subsection (2) will not affect the reference to the age of 21 years in example 2.

(4) Section 127(2) does not affect any interest vested in possession in the adopted child before the adoption, or any interest expectant (whether immediately or not) upon an interest so vested.

(5) If it is necessary to determine for the purposes of a disposition of property effected by an instrument whether a woman can have a child, it is to be presumed that once a woman has attained the age of 55 years she will not adopt a child after execution of the instrument, and, notwithstanding section 120, if she does so that child is not to be treated as her child or as the child of her spouse (if any) for the purposes of the instrument.

(6) In this section, “**instrument**” does not include an Ordinance.

Dispositions depending on date of birth

123. (1) If a disposition depends on the date of birth of a child who was born illegitimate and who is adopted by one of the natural parents as sole adoptive parent section 122(2) does not affect entitlement under Division 4 of Part XIII.

(2) Subsection (1) applies, as an example, if—

- (a) a testator died in 2009 bequeathing a legacy to his or her eldest grandchild living at a specified time;
- (b) his or her daughter had an illegitimate child in 2010 who was the first grandchild;
- (c) his or her married son had a child in 2011;
- (d) subsequently the illegitimate child was adopted by the mother as sole adoptive parent.

In all those cases the daughter’s child remained the eldest grandchild of the testator throughout.

Property devolving with peerages, etc. on adoption

124. (1) An adoption does not affect the descent of any peerage or dignity or title of honour.

(2) An adoption does not affect the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any peerage or dignity or title of honour.

(3) Subsection (2) applies only if and so far as a contrary intention is not expressed in the instrument, and has effect subject to the terms of the instrument.

Protection of trustees and personal representatives

125. (1) A trustee or personal representative is not under a duty, by virtue of the law relating to trusts or the administration of estates, to enquire, before conveying or distributing property, whether an adoption has been effected or revoked if that fact could affect entitlement to the property.

(2) A trustee or personal representative is not liable to a person by reason of a conveyance or distribution of the property made without regard to any such fact if he or she has not received notice of the fact before the conveyance or distribution.

(3) This section does not affect the right of a person to follow the property, or any property representing it, into the hands of another person, other than a purchaser, who has received it.

Construing other laws

126. Section 120 does not apply for construing—

- (a)* the prohibited degrees of consanguinity or affinity in the law of St Helena; or
- (b)* an offence of sexual activity with a child family member or inciting a child family member to engage in sexual activity.

Pensions

127. Section 120(2) does not affect entitlement to a pension which is payable to or for the benefit of a child and is in payment at the time of the child's adoption.

Insurance

128. If a child is adopted whose natural parent has effected an insurance for the payment on the death of the child of money for funeral expenses, the rights and liabilities under the policy are by virtue of the adoption transferred to the adoptive parents, who are to be treated as the person who took out the policy.

Division 3 - Registration of Adoption Orders

Adopted Children Register

129. (1) The Registrar of Births and Deaths appointed under the Births and Deaths (Registration) Ordinance, 1853 (hereinafter referred to as “**the Registrar**”) must maintain in the Registrar’s office a register, to be called the “**Adopted Children Register**”, in which are to be made any entries directed to be made in the register by an adoption order, but no other entries.

(2) A certified copy of an entry in the Adopted Children Register, if purporting to be signed by the Registrar, is, without any further or other proof of that entry, to be received—

(a) as evidence of the adoption to which it relates; and

(b) if the entry contains a record of the date of the birth or the country or the district and sub-district of the birth of the adopted person – as evidence of that date or country or district and sub-district,

in all respects as if the copy were a certified copy of an entry in the Register of Births.

(3) The Registrar must cause an index of the Adopted Children Register to be made and kept in the Registrar’s Office; and every person is entitled to search that index and to have a certified copy of any entry in the Adopted Children Register in all respects upon and subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under the Births and Deaths (Registration) Ordinance, 1853 in respect of searches in other indexes kept in the Registrar’s Office and in respect of the supply from that office of certified copies of entries in the certified copies of the Registers of Births and Deaths.

(4) The Registrar must, in addition to the Adopted Children Register and the index of that Register, keep such other registers and books, and make such entries in them, as may be necessary to record and make traceable the connection between an entry in the Register of Births in respect of a person and any corresponding entry in the Adopted Children Register in respect of that person.

**PART XIII
LEGITIMACY**

Division 1 - Interpretation

Meaning of “legitimated person”

130. (1) In this Part “**legitimated person**” means a person legitimated by virtue of any provision of this Part.

(2) Nothing in this Part applies in respect of a person legitimated under the law as in force before the commencement of this Ordinance and that law continues to apply in respect of such persons.

Interpretation

131. (1) In this Part—
“**disposition**” includes the conferring of a power of appointment and any other disposition of an interest in or right over property;

“power of appointment” includes a discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration;

“void marriage” means a marriage, not being voidable only, in respect of which the Supreme Court has or had jurisdiction to grant a decree of nullity, or would have or would have had such jurisdiction if the parties were domiciled in St Helena.

(2) This Part applies to an oral disposition as if contained in an instrument made when the disposition was made.

(3) In this Part—

- (a) the death of the testator is the date at which a will or codicil is to be regarded as made;
- (b) an oral disposition of property is to be taken to be contained in an instrument made when the disposition was made.

(4) References in this Part to dispositions of property include references to a disposition by the creation of an entailed interest.

Division 2 - Legitimation by Marriage

Legitimacy of children of certain void marriages

132. (1) The child of a void marriage, whenever born, is to be treated as the legitimate child of the child’s parents if—

- (a) at the time of the act of intercourse resulting in the birth; or
- (b) at the time of the celebration of the marriage if later,

both or either of the parties reasonably believed that the marriage was valid.

(2) This section only applies in a case where the father of the child—

- (a) was domiciled in St Helena at the time of the birth; or
- (b) if he died before the birth, was domiciled in St Helena immediately before death.

Legitimation by subsequent marriage of parents

133. (1) If the parents of an illegitimate person marry one another, the marriage renders that person, if living, legitimate from the date of the marriage if the father of the illegitimate person is at the date of the marriage domiciled in St Helena.

(2) If—

- (a) the parents of an illegitimate person marry one another; and
- (b) the father of the illegitimate person—
 - (i) is not at the time of the marriage domiciled in St Helena; but
 - (ii) is domiciled in a country by the law of which the illegitimate person became legitimated by virtue of such subsequent marriage,

that person, if living, is to be recognised in St Helena as having been so legitimated from the date of the marriage notwithstanding that, at the time of the child’s birth, his or her father was domiciled in a country the law of which did not permit legitimation by subsequent marriage.

Legitimation of adopted child

134. (1) Section 120 does not prevent an adopted child being legitimated under section 132 or 133 if either natural parent is the sole adoptive parent.

- (2)** If an adopted child (with a sole adoptive parent) is legitimated—
- (a)* section 120(2) does not apply after the legitimation to the natural relationship with the other natural parent; and
 - (b)* revocation of the adoption order in consequence of the legitimation does not affect section 120, 121, or 122 as it applies to any instrument made before the date of legitimation.

Division 3 - Property Rights of Legitimated Children

Rights of legitimated persons and others to take interests in property

135. (1) Subject to any contrary indication, the rules of construction contained in this section apply to any instrument other than an instrument existing before the commencement of this Ordinance, so far as the instrument contains a disposition of property.

(2) For the purposes of this section, provisions of the law of intestate succession applicable to the estate of a deceased person are to be treated as if contained in an instrument executed by the person (while of full capacity) immediately before his or her death.

(3) A legitimated person, and any other person, is entitled to take any interest as if the legitimated person had been born legitimate.

(4) A disposition which depends on the date of birth of a child or children of the parent or parents is to be construed as if—

- (a)* a legitimated child had been born on the date of legitimation;
- (b)* 2 or more legitimated children legitimated on the same date had been born on that date in the order of their actual births,

but this does not affect any reference to the age of a child.

(5) Examples of phrases in wills on which subsection (4) can operate are—

1. Children of A “living at my death or born afterwards”.
2. Children of A “living at my death or born afterwards before any one of such children for the time being in existence attains a vested interest, and who attain the age of 21 years”.
3. As in example 1 or 2, but referring to grandchildren of A, instead of children of A.
4. A for life “until he or she has a child” and then to his or her child or children.

Note: Subsection (4) will not affect the reference to the age of 21 years in example 2.

(6) If an illegitimate person or a person adopted by one of the child’s natural parents dies, or has died before the commencement of this Ordinance, and—

- (a)* after his or her death his or her parents marry or have married; and
- (b)* the deceased would, if living at the time of the marriage, have become a legitimated person,

this section applies for the construction of the instrument so far as it relates to the taking of interests by, or in succession to, his or her spouse, children and remoter issue as if he or she

had been legitimated by virtue of the marriage.

- (7) In this section “**instrument**” does not include an Ordinance.

Dispositions depending on date of birth

136. (1) If a disposition depends on the date of birth of a child who was born illegitimate and who is legitimated (or, if deceased, is treated as legitimated), section 135(4) does not affect entitlement under Division 4 of this Part.

(2) If a disposition depends on the date of birth of an adopted child who is legitimated (or, if deceased, is treated as legitimated) section 135(4) does not affect entitlement by virtue of section 122(2).

(3) This section applies, as an example, if—

- (a) a testator died in 2009 bequeathing a legacy to his or her eldest grandchild living at a specified time;
- (b) a daughter had an illegitimate child in 2010 who was the first grandchild;
- (c) his or her married son had a child in 2011;
- (d) subsequently the illegitimate child was legitimated.

In all those cases the daughter’s child remained the eldest grandchild of the testator throughout.

Protection of trustees and personal representatives

137. (1) A trustee or personal representative is not under a duty, by virtue of the law relating to trusts or the administration of estates, to enquire, before conveying or distributing property, whether any person is illegitimate or has been adopted by one of the person’s natural parents, and could be legitimated (or if deceased be treated as legitimated), if that fact could affect entitlement to the property.

(2) A trustee or personal representative is not liable to a person by reason of a conveyance or distribution of the property made without regard to any such fact if the trustee has not received notice of the fact before the conveyance or distribution.

(3) This section does not affect the right of a person to follow the property, or any property representing it, into the hands of another person, other than a purchaser, who has received it.

Personal rights and obligations

138. A legitimated person has the same rights, and is under the same obligations in respect of the maintenance and support of himself or herself or of any other person as if he or she had been born legitimate, and, subject to this Ordinance, the provisions of any Ordinance relating to claims for damages, compensation, allowance, benefit or otherwise by or in respect of a legitimate child apply in like manner in the case of a legitimated person.

Re-registration of birth of legitimated person

139. (1) The—
 (a) parents of a legitimated person; or
 (b) in cases where re-registration can be effected on information furnished by one parent and one of the parents is dead, the surviving parent of a legitimated person,
 must provide to the Registrar of Births and Deaths information with a view to obtaining the re-registration of the birth of the legitimated person within 3 months after the date of the marriage by virtue of which the person was legitimated.

(2) The failure of the parents or either of them to provide information as required by subsection (1) in respect of a legitimated person does not affect the legitimation of that person.

(3) This section does not apply in relation to a person who was legitimated otherwise than by virtue of the subsequent marriage of the child's parents.

(4) A person who fails to comply with subsection (1) commits an offence.
 Penalty: A fine of £1,000.

Titles, etc

140. (1) Apart from section 132, nothing in this Part affects the succession to any dignity or title of honour or render any person capable of succeeding to or transmitting a right to succeed to any such dignity or title.

(2) Apart from section 132, nothing in this Part affects the devolvement of property limited (expressly or not) to devolve (as nearly as the law permits) along with any dignity or title of honour.

(3) Subsection (2) applies only if and so far as a contrary intention is not expressed in the instrument and has effect subject to the instrument.

Division 4 - Property Rights of Illegitimate Children

Interpretation

141. (1) Nothing in this Part applies in respect of a disposition coming into force before the commencement of this Ordinance and the law in force at the time the disposition came into force continues to apply in respect of such a disposition.

(2) In this Part—
 “**disposition**” includes the conferring of a power of appointment and any other disposition of an interest in or right over property;
 “**power of appointment**” includes a discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration.

(3) This Part applies to an oral disposition as if contained in an instrument made when the disposition was made.

(4) For the purposes of this Part, the death of the testator is the date at which a will or codicil is to be regarded as made.

(5) For the purposes of this Part, provisions of the law of intestate succession applicable to the estate of a deceased person are to be treated as if contained in an instrument executed by the person (while of full capacity) immediately before his or her death.

(6) References in this Part to dispositions of property include references to a disposition by the creation of an entailed interest.

Presumptions with respect to illegitimate children

142. (1) In a disposition—

- (a) a reference (whether express or implied) to the child or children of a person, unless the contrary intention appears, is to be construed as, or as including, a reference to any illegitimate child of that person; and
- (b) a reference (whether express or implied) to a person or persons related in some other manner to a person, unless the contrary intention appears, is to be construed as, or as including, a reference to anyone who would be so related if he or she, or some other person through whom the relationship is deduced, had been born legitimate.

(2) Subsection (1) applies only where the reference in question is—

- (a) to a person who is to benefit or to be capable of benefiting under the disposition; or
- (b) for the purpose of designating such a person, to someone else to or through whom that person is related,

but subsection (1) does not affect the construction of the word “heir” or “heirs” or of any expression which is used to create an entailed interest in real or personal property.

(3) In relation to a disposition made after the coming into force of this section, section 33 of the Trustee Act 1925 (UK) (which specifies the trusts implied by a direction that income is to be held on protective trusts for the benefit of a person) is to have effect as if—

- (a) the reference to the children or more remote issue of the principal beneficiary included a reference to any illegitimate child of the principal beneficiary and to anyone who would rank as such issue if he or she, or some other person through whom he or she is descended from the principal beneficiary, had been born legitimate; and
- (b) the reference to the issue of the principal beneficiary included a reference to anyone who would rank as such issue if he or she, or some other person through whom he or she is descended from the principal beneficiary, had been born legitimate.

(4) If under a disposition any real or personal property or an interest in such property is limited (whether subject to a preceding limitation or charge or not) in such a way that it would, apart from this section, devolve (as nearly as the law permits) along with a dignity or title of honour, then, whether or not the disposition contains an express reference to the dignity or title of honour, and whether or not the property or some interest in the property may in some event become severed from the dignity, this section does not operate to sever the property or any interest in it from the dignity or title, but the property or interest is to devolve in all respects as if this section had not been enacted.

(5) This section abolishes, as respects dispositions made after the coming into force of this section, any rule of law that a disposition in favour of illegitimate children not in being when the disposition takes effect is void as contrary to public policy.

Protection of trustees and personal representatives

143. (1) A trustee or personal representative is not under a duty, by virtue of the law relating to trusts or the administration of estates, to enquire, before conveying or distributing property, whether any person is entitled to an interest in it by virtue of section 142.

(2) A trustee or personal representative is not liable to a person by reason of a conveyance or distribution of the property made without regard to any such fact if the trustee or personal representative has not received notice of the fact before the conveyance or distribution.

(3) This section does not prejudice the right of a person to follow the property, or any property representing it, into the hands of another person, other than a purchaser, who has received it.

PART XIV OFFENCES AGAINST CHILDREN AND YOUNG PERSONS

Cruelty to children and young persons

144. (1) A person commits an offence if, having attained the age of 17 years and having the actual custody, charge or care of any child or young person, that person—

- (a) wilfully assaults, ill-treats (whether physically or otherwise), neglects abandons or exposes that child or young person; or
- (b) causes or procures the child or young person to be assaulted, ill-treated (whether physically or otherwise), neglected, abandoned or exposed, in a manner likely to cause him or her 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).

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 the child or young person;
- (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, or at any later time before the suffocation, under the influence of drink or any drug, 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, if as a result 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) The reference in subsection (2)(b) to the infant being "in bed" with another ("the adult") includes a reference to the infant lying next to the adult in or on any kind of furniture or surface being used by the adult for the purpose of sleeping (and the reference to the time when the adult "went to bed" is to be read accordingly).

(2B) Subsection (2)(d), and any proceedings taken under it, does 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, it is lawful for the jury, if they are satisfied that the person has committed an offence under this section to convict him or her of that offence.

(5) This section does not affect the right of any parent, teacher or other person having lawful control or charge of a child to administer reasonable punishment to the child, subject to any other law.

Begging and soliciting for prostitution

145. (1) It is an offence for a person to—

- (a) cause or procure any child or young person; or
- (b) having the custody, charge or care of a child or young person, 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: Imprisonment for 2 years.

(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 is 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 the child or young person to be in the street, premises

or place for that purpose, unless the contrary is proved.

Allowing children to be in brothels

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

Penalty: Imprisonment for 2 years.

(2) This section does not affect the liability of a person to be indicted under the Sexual Offences Act, 2003 (UK), but upon the trial of a person under that Act it is lawful for the jury, if they are satisfied that the person has committed an offence under this section, to convict him or her of that offence.

Causing or encouraging prostitution

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

Penalty: Imprisonment for 5 years.

(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 such child to consort with, or enter or continue in the employment of, any prostitute or person of known immoral character.

Causing or allowing children to be in bars of licensed premises

148. (1) The holder of a licence of any licensed premises must not allow any child at any time to be in the bar of the licensed premises during the permitted hours.

(2) It is an offence for -

(a) the holder of a licence to act in contravention of subsection (1); or

(b) any person to cause, or procure, or attempt to cause or procure, any child to go to, or to be in, the bar of any licensed premises during the permitted hours.

Penalty: A fine of £100 for a first offence, and of £1,000 for any subsequent offence.

(3) If a child is found in the bar of any licensed premises during the permitted hours, the holder of the licence is deemed to have committed an offence under this section unless he or she proves that -

(a) he or she used due diligence to prevent the child from being admitted to the bar; or

(b) the child had apparently attained the age of 16 years.

(4) In this section -

“**bar**” in relation to any licensed premises means any open drinking bar or any part of the premises exclusively or mainly used for the sale and consumption of intoxicating liquor;

“licence” and **“licensed premises”** have the same meanings as in the Liquor Ordinance, 1988;

“permitted hours” means those hours of the day during which intoxicating liquor may be lawfully supplied in licensed premises.

Safety of children at entertainments

149. (1) If there is provided in any building an entertainment for children, or an entertainment at which the majority of persons attending are children, it is the duty of the person or persons providing the entertainment to –

- (a) take all reasonable steps to station and keep stationed wherever necessary a sufficient number of attendants, properly instructed as to their duties and being not less than 18 years of age, to prevent more children or other persons being admitted to the building, or to any part of it, than the building can properly accommodate;
- (b) control the movement of the children and other persons admitted while entering or leaving the building or part of it; and
- (c) take all other reasonable precautions for the safety of the children and the prevention of fire.

(2) A person failing to fulfil the obligations imposed on the person by this section commits an offence.

Penalty: Imprisonment for 2 years.

(3) Any police officer who has reason to believe that an entertainment as mentioned in subsection (1) is being, or is about to be, provided in any building may enter the building with a view to ascertaining whether subsection (1) is being complied with.

PART XV ATTACHMENT OF EARNINGS ORDERS

Interpretation

150. (1) In this Part—
“earnings” are any sums payable to a person—

- (a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary or payable under a contract of service);
- (b) by way of pension (including an annuity in respect of past services, whether or not rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or diminution in the emoluments, of any office or employment);

“payer” means the person required to make payments under a payment order;

“payment order” means an order made by the court under this Ordinance which requires a person—

- (a) to make periodical payments to another person; or
- (b) to make a lump sum payment to another person by instalments;

“receiver” means a person entitled to receive—

- (a) periodic payments; or
- (b) payment of a lump sum by instalments, under a payment order.

(2) For the purposes of this Part, the relationship of employer and employee subsists

between 2 persons if one of them, as a principal and not as a servant or agent, pays to the other earnings.

(3) Nothing in this Part affects the ability of a person to enforce a payment order in any other way.

Effect and contents of attachment of earnings orders

151. (1) An attachment of earnings order is an order directed to a person who appears to the court to have the payer in respect of a payment order in his or her employment and operates as an instruction to that person—

- (a) to make periodical deductions from the payer's earnings in accordance with the payment order; and
- (b) to pay the amounts deducted to the Clerk of the Peace.

(2) An attachment of earnings order must—

- (a) contain sufficient particulars to enable the payer to be identified by the employer;
- (b) state the amount of the periodic payments that are to be deducted from the payer's earnings; and
- (c) specify the period during which those deductions are to be made.

Application for attachment of earnings order

152. (1) An application for an attachment of earnings order in respect of a payment order may be made by—

- (a) the receiver under the payment order; or
- (b) the Department, whether or not it is a receiver under the payment order.

(2) An application for an attachment of earnings order may be made—

- (a) at the same time as the application for the payment order is made; or
- (b) at any time thereafter.

(3) An application by the Department for an attachment of earnings order where the Department is not a receiver under the payment order does not need the consent of the receiver under the payment order.

Compliance with order by employer

153. (1) If an attachment of earnings order has been made, the employer must, if served with the order, comply with it.

(2) If—

- (a) a person is served with an attachment of earnings order directed to the person; and
- (b) the payer is not in that person's employment,

the person must within 10 days from the date of service give notice of that fact to the Clerk of the Peace.

(3) If—

- (a) a person is served with an attachment of earnings order directed to the person;

and

- (b) the payer subsequently ceases to be in that person's employment, that person must, within 10 days from the cesser, give notice of the cesser to the Clerk of the Peace.

(4) If the Clerk of the Peace receives notice in accordance with subsection (2) or (3) the Clerk of the Peace must inform—

- (a) the receiver under the relevant payment order; and
- (b) if different, the Department.

(5) A person who fails to comply with subsection (1), (2) or (3) commits an offence.

Penalty: (a) for a contravention of subsection (1) - a fine of £2,500;

(b) for a contravention of subsection (2) or (3) - a fine of £1,000.

Application of sums received by Clerk of the Peace

154. (1) Subject to subsection (2), the Clerk of the Peace must pay all amounts received by him or her in compliance with an attachment of earnings order to the person entitled to receive those amounts under the relevant payment order.

(2) If at any time while an attachment of earnings order is in force the Department is satisfied that the amounts being received by the Clerk of the Peace in compliance with the order and paid to the receiver in accordance with subsection (1)—

- (a) are not being used for the maintenance of any child intended to be benefited by the payment; and
- (b) as a result, the welfare of the child is suffering,

the Department may direct the Clerk of the Peace that the payments received in accordance with subsection (1) are to be paid to the Department to be used by the Department for the welfare of the child.

(3) The Clerk of the Peace must comply with a direction given in accordance with subsection (2).

(4) A sum paid to the Clerk of the Peace under an attachment of earnings order is to be taken to be a payment paid by the payer in accordance with the requirements of the relevant payment order.

Obligation of payer and employers to notify changes of employment and earnings

155. (1) While an attachment of earnings order is in force the payer must notify the Clerk of the Peace if the payer—

- (a) leaves his or her employment; or
- (b) becomes employed or re-employed,

within 7 days from the date on which he or she did so.

(2) While an attachment of earnings order is in force a person who—

- (a) becomes the payer's employer; and
- (b) knows that the order is in force,

must within 7 days of becoming the payer's employer or of acquiring that knowledge (whichever is the later) notify the Clerk of the Peace that he or she is the payer's employer.

(3) If the Clerk of the Peace receives notice in accordance with subsection (1) or (2) he or she must inform—

- (a) the receiver under the relevant payment order; and
- (b) if different, the Department.

(4) A person who fails to comply with subsection (1) or (2) commits an offence.
Penalty: A fine of £1,000.

Variation or termination of attachment of earnings order

156. (1) If—

- (a) the court varies a payment order so as to vary any amount payable under the order; and
 - (b) the payment of that amount is the subject of an attachment of earnings order,
- the Clerk of the Peace must notify any employer required to make deductions in accordance with the attachment of earnings order of the variation and that order is upon the receipt of the notice by the employer to be taken to be varied so as to require the making of deductions in accordance with the payment order as varied.

(2) If—

- (a) the payment order ceases to have effect for any other reason; and
 - (b) the payment of an amount under the payment order is the subject of an attachment of earnings order,
- the Clerk of the Peace must notify any employer required to make deductions in accordance with the attachment of earnings order that the order has been revoked or has ceased to have effect and the attachment of earnings order ceases to have effect as from the receipt of the notice by the employer.

(3) An employer is not liable to the payer in respect of any deductions made under an attachment order in respect of a payment order that has been revoked or has ceased to have effect if notice has not been received in accordance with subsection (2).

Enforcement of orders made in Ascension and Tristan da Cunha

157. *Omitted*²

PART XVA EMPLOYMENT OF CHILDREN

Interpretation

- 157A.** For the purpose of this Part—
“**hazardous work**” includes, but is not limited to, work—
- (a) that exposes children to physical, emotional or sexual abuse;
 - (b) underground, under water, at dangerous heights or in confined spaces;
 - (c) with dangerous machinery, equipment and tools, or that involves the manual

² See the Courts (Extension of Jurisdiction) Ordinance, 2016

- handling or transport of heavy loads;
- (d) in an unhealthy environment, which may, for example, expose children to hazardous substances, agents or processes or to temperatures, noise levels, or vibrations damaging to their health;
- (e) under particularly difficult conditions such as work for long hours or during the night or work that does not allow for the possibility of returning home each day; or
- (f) on a vessel which includes all ships and boats of any nature whatsoever engaged in maritime navigation, whether publicly or privately owned;

“illicit activities” includes, but is not limited to—

- (a) the production and trafficking of drugs;
- (b) the trafficking of other goods;
- (c) gambling operations;
- (d) begging or stealing;
- (e) sexual exploitation;
- (f) activities which involve the unlawful carrying or use of firearms or other weapons;
- (g) other organised criminal activities;

“light work” means work that is not detrimental to the child’s mental or physical health or development and does not interfere with the child’s education;

“work” does not include chores within a child’s household, provided such chores are not detrimental to the child’s physical or mental health or development and do not interfere with the child’s education;

“work experience” means any activity undertaken by a child as part of their education which is—

- (a) organised by the educational establishment the child attends to gain experience and skills of work; and
- (b) not for financial or other gain.

Employment of children

157B. (1) A child under the age of 18 must not be employed in any manner, whether on a voluntary basis or for financial or other gain, except in the following circumstances:

- (a) a child aged 16 or older may be employed on a voluntary basis or for financial or other gain, provided that he or she would not be undertaking hazardous work;
- (b) a child aged 13 or older may be employed for light work on a voluntary basis or for financial or other gain;
- (c) a child aged 11 and above may undertake work experience.

(2) A child will not be undertaking hazardous work for purposes of subsection (1)(a) if—

- (a) in respect of work generally:
 - (i) the child has received adequate training in the use of any dangerous machinery, equipment or tools; and
 - (ii) where reasonably necessary to ensure the child’s health and safety, the work is supervised;
- (b) in respect of work on a vessel:

- (i) the child is employed on a vessel commanded by a family member or upon which any member of his or her family is employed or as part of a programme of training; and
- (ii) the child is supervised at all times.

(3) Any work undertaken in accordance with subsection (1) may not take place between 7:00 p.m. and 7:00 a.m. unless—

- (a) the child is supervised by his or her parent, guardian or someone with the parent's or guardian's agreement; and
- (b) working at such times is not detrimental to the child's mental or physical health or development and does not interfere with the child's education.

(4) Children of compulsory school age must not be employed in any manner (whether on a voluntary basis or for financial or other gain) during school hours, except for work experience.

(5) A person who employs or engages a child, or causes or allows a child to be employed or engaged in contravention of this section commits an offence.

Penalty: A fine of £3000 or imprisonment for 6 months, or both.

Illicit activities

157C. (1) No person may employ or engage a child, or cause or allow a child to be employed or engaged in any illicit activity.

(2) Any person who contravenes subsection (1) commits an offence.

Penalty: A fine of £5000 or imprisonment for 12 months, or both.

Regulations as to employment of children

157D. The Governor in Council may make regulations in respect of the employment of children.

PART XVI MISCELLANEOUS AND SUPPLEMENTAL

Employment of children

158. (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 every child is entitled to be protected from such activity.

(2) Children 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 such 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

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

(1A) If it appears to the Attorney General that a child should be represented as mentioned in subsection (1), the Attorney General may instruct an advocate as provided in that subsection.

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

- (a) the child, if not a party, is 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 such wishes, and, subject to any directions of the court, the advocate must take such steps in connection with the proceedings as 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.

Appeals to Supreme Court

160. (1) Any person who would be entitled to apply for the variation or revocation of an order made under this Ordinance by the Magistrates’ Court (otherwise than in domestic proceedings) may appeal to the Supreme Court against—

- (a) the making of any such order;
- (b) the refusal by the court to make such an order; or
- (c) the revocation or variation by the court of such an order.

(2) An appeal under subsection (1) must be made within 14 days of the making of the order by the Magistrates’ Court.

(3) On an appeal under subsection (1) the Supreme Court may make such orders as may be necessary to give effect to its determination of the appeal, including any incidental or consequential orders that appear to the Court to be just.

Inspection of premises

- 161. (1)** A person authorised by the Department may at any reasonable time enter—
- (a) any children's home;
 - (b) any premises in which the person has reasonable cause to believe any of the following is or will be living—
 - (i) a child who is being looked after by the Department;
 - (ii) a privately fostered child;
 - (c) any domestic premises on which child-minding is at any time carried on; or
 - (d) any premises on which day care for children under the age of 8 is at any time provided.

(2) If the Department has reasonable cause to believe that a child is being looked after on any premises in contravention of any provision of this Ordinance or of regulations under this Ordinance, any person authorised by the Department may enter those premises at any reasonable time.

- (3)** A person ('A') entering premises under this section may—
- (a) inspect the premises;
 - (b) inspect any children there;
 - (c) inspect any arrangements made for their welfare; and
 - (d) require any other person to provide to A such records, of a kind required to be kept in relation to the premises under this Ordinance (in whatever form they are held) or allow A to inspect such records, as person A may at any time direct.

(4) Any person exercising a power conferred by subsection (1), (2) or (3) must, if asked to do so, produce some duly authenticated document showing his or her authority to exercise the power.

(5) Any person authorised to exercise the power to inspect records conferred by subsection (3)(d)—

- (a) is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in used in connection with the records in question; and
- (b) may require the person by whom or on whose behalf the computer is or has been used, or any person having charge of or otherwise concerned with the operation of the computer, apparatus or material, to afford him or her such assistance as he or she may reasonably require.

(6) Without affecting the foregoing provisions of this section, the Department must cause any premises which may be inspected under this section to be so inspected at least once in every quarter and must require each of its authorised officers **that carries** out any such inspection to file with the Department a report containing his or her findings and observations concerning—

- (a) the children on the premises;
- (b) the persons in whose care the children are;
- (c) the condition of the premises; and
- (d) any other relevant matters affecting the children's welfare.

(7) A person who intentionally obstructs another person in the exercise of any power conferred by this section commits an offence.
Penalty: A fine of £2,500.

(8) In relation to day care and child-minding, expressions used in Part X have the same meanings in this section as in that Part.

Search warrants

162. (1) If, on an application made by any person for a warrant under this section, it appears to the Magistrates' Court that a person attempting to exercise powers under—

- (a) an emergency protection order; or
- (b) section 100,

has been or is likely to be prevented from doing so by being refused entry to premises or refused access to a child, the court may issue a warrant authorising any police officer 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 court issuing the warrant does not otherwise direct; and
- (b) if the court so directs and the police officer so desires - a medical practitioner or a social services officer.

(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 they do not do so they must describe the child as clearly as possible.

(4) The powers of the court under this section may be exercised by a single Justice of the Peace.

Power of Department if parent, etc. about to leave child in St Helena

163. (1) If the Department is satisfied that a person—

- (a) intends to leave St Helena; and
- (b) does not intend to take with him or her a child who is in St Helena and for whom the person has parental responsibility,

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

(2) A person must not—

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

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

(3) It is the duty of the Department in respect of a person to whom subsection (1) applies to give him or her any assistance, in accordance with this Ordinance, necessary to ensure the adequate maintenance of the child that the person will be leaving on St Helena.

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

Penalty: A fine of £1,000.

Stop orders

164. (1) The court may on the application of—

- (a) a relative or step-parent of a child; or
- (b) the Department,

make an order forbidding a person who has parental responsibility for the child from leaving St Helena without the court's consent, which must not be given unless the court is satisfied that adequate provision has been made for the maintenance of the child during that person's absence from St Helena.

(2) If an application is made under subsection (1) the court may, at any time before it—

- (a) makes a stop order; or
- (b) dismisses the application,

make an interim stop order forbidding the person from leaving St Helena.

(3) An interim stop order made under this section ceases to have effect on whichever of the following dates occurs first, that is to say—

- (a) the date, if any, specified for the purpose in the order;
- (b) the date of the expiration of the period of one month beginning with the date of the making of the order;
- (c) the date on which the court either makes a final stop order on, or dismisses, the application.

(4) If an interim stop order made under subsection (2) would, but for this subsection, cease to have effect by virtue of subsection (3)(a) or (b), the court which made the order may by order provide that the interim stop order is to continue in force for a further period.

(5) An interim stop order in force under subsection (4) ceases to have effect on whichever of the following dates occurs first, that is to say—

- (a) the date, if any, specified for the purpose in the order made under subsection (4);
- (b) the date of the expiration of the period of one month beginning with the date of the making of the order under subsection (4);
- (c) the date on which the court either makes a final stop order on, or dismisses, the application.

(6) The court may give its consent under subsection (1) subject to any conditions it considers are in the best interest of the child.

(7) Without limiting subsection (6), the court may make it a condition of consent given by it under subsection (1) that the person given the consent—

- (a) must—
 - (i) authorise his or her employer for the time being outside St Helena to deduct from his or her earnings (as defined by section 150(1)) such periodical payments as the court may specify and to pay the amount so deducted (less reasonable administration expenses) to the Department; and
 - (ii) give to the Department (whether before the person leaves St Helena or at

- any time thereafter) any assistance the Department requires to ensure that the person's obligation under sub-paragraph (i) is carried out; and
- (b) must return to St Helena if the court on the application of the Department is satisfied that it is in the interest of the child that the person given the consent should return to St Helena.

(8) A person must comply with any condition subject to which permission was given under subsection (1), as varied or added to by virtue of subsection (11), if that be the case.

(9) Subject to subsection (10), the Department must pay any amount received by it in accordance with subsection (7)(a) to the person who for the time being has the actual custody of the child.

(10) If at any time while the Department is receiving any amounts in accordance with subsection (7)(a) the Department is satisfied that the amounts being paid by it to the person with the actual custody of the child—

- (a) are not being used for the maintenance of the child; and
- (b) as a result, the welfare of the child is suffering,

the Department may retain the amounts received by it in accordance with subsection (7)(a) and use them for the welfare of the child.

(11) On the application of—

- (a) a person to whom consent under subsection (1) was given subject to conditions;
- (b) the person for the time being with the actual custody of the child; or
- (c) the Department,

the court which gave the consent may—

- (i) vary or revoke any condition subject to which the consent was given;
- (ii) whether or not the consent was originally given subject to conditions, impose new or additional conditions on the consent.

(12) Applications made to the court by the Department under subsections (7)(b) and (11)(c) may be heard at the same time.

(13) A person who fails to comply with subsection (8) commits an offence.
Penalty: A fine of £2,500.

Governor may withhold passport

165. If any person legally liable for the care and maintenance of a child intends to leave St Helena without taking the child with him or her, the Governor may withhold the grant of a passport to the person until the person has satisfied the Governor that the child is not likely, before he or she reaches the age of 16 years, to become a charge on public funds or to be exposed to moral danger or neglect by reason of lack of care and maintenance.

Regulations

166. (1) The Governor in Council 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 welfare of children cared for in a children's home or by the Department or a person registered or certified under this Ordinance;
- (b) the qualifications or training of persons registered or certified under this Ordinance or eligible to be appointed as official foster carer or to visit a child;
- (c) the maximum number of children who may be looked after by a person registered or certified under this Ordinance;
- (d) the number of persons required to assist a person registered or certified under this Ordinance;
- (e) the maintenance, safety and suitability of children's homes and other premises where children are looked after or cared for by persons registered or certified under this Ordinance and of any equipment on the premises;
- (f) the keeping of records at children's homes or by persons registered or certified under this Ordinance;
- (g) the provision of information to the Department;
- (h) the imposition of penalties for contravening or failing to comply with any regulation;
- (i) the keeping of a register of sex offenders on St Helena; and
- (j) any other matters necessary or expedient for the effective administration of this Ordinance.

Repeal and amendment of legislation

167. (1) The Child Care Ordinance, Cap. 82, and the Children and Young Persons Ordinance, Cap. 83 (in this Part called "**the repealed Ordinances**"), are repealed.

(2) The legislation listed the first column of Schedule 6 is amended to the extent as listed in the second column.

Transitional provisions

168. (1) Notwithstanding the repeal of the repealed Ordinances—

- (a) any matter prescribed by the Governor in Council by rule, regulation or order under any of those Ordinances 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 non-legislative order made under a repealed Ordinance prior to its repeal remains in force until expiry of the order and is deemed to be made under this Ordinance;
 - (c) any guardian appointed under a repealed Ordinance prior to its repeal is deemed to be appointed under this Ordinance;
 - (d) any person maintaining a foster child under a repealed Ordinance must continue to maintain the child as if the person agreed under this Ordinance to privately foster the child.
-

SCHEDULE 1
(Section 25)

FINANCIAL PROVISION FOR CHILDREN

TABLE OF CONTENTS

1. Orders for financial relief against parents
2. Orders for financial relief for persons over 18
3. Matters to which court is to have regard
4. Duration of orders
5. Lump sums
6. Variation etc. of periodical payments orders
7. Variation etc. of previous orders
8. Interim orders
9. Alteration of maintenance agreements
10. Maintenance agreement - supplemental
11. Variation etc. affecting deceased's estate
12. Enforcement
13. Department's contribution to child maintenance
14. Interpretation

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, such periodical payments, for such term, as may be 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, such periodical payments, for such term, as may be 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, such lump sum as may be 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 St Helena and the child lives outside St Helena 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 the child, 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 St Helena).

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

(3) An application must not be made under this paragraph by any person if, immediately before the person 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 the person.

(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 the person assumed that responsibility and the length of the period during which he or she met that responsibility;
- (b) whether the person 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 said 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 said 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 the child.

(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 installments, 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 a date the court specifies, 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 the child attains the age of 18, the child may apply to the court for an order for its revival.

(6) If on such 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 such periodical payments, at such times for such term as 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 such date as the court may specify, not being earlier than the date of the making of the application under paragraph 1 or 2 or, if no such 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 domiciled or resident in St Helena, 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 either—

- (a) that, 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) that 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 such alterations in the agreement by varying or revoking any financial arrangements contained in it as appear 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 paragraph 4(1), (2) and (3) as if the order were an order under paragraph 1.

(5) Nothing in this paragraph affects 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 such an order in such 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 domiciled in St Helena, 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 such 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 is left out of account, and a grant limited to real estate is 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 Supreme Court makes a periodical payments order, it must order that the payments be made to the Registrar unless, upon representations expressly made by the person to whom payments under the order fall to be made, the court is satisfied that it is undesirable to do so.

(2) Any person for the time being under an obligation to make payments pursuant to a periodical payments order must give notice of any change of address to such person (if any) as is specified in the order.

(3) A person who without reasonable excuse fails to give such a notice commits an offence.

Penalty: A fine of £1,000.

Department's contribution to child maintenance

13. (1) If a child lives, or is to live, with a person as a result of a residence order, the Department may make contributions to that person towards the cost of the accommodation and maintenance of the child.

(2) Sub-paragraph (1) does not apply if the person with whom the child lives, or is to live, is a parent of the child or the husband or wife of a parent of the child.

Interpretation

14. 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 the child;

“**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 31(5))

CHILDREN LOOKED AFTER BY DEPARTMENT

TABLE OF CONTENTS

1. Promotion and maintenance of contact between child and family
2. Visits to or by children: expenses
3. Appointment of visitor for child who is not being visited
4. Power to guarantee apprenticeship deeds etc.
5. Review of cases, etc.
6. Arrangements to assist children to live abroad
7. Death of children being looked after by Department
8. Persons formerly looked after by the Department

Promotion and maintenance of contact between child and family

1. (1) If a child is being looked after by the Department, the Department must, unless it is not reasonably practicable or consistent with the child's welfare, endeavour to promote contact between the child and—

- (a) his or her parents;
- (b) any individual who is not a parent of the child but who has parental responsibility for the child; and
- (c) any relative, friend or other person connected with the child.

(2) If a child is being looked after by the Department—

- (a) the Department must take such steps as are reasonably practicable to secure that—
 - (i) the child's parents; and
 - (ii) any individual who is not a parent of the child but who has parental responsibility for the child,
 are kept informed of where the child is being accommodated; and
- (b) every such person must secure that the Department is kept informed of the person's address.

(3) Nothing in this paragraph requires the Department to inform any person of the whereabouts of a child if—

- (a) the child is in the care of the Department; and
- (b) the Department has reasonable cause to believe that informing the person would prejudice the child's welfare.

(4) A person who fails without reasonable excuse to comply with sub-paragraph (2)(b) commits an offence.

Penalty: A fine of £1,000.

(5) It is a defence in any proceedings under sub-paragraph (4) to prove that the defendant—

- (a) was residing at the same address as another person who was the child's parent or who had parental responsibility for the child; and
- (b) had reasonable cause to believe that the other person had informed the Department that both of them were residing at that address.

Visits to or by children: expenses

2. (1) Subject to sub-paragraph (2), the Department may—
 - (a) make payments to—
 - (i) a parent of the child;
 - (ii) any person who is not a parent of the child but who has parental responsibility for the child; or
 - (iii) any relative, friend or other person connected with the child, in respect of travelling, subsistence or other expenses incurred by that person in visiting the child; or
 - (b) make payments to the child, or to any person on the child's behalf, in respect of travelling, subsistence or other expenses incurred by or on behalf of the child in visiting—
 - (i) a parent of the child;
 - (ii) any person who is not a parent of the child but who has parental responsibility for the child; or
 - (iii) any relative, friend or other person connected with the child.
- (2) Payments must not be made under this paragraph unless—
 - (a) the child is being looked after by the Department;
 - (b) it appears to the Department that the visit in question could not otherwise be made without undue financial hardship; and
 - (c) the circumstances warrant the making of the payments.

Appointment of visitor for child who is not being visited

3. (1) If it appears to the Department in relation to any child whom it is looking after that—
 - (a) communication between the child and—
 - (i) a parent of the child; or
 - (ii) any individual who is not a parent of the child but who has parental responsibility for the child, has been infrequent; or
 - (b) the child has not visited or been visited by (or lived with) any such person during the preceding 12 months,
 and that it would be in the child's best interests for an independent person to be appointed to be his or her visitor for the purposes of this paragraph, it must appoint such a visitor.

- (2) A person so appointed—
 - (a) must visit, advise and befriend the child; and
 - (b) may recover from the Department any reasonable expenses incurred by him or her for the purposes of his or her functions under this paragraph.
- (3) A person's appointment as a visitor pursuant to this paragraph may be terminated by—
 - (a) notice in writing by the person to the Department resigning the appointment; or
 - (b) notice in writing by the Department to the person terminating it.
- (4) The termination of such an appointment does not affect any duty under this paragraph to make a further appointment.

- (5) If the Department proposes to appoint a visitor for a child under this paragraph,

the appointment must not be made if—

- (a) the child objects to it; and
- (b) the Department is satisfied that the child has sufficient understanding to make an informed decision.

(6) If a visitor has been appointed for a child under this paragraph, the Department must terminate the appointment if—

- (a) the child objects to its continuing; and
- (b) the Department is satisfied that the child has sufficient understanding to make an informed decision.

(7) The Department is not liable for the acts or omissions of a visitor appointed under this paragraph.

Power to guarantee apprenticeship deeds etc.

4. (1) While a child is being looked after by the Department, it may undertake any obligation by way of guarantee under any deed of apprenticeship that the child enters into.

(2) If the Department has undertaken any such obligation under any deed it may at any time (whether or not it is still looking after the person concerned) undertake the like obligation under any supplemental deed.

Review of cases, etc.

5. (1) The Department must make arrangements for periodically reviewing the case of every child while he or she is being looked after by the Department.

(2) Without limiting sub-paragraph (1), in performing its duty under that sub-paragraph the Department must—

- (a) seek and take into account, so far as it is reasonably practicable to do so, the views of—
 - (i) the child himself or herself;
 - (ii) the child's parents;
 - (iii) any other individual who has parental responsibility for the child; and
 - (iv) any other person whose views the Department consider to be relevant;
- (b) if the child is in the care of the Department, consider whether to apply for the revocation of the relevant care order; and
- (c) record any decisions taken in the course or as a result of any review under this paragraph and, so far as practicable, notify the persons referred to in (a) above of those decisions.

(3) The Department must establish a procedure for considering any representations (including any complaint) with respect to the treatment of a child who is or has been looked after by it made to it by—

- (a) any person mentioned in sub-paragraph (2)(a);
- (b) any official foster carer; or
- (c) any other person appearing to the Department to have a sufficient interest in the welfare of the child to warrant the person's representations being considered by it.

(4) The Department must set out in writing, and make available to the public—

- (a) its arrangements under sub-paragraph (1); and
- (b) its procedure established under sub-paragraph (3).

Arrangements to assist children to live abroad

6. (1) The Department may, with the approval of every person who has parental responsibility for the child, arrange for, or assist in arranging for, any child looked after by it (except a child in its care) to live outside St Helena.

(2) The Department may, with the approval of the court, arrange for, or assist in arranging for, any child in its care to live outside St Helena.

(3) The court must not give its approval under sub-paragraph (2) unless it is satisfied that—

- (a) living outside St Helena would be in the child's best interests;
- (b) suitable arrangements have been, or will be, made for the child's reception and welfare in the country in which he or she will live;
- (c) the child has consented to living in that country; and
- (d) every person who has parental responsibility for the child has consented to the child living in that country.

(4) If the court is satisfied that the child does not have sufficient understanding to give or withhold consent, it may disregard sub-paragraph (3)(c) and give its approval if the child is to live in the country concerned with a parent, guardian, or other suitable person.

(5) If a person whose consent is required by sub-paragraph (3)(d) fails to give his or her consent, the court may disregard that provision and give its approval if it is satisfied that that person—

- (a) cannot be found;
- (b) is incapable of consenting; or
- (c) is withholding his or her consent unreasonably.

(6) If the court decides to give its approval under this paragraph it may order that its decision is not to have effect during the appeal period.

(7) In this paragraph “**the appeal period**” means—

- (a) if an appeal is made against the decision - the period between the making of the decision and the determination of the appeal; and
- (b) otherwise - the period during which an appeal may be made against the decision.

Death of children being looked after by Department

7. (1) If a child who is being looked after by the Department dies, the Department—

- (a) must, so far as is reasonably practicable, notify the child's parents and every person who is not a parent of the child but who has parental responsibility for the child;
- (b) must notify the police and the Coroner;
- (c) may, with the consent (so far as it is reasonably practicable to obtain it) of every person who has parental responsibility for the child, arrange for the child's body to be buried or cremated in accordance with the religious beliefs of the child; and
- (d) may, if the conditions mentioned in sub-paragraph (2) are satisfied, make

payments to any person who has parental responsibility for the child, or any relative, friend or other person connected with the child, in respect of travelling, subsistence or other expenses incurred by that person in attending the child's funeral.

- (2) The conditions are that—
- (a) it appears to the Department that the person concerned could not otherwise attend the child's funeral without undue financial hardship; and
- (b) the circumstances warrant the making of the payments.

(3) If the Department has exercised its power under sub-paragraph (1)(c) with respect to a child who was under 16 when he or she died, it may recover from any parent of the child any expenses incurred by it, and any sums so recoverable are, without affecting any other method of recovery, recoverable summarily as a civil debt.

(4) Nothing in this paragraph affects any enactment regulating or authorising the burial, cremation or anatomical examination of the body of a deceased person.

Persons formerly looked after by the Department

8. (1) This paragraph applies to a person within St Helena who is under the age of 21 and who was, at any time after reaching the age of 16 but while still a child—

- (a) looked after by the Department;
- (b) accommodated in a children's home;
- (c) accommodated in a residential care home, or psychiatric home for a consecutive period of at least 3 months (whether or not that period began after the child reached the age of 16); or
- (d) privately fostered,

but who is no longer so looked after, accommodated or fostered.

- (2) If—
- (a) the Department knows that there is in St Helena a person to whom this paragraph applies;
- (b) it appears to the Department that the child is in need of advice and being befriended;
- (c) if the child was not being looked after by the Department, the Department is satisfied that the person by whom the child was being looked after is not able to advise and befriend him or her, and
- (d) the child has asked the Department for help of a kind which it is able to give under this paragraph,

the Department may advise and befriend the child, and may also give him or her assistance in kind or, in exceptional circumstances, in cash.

(3) Paragraph 4 applies in relation to a person to whom this paragraph applies as it applies in relation to a child who is being looked after by the Department.

SCHEDULE 3
(Section 31(6))

CONTRIBUTIONS TOWARDS MAINTENANCE

TABLE OF CONTENTS

1. Liability to contribute
2. Agreed contributions
3. Contribution orders
4. Arrears

Liability to contribute

1. (1) If the Department is looking after a child (unless the child is looked after by the Department under section 32(1)(c) or under an interim care order), and it considers that it is reasonable to do so, the Department must take such steps as are practicable to recover contributions towards the child's maintenance from any person liable to contribute (a **"contributor"**).

- (2)** The persons liable to contribute are—
- (a)* if the child is under 16 - each of the child's parents;
 - (b)* if the child has reached the age of 16 - the child himself or herself.

(3) A parent is not liable to contribute during any period when the parent is in receipt of income support, family income supplement or disability working allowance under any statutory provision relating to social security.

(4) A person is not liable to contribute towards the maintenance of a child in the care of the Department in respect of any period during which the child is allowed by the Department under section 33(2) to live with a parent of the child.

(5) A contributor is not obliged to make any contribution towards a child's maintenance except as agreed with the Department or determined in accordance with this Schedule.

Agreed contributions

2. (1) Before recovering contributions towards a child's maintenance the Department must first serve a notice in writing (a **"contribution notice"**) on the contributor specifying—

- (a)* the weekly sum which it considers that he or she should contribute; and
- (b)* arrangements for payment.

- (2)** Arrangements for payment must, in particular, include—
- (a)* the date on which liability to contribute begins (which must not be earlier than the date on which the notice is served on the contributor);
 - (b)* the date on which liability under the notice will end, if the child has not before that date ceased to be looked after by the Department; and
 - (c)* the date on which the first payment is to be made.

(3) The Department may specify in a contribution notice a weekly sum that is a standard contribution determined by it for all children looked after by the Department.

(4) The Department must not specify in a contribution notice a weekly sum greater than that which it considers—

- (a) it would normally be prepared to pay if it had placed a similar child with official foster carers; and
- (b) is reasonably practicable for the contributor to pay (having regard to his or her means).

(5) The Department may at any time withdraw a contribution notice (without affecting its power to serve another).

(6) If the Department and the contributor agree—

- (a) the sum which the contributor is to contribute; and
- (b) arrangements for payment,

(whether as specified in the contribution notice or otherwise) and the contributor notifies the Department in writing that he or she so agrees, the Department may recover from him or her any contribution which is overdue and unpaid.

(7) A contributor may, by serving a notice in writing on the Department, withdraw his or her agreement in relation to any period of liability falling after the date of service of the notice.

(8) The Governor in Council may make regulations with respect to the procedures to be followed by the Department in reaching an agreement with a contributor and other matters relevant or incidental to the carrying into effect of this Schedule.

Contribution orders

3. (1) If a contributor has been served with a contribution notice and has—

- (a) failed to reach any agreement with the Department as mentioned in paragraph 2(6) within the period of one month beginning with the day on which the contribution notice was served; or
 - (b) served a notice under paragraph 2(7) withdrawing his or her agreement,
- the Department, unless it has withdrawn the notice, may apply to the Magistrates' Court for an order under this paragraph.

(2) On such an application the court may make an order (a “**contribution order**”) requiring the contributor to contribute a weekly sum towards the child's maintenance in accordance with arrangements for payment specified by the court.

(3) In making a contribution order the court must—

- (a) not specify a weekly sum greater than that specified in the contribution notice; and
- (b) have regard to the contributor's means.

(4) A contribution order does not—

- (a) take effect before the date specified in the contribution notice; or
- (b) have effect while the contributor is not liable to contribute (by virtue of paragraph 1); or
- (c) remain in force after the child has ceased to be looked after by the Department.

(5) If—

- (a) a contribution order is in force;
- (b) the Department serves another contribution notice; and
- (c) the contributor and the Department reach an agreement under paragraph 2(6) in respect of that other contribution notice,

the order ceases to have effect on the date on which it is agreed that the agreement takes effect.

(6) If an agreement is reached under sub-paragraph (5) the Department must notify the Registrar of the agreement and of the date on which it took effect.

(7) A contribution order may be varied or revoked by the Magistrates' Court on the application of the contributor or the Department.

(8) In proceedings for the variation of a contribution order, the Department must specify—

- (a) the weekly sum which, having regard to paragraph 2, it proposes that the contributor should contribute under the order as varied; and
- (b) the proposed arrangements for payment.

(9) In varying a contribution order the court must—

- (a) not specify a weekly sum greater than that specified under sub-paragraph (8)(a); and
- (b) have regard to the contributor's means.

(10) An appeal lies in accordance with rules of court from any order made under this paragraph.

Arrears

4. (1) In any proceedings for the recovery of any sum due under a contribution order, a certificate which—

- (a) purports to be signed by an officer of the Department; and
 - (b) states that any sum due to the Department under the order is overdue and unpaid,
- is evidence that the sum is overdue and unpaid.

(2) In any proceedings for the variation or revocation of a contribution order, or for the recovery of any sum due under a contribution order, the court may remit the whole or any part of the sum due under the order.

SCHEDULE 4
(Section 45(2))

SUPERVISION ORDERS

TABLE OF CONTENTS

1. Interpretation
2. Requirement to comply with supervisor's directions
3. Requirements imposed on responsible persons
4. Medical and psychiatric examinations
5. Medical and psychiatric treatment
6. Restriction on directions

Interpretation

1. In this Schedule, “**responsible person**”, in relation to a supervised child, means—

- (a) any person who has parental responsibility for the child; and
- (b) any other person with whom the child is living.

Requirement to comply with supervisor's directions

2. (1) A supervision order may require the supervised child to comply with any directions given from time to time by the supervisor and requiring him or her to do all or any of the following—

- (a) live at a place or places specified in the directions for a period or periods so specified;
- (b) present himself or herself to a person or persons specified in the directions at a place or places and on a day or days so specified;
- (c) participate in activities specified in the directions on a day or days specified in the directions.

(2) It is for the supervisor to decide whether and to what extent he or she exercises any power to give directions under sub-paragraph (1).

(3) This paragraph does not confer on a supervisor power to give directions in respect of any medical or psychiatric examination or treatment.

Requirements imposed on responsible persons

3. (1) With the consent of any responsible person, a supervision order may include a requirement that the responsible person must—

- (a) take all reasonable steps to ensure that the supervised child complies with any direction given by the supervisor under paragraph 2;
- (b) take all reasonable steps to ensure that the supervised child complies with any requirement included in the order under paragraph 4 or 5;
- (c) comply with any directions given by the supervisor requiring him or her to attend at a place specified in the directions for the purpose of taking part in activities so specified.

(2) A direction given under sub-paragraph (1)(c) may specify the time at which the responsible person is to attend and whether or not the supervised child is required to attend

with him or her.

(3) A supervision order may require any person who is a responsible person in relation to the supervised child to keep the supervisor informed of the responsible person's address, if it differs from that of the supervised child.

Medical and psychiatric examinations

4. (1) A supervision order may require the supervised child to submit—
 - (a) to a medical or psychiatric examination; or
 - (b) to any such examination from time to time as directed by the supervisor.
- (2) Any such examination is required to be conducted—
 - (a) by, or under the direction of, a medical practitioner as specified in the order;
 - (b) at a place specified in the order and at which the supervised child is to attend as a patient; or
 - (c) at a hospital or (in the case of a psychiatric examination) a hospital or psychiatric home at which the supervised child is, or is to attend as, a patient.
- (3) A requirement of a kind mentioned in sub-paragraph (2)(c) must not be included unless the court is satisfied, on the evidence of a medical practitioner, that—
 - (a) the supervised child may be suffering from a physical or mental condition that requires, or may be susceptible to, treatment; and
 - (b) a period as a resident patient is necessary if the examination is to be carried out properly.
- (4) A court must not include a requirement under this paragraph in a supervision order unless it is satisfied that—
 - (a) if the child has sufficient understanding to make an informed decision, he or she consents to its inclusion; and
 - (b) satisfactory arrangements have been, or can be, made for the examination.
- (5) This paragraph does not apply in the case of an interim order or an order pending appeal.

Medical and psychiatric treatment

5. (1) If a court proposes to make or vary a supervision order and is satisfied, on the evidence of a medical practitioner, that the physical condition of the supervised child is such as requires and may be susceptible to treatment, the court may include in the supervision order a requirement that the supervised child must, for a period specified in the order, submit to treatment of one of the following descriptions so specified—
 - (a) treatment by or under the direction of a medical practitioner specified in the order;
 - (b) treatment as a patient at a place specified in the order;
 - (c) treatment as a patient in a hospital.
- (2) If a court proposes to make or vary a supervision order and is satisfied, on the evidence of a medical practitioner, that the mental condition of the supervised child is such as requires and may be susceptible to treatment, the court may include in the supervision order a requirement that the supervised child must, for a period specified in the order, submit to treatment of one of the following descriptions so specified—
 - (a) treatment by or under the direction of a medical practitioner specified in the order;

- (b) treatment as a patient at a place specified in the order;
- (c) treatment as a patient in a hospital or psychiatric home.

(3) A court must not include a requirement under this paragraph in a supervision order unless it is satisfied that—

- (a) if the child has sufficient understanding to make an informed decision, he or she consents to its inclusion; and
- (b) satisfactory arrangements have been, or can be, made for the treatment.

(4) If a medical practitioner by whom or under whose direction a supervised child is being treated pursuant to a requirement included in a supervision order by virtue of this paragraph is—

- (a) unwilling to treat or direct the treatment of the supervised child; or
- (b) of the opinion that—
 - (i) the treatment should be continued beyond the period specified in that behalf in the order;
 - (ii) the supervised child needs different treatment;
 - (iii) the child is not susceptible to treatment; or
 - (iv) the child does not require further treatment,

the medical practitioner must make a report in writing to that effect to the supervisor.

(5) On receiving a report under sub-paragraph (4) the supervisor must refer it to a court, and on such a reference the court may make an order cancelling or varying the requirement.

(6) This paragraph does not apply in the case of an interim order or an order pending appeal.

Restriction on directions

6. The total number of days in respect of which a supervised child or responsible person may be required to comply with directions given under paragraph 2 or 3 must not exceed 90 or such lesser number, if any, as may be specified in the order.

SCHEDULE 5

(Sections 47(3) & 54(3))

EXCLUSION REQUIREMENTS

Power to include exclusion requirements in interim care orders and 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;
- (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 Supreme Court and the Magistrates' Court apart from this Schedule.

(5) In this Schedule—

“relevant order” means an interim care order or an emergency protection order;

“relevant person” has the same meaning as in section 47 or section 54, as the case may require.

SCHEDULE 6
(Section 167)

AMENDMENT OF LEGISLATION

Omitted as had effect

WELFARE OF CHILDREN ORDINANCE, 2008

WELFARE OF CHILDREN REGULATIONS, 2010
(Section 166)

TABLE OF CONTENTS

1. Citation and commencement

PART I
PRELIMINARY

2. Interpretation

PART II
SAFEGUARDING OF CHILDREN BOARD

3. Constitution of the Board
4. Functions of the Board
5. Functions of the Department in relation to the Board
6. Procedures of the Board

PART III
PARENTAL RESPONSIBILITY

7. Parental responsibility

PART IV
PRIVATE FOSTERING

8. Notification of proposal to foster a child privately
9. Action to be taken by Department on proposal to foster child privately
10. Notification by person already fostering a child privately
11. Subsequent visits to children who are being fostered privately
12. Notification of change of circumstances
13. Notification of the end of private fostering arrangement
14. Form of notification
15. Grounds for disqualification from fostering child privately

PART V
OFFICIAL FOSTERING AND PLACING OF CHILDREN IN CHILDREN'S HOME

16. Placing of children by the Department
17. Considerations on making placement and contents of arrangements
18. Notification of arrangements
19. Arrangements for contact
20. Health care and assessment
21. Establishment of records
22. Register
23. Retention and confidentiality of records and register

PART VI
REGISTRATION OF CHILDREN'S HOMES

General

24. Application for registration
25. Statement of purpose and children's guide

Registered persons

26. Fitness of registered provider
27. Appointment of manager
28. Training requirements of registered person
29. Notification of offences

Conduct of children's home

30. Promotion of welfare
31. Child's placement plan
32. Food provided for children
33. Provision of clothing, pocket money and personal necessities
34. Contact and access to communications
35. Arrangements for the protection of children
36. Behaviour management, discipline and restraint
37. Education, employment and leisure activity
38. Religious observance
39. Health needs of children
40. Medicines
41. Use of surveillance
42. Hazards and safety
43. Complaints and representations

Staffing

44. Staffing of children's homes

Fitness of workers

45. Fitness of workers
46. Employment of staff

Records

47. Children's case records

- 48. Other records
- 49. Notifiable events

Premises

- 50. Fitness of premises
- 51. Fire precautions

Management of homes

- 52. Visits by registered provider
- 53. Review of quality of care
- 54. Regulations and guidance
- 55. Financial position

Miscellaneous

- 56. Notice of absence
- 57. Notice of changes
- 58. Death of registered person
- 59. Offences
- 60. Compliance with regulations

**PART VII
CHILD-MINDING AND DAY CARE**

- 61. Application for registration as child-minder or provide day care
- 62. Grounds for disqualification from providing child-minding or day care service
- 63. Certification to look after older children

**PART VIII
PROVISION RELATING TO SECURE ACCOMMODATION**

- 64. Secure accommodation

**PART IX
ASSISTANCE FOR DISABLED CHILDREN**

- 65. Application for assistance
- 66. Appeals
- Schedule 1: Disqualifying offences
- Schedule 2: Forms
- Schedule 3: Fees

Citation and commencement

1. These Regulations may be cited as the Welfare of Children Regulations, 2010, and come into force on 1st March 2010.

PART I PRELIMINARY

Interpretation

2. In these Regulations—
“registered person”, in relation to a children’s home, means any person who is the registered provider or the registered manager of the home;
“the Board” means the Safeguarding of Children Board constituted under regulation 3;
“the Ordinance” means the Welfare of Children Ordinance, 2008.

PART II SAFEGUARDING OF CHILDREN BOARD

Constitution of the Board

3.³ (1) The St Helena Safeguarding of Children Board established by the Governor under section 38 of the Ordinance must include—

- (a) the chief officers, or their nominees, from Departments administering—
 - (i) Children’s Social Services;
 - (ii) Police;
 - (iii) Education;
 - (iv) Health;
- (b) at least 2 members appointed from non-governmental organisations and civil societies which are involved in children’s activities; and
- (c) the Children’s Champion if appointed as referred to in sub-regulation (2)(a).

(2) The Governor may appoint a person to be the Children’s Champion who must be a person nominated by the Chair of the Council Committee which has policy responsibility for Government business concerning social services, from amongst—

- (a) the Elected Members of the Legislative Council; or
- (b) the members of the Board referred to in regulation 3(1)(a) and (b).

(3) The Board must agree the terms of reference in respect of the Children’s Champion which must be confirmed by the Governor in Council before they come into force.

Functions of the Board

4. For the purpose of achieving its objective as prescribed in section 39 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; and
 - (v) safety and welfare of privately fostered children;

³ Regulation 3 substituted by LN 13/2018

- (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;
- (f) collect and analyse information about child deaths, and
- (g) consider applications under regulation 24.

Functions of the Department in relation to the Board

5. (1) The Department must make arrangements to promote cooperation between the Department and the Board with a view to supporting the Board in fulfilling its functions under regulation 4.

Procedures of the Board

6. The Board must regulate its own proceedings in order to fulfil its functions under regulation 4 and to meet its objective under section 39 of the Ordinance.

PART III PARENTAL RESPONSIBILITY

Parental responsibility

7. A parental responsibility agreement between the biological parents of a child to provide that the biological father is to have parental responsibility for the child must be in Form A in Schedule 2.

PART IV PRIVATE FOSTERING

Notification of proposal to foster a child privately

8. (1) A person who proposes to foster a child privately must notify the Department of the proposal, subject to sub-regulation (2), at least 3 months before the private fostering arrangement is to begin.

(2) In an emergency situation notification may be given within 3 months of the commencement of the arrangement but must be given as soon as reasonably possible after the emergency arises.

(3) Any person who is involved (whether or not directly) in arranging for a child to be fostered privately must notify the Department of the arrangement as soon as possible after the arrangement has been made.

(4) A parent of a child and any other person who has parental responsibility for a child, who is not involved (whether or not directly) in arranging for the child to be fostered privately, but who knows that it is proposed that the child should be fostered privately, must notify the Department of the proposal as soon as possible after the parent becomes aware of the arrangement.

(5) Notification is by submission of Form B in Schedule 2.

(6) Notification given under sub-regulations (1) to (3) must contain such of the following information as the person giving the notification is able to provide:

- (a) the name, sex, date and place of birth, religious persuasion, and cultural and linguistic background of the child;
- (b) the name and current address of the person giving the notice;
- (c) the name and current address of the proposed or current private foster carer;
- (d) the name and current address of the parents of the child and of any other person who has parental responsibility for the child and (if different) of any person from whom the child is to be, or was, received;
- (e) the name and current address of the minor siblings of the child, and details of the arrangements for their care;
- (f) the name and current address of any person, other than a person specified in sub-regulation (d), who is or was involved (whether or not directly) in arranging for the child to be fostered privately;
- (g) the date on which it is intended that the private fostering arrangement will start; and
- (h) the intended duration of the private fostering arrangement.

(7) If applicable, the following information must also be provided in respect of any person referred to in the notification under sub-regulations (4)(c), (d) and (f):

- (a) any offence of which the person has been convicted;
- (b) any disqualification under regulation 15 or a prohibition imposed on the person under section 70 of the Ordinance, including any details of the order, requirement or offence which gives rise to the disqualification or prohibition;
- (c) any such conviction, disqualification or prohibition imposed on any other person living in or employed at the same household as such person.

Action to be taken by Department on notification of proposal to foster child privately

9. (1) Upon receipt of notification under regulation 8, the Department must arrange for an officer of the Department within 7 working days to—

- (a) visit the premises where it is proposed that the child will be cared for and accommodated;
- (b) visit and speak to the proposed private foster carer and to all members of the child household;
- (c) visit and speak to the child, alone unless the officer considers it inappropriate;
- (d) speak to and, if it is practicable to do so, visit every parent of or person with parental responsibility for the child.

(2) The purpose of the visit by the officer under sub-regulation (1) is to establish—

- (a) whether the intended duration of the arrangement is understood by and agreed between—
 - (i) the parents of the child or any other person with parental responsibility for the child; and
 - (ii) the proposed private foster carer;
- (b) the wishes and feelings of the child about the proposed arrangement (considered in the light of the child's age and understanding);

- (c) the suitability of the proposed accommodation;
- (d) the capacity of the proposed private foster carer to look after the child;
- (e) the suitability of other members of the proposed private foster carer's household;
- (f) that arrangements for contact between the child and his or her parents, any other person with parental responsibility for him or her, and other persons who are significant to him or her, have been agreed and understood and that those arrangements will be satisfactory for the child;
- (g) that the parents of the child or any other person with parental responsibility for him or her and the proposed private foster carer have agreed financial arrangements for the care and maintenance of the child;
- (h) that consideration has been given to, and necessary steps taken to make arrangements for, care of the child's health;
- (i) that consideration has been given to, and necessary steps taken to make arrangements for, the child's education;
- (j) how decisions about the care of the child will be taken; and
- (k) whether the proposed private foster carer, the parents of the child, any other person with parental responsibility for the child, or any other person concerned with the child are being given such advice as seems to the Department to be needed;
- (l) any other matters that appear to the officer to be relevant.

(3) Having completed his or her functions under sub-regulation (2), the officer must make a written report to the Department.

Notification by person already fostering a child privately

10. (1) A person who is fostering a child privately and has not given notification to the Department in accordance with regulation 8 must notify the Department immediately in writing.

(2) The Department will determine in all the circumstances of the case whether full notification under regulation 8 is required.

(3) If notification is required under sub-regulation (2) it must contain such of the information specified in regulation 8 as the person giving the notification is able to provide.

Subsequent visits to children who are being fostered privately

11. (1) The Department must arrange for an officer to visit every child who is being fostered privately—

- (a) within 4 weeks of the commencement of the fostering; and
- (b) subsequent to the visits in paragraph (a) at intervals of 16 weeks or at a frequency (which can be more or less than 16 weeks) determined by the Department in accordance with its duties under section 3 of the Ordinance but in any case with not more than 26 weeks between visits.

(2) In addition to visits carried out in accordance with sub-regulation (1) the Department must arrange for every child who is fostered privately to be visited by an officer when reasonably requested to do so by the child, the private foster carer, a parent of the

child or any other person with parental responsibility for the child.

(3) When carrying out a visit under this regulation, the officer must speak to the child alone unless the officer considers it inappropriate, and must during the visit establish—

- (a) the feelings of the child about the arrangement (considered in the light of the child's age and understanding);
- (b) that the child's physical, intellectual, emotional, social and behavioural development is appropriate and satisfactory;
- (c) that the child's needs arising from his or her religious persuasion and cultural and linguistic background are being met;
- (d) the suitability of the accommodation if the visit is taking place at the child's accommodation;
- (e) as far as possible the status of the child's health;
- (f) whether the contact between the child and his or her parents, or any other person with whom contact has been arranged, is satisfactory for the child;
- (g) whether the private foster carer, the parents of the child, any other person with parental responsibility for the child, or any other person concerned with the child are being given such advice as appears to the Department to be needed; and
- (h) any other matters that appear to be relevant.

(4) The officer must make a written report to the Department after each visit carried out in accordance with this regulation.

Notification of change of circumstances

12. (1) A private foster carer must notify the Department of—

- (a) any change of the carer's address;
- (b) any further offence of which the carer or a person who is part of or employed at the carer's household has been convicted;
- (c) any further disqualification under regulation 15 or restriction under section 70 imposed on the carer or a person who is part of or employed at his or her household;
- (d) any person who begins to be part of or employed at his or her household, and any offence of which that person has been convicted, and any disqualification under regulation 15 or prohibition imposed on that person by section 70; and
- (e) any person who ceases to be part of or employed at the carer's household.

(2) A notification under sub-regulation (1) is given in advance if practicable, otherwise not more than 48 hours after the change of circumstances.

(3) The parent of a privately fostered child, and any other person who has parental responsibility for the child, who knows that the child is being fostered privately, must notify the Department of any change of the child's own address.

Notification of the end of private fostering arrangement

13. (1) Subject to sub-regulations (2) and (3), any person who has been fostering a child privately but has ceased to do so must notify the Department at the earliest

opportunity and in any event within 72 hours of the foster care ending and must include in the notification the name and address of the person into whose care the child was received and that person's relationship with the child.

(2) If a person has been fostering a child privately but has ceased to do so because of the death of the child, he or she must in his or her notification to the Department indicate that that is the reason.

(3) Sub-regulation (1) does not apply where the private foster carer intends to resume the private fostering arrangement after an interval of not more than 60 days, but if—

(a) he or she subsequently abandons his or her intention; or

(b) the interval expires without his or her having given effect to his or her intention, he or she must notify the Department within 48 hours of abandoning his or her intention or, as the case may be, the expiry of the interval.

(4) Any parent of a privately fostered child, and any other person who has parental responsibility for a child, who has given notification to the Department under regulation 8, must notify the Department of the ending of the private fostering arrangement and must include in the notification the name and address of the person into whose care the child was received and that person's relationship with the child.

Form of notification

14. Any notification required to be given to the Department under this Part must be given in writing.

Grounds for disqualification from fostering child privately

15. (1) A person is disqualified from fostering a child privately if any of the following provisions of this regulation apply to the person:

(a) he or she is a parent of a child with respect to whom a care order has been made at any time under section 42(1)(a) of the Ordinance;

(b) a care order or supervision order has been made at any time under section 42 of the Ordinance with respect to a child so as to remove the child from his or her care, or prevent the child living with him or her;

(c) he or she is a person whose registration in respect of a children's home has been cancelled under section 62(6) of the Ordinance, or he or she has been concerned in the management of, or had any financial interest in, a children's home, in respect of which the registration of any person has been cancelled under that section;

(d) he or she has at any time been refused registration in respect of the provision of child-minding or day care, or had any such registration cancelled under section 78 or 79(7); or

(e) he or she has been convicted of any of the following offences (or has been placed on probation or discharged absolutely or conditionally for any such offence)—

(i) any offence listed in Schedule 1;

(ii) an offence of abduction of a child in care under section 59 of the Ordinance;

(iii) an offence under section 53(13), 58(8), 60(5), or 161(7) of the Ordinance,

of obstructing an authorised person from exercising any power under such section;

- (iv) an offence under section 63 of the Ordinance relating to children's homes;
- (viii) any offence under sections 144 to 147 of the Ordinance;
- (ix) an offence under section 163(5) of the Ordinance.

(2) Despite sub-regulation (1), the Board may on receiving a request from the Department, exempt a person from any disqualification the person would otherwise be subject to under this regulation. The Board may make such exemption subject to any conditions it thinks fit.

(3) If the Department has stated its intention not to make a recommendation under sub-regulation (2) or has failed to make a recommendation within 21 days of receipt of a notification under this Part, a person disqualified under this regulation may apply in writing to the Board for consideration of an exemption from disqualification. Upon receipt of such an application the Board must notify the Department. The Department must make representations to the Board on the application within 14 days of such notice and the Board may on consideration of the Department's representations and any representations of the applicant exempt the applicant from any disqualification that the applicant would otherwise be subject to under this regulation.

(4) Unless the Board requires further information it must notify the person who is the subject of any request or application under this regulation of its decision within 14 days of the receipt of the report or application.

(5) A person in respect of whom the Board has made a decision under sub-regulations (2) or (3) may appeal to the Magistrates' Court in respect of that decision not later than 28 days after being notified in writing of the decision.

PART V

OFFICIAL FOSTERING AND PLACING OF CHILDREN IN CHILDREN'S HOME

Placing of children by the Department

16. (1) Before placing a child with foster carers or in a children's home, the Department must, so far as is reasonably practicable, make immediate and long-term arrangements for that placement, and for promoting the welfare of the child who is to be placed.

(2) If it is not practicable to make those arrangements before the placement, the Department must make them as soon as reasonably practicable thereafter.

(3) In the case of a child who is in care of the Department, the arrangements must so far as reasonably practicable be agreed by the Department with the child before a placement is made and if that is not practicable as soon as reasonably practicable thereafter.

(4) In any other case in which a child is looked after or accommodated but is not in the care of the Department, the arrangements must so far as reasonably practicable be agreed by the Department with—

- (a) a person with parental responsibility for the child; or

- (b) if there is no such person, the person who is caring for the child before a placement is made, and if that is not practicable as soon as reasonably practicable thereafter.

(5) Any arrangements made by the Department under this regulation must be recorded in writing.

Considerations on making placement and contents of arrangements

17. (1) In making arrangements for the placement of a child with foster carers or in a children's home, the Department must, as far as is reasonably practicable, have regard to—

- (a) in the case of a child who is in care - whether an application should be made to discharge the care order;
- (b) arrangements for contact, and whether there is any need for changes in the arrangements in order to promote contact with the child's family and others so far as is consistent with the child's welfare;
- (c) the Department's immediate and long term arrangements for the child, previous arrangements in respect of the child, and whether a change in those arrangements is needed, and consideration of alternative courses of action;
- (d) whether arrangements need to be made for the time when the child will no longer be looked after by the Department;
- (e) whether plans need to be made to find a permanent substitute family for the child;
- (f) the child's state of health including his or her physical, oral, emotional and mental health;
- (g) the child's health history including, so far as practicable, his or her family health history and the effect of the child's health and health history on his or her development;
- (h) any need the child has for mental health services;
- (i) whether the child's health needs will be met in the proposed placement taking into account the information under sub-regulations (f) to (h);
- (j) the child's educational history;
- (k) the need to achieve continuity in the child's education and to promote the child's educational achievement;
- (l) the need to identify any educational need which the child may have and to take action to meet that need;
- (m) whether the child's educational needs will be met in the proposed placement, taking into account the information available under sub-regulations (j) to (l).

(2) The arrangements referred to in regulation 16 must include, where practicable, arrangements concerning—

- (a) the type of accommodation to be provided and the name of any person who will be responsible for the child at that accommodation on behalf of the Department;
- (b) details of any services to be provided for the child;
- (c) the respective responsibilities of the Department and—
 - (i) the child;
 - (ii) any parent of the child; and
 - (iii) any person who is not a parent of the child but who has parental responsibility for him or her;

- (d) what delegation there has been by the persons referred to in sub-regulations (c)(ii) and (iii) to the Department of parental responsibility for the child's day to day care;
- (e) the arrangements for involving those persons and the child in decision-making with respect to the child;
- (f) the arrangements for contact between the child and—
 - (i) his or her parents;
 - (ii) any person who is not a parent of the child but who has parental responsibility for him or her; and
 - (iii) any relative, friend or other person connected with him or her, and, if appropriate, the reasons why contact with any such person would not be reasonably practicable or would be inconsistent with the child's welfare;
- (g) the arrangements for notifying changes in arrangements for contact to any of the persons referred to in sub-regulation (f);
- (h) the expected duration of arrangements and the steps which should apply to bring the arrangements to an end, including arrangements for rehabilitation of the child with the person with whom he or she was living before the arrangements were made or some other suitable person.

Notification of arrangements

18. (1) The Department must, so far as is reasonably practicable and consistent with the child's welfare, notify the following persons in writing of the arrangements to place a child, before the placement is made—

- (a) any person who is caring for the child immediately before the arrangements are made;
- (b) except in the case of a child in the care of the Department, any person in whose favour a contact order is in force with respect to the child; and
- (c) in the case of a child in the care of the Department, any person who has contact with the child pursuant to section 44 of the Ordinance or to an order under that section.

(2) If it is not practicable to give the notification before the placement, it must be given as soon as reasonably practicable thereafter and in any event no later than 10 working days from the date the placement is made.

(3) The Department must send a copy of the arrangements referred to in regulation 16 or such part of the arrangements as they consider will not prejudice the welfare of the child, with the notification referred to in sub-regulation (1).

(4) Subject to sub-regulation (3), the Department must in the notification to the persons specified in sub-regulation (1)(a) and (b) provide copies of any relevant report or assessment available at the time the placement is made or obtained subsequently during the placement.

Arrangements for contact

19. In operating the arrangements referred to in regulation 17(2)(f), a voluntary organisation or a person carrying on a private children's home must, unless it is not reasonably practicable or consistent with the child's welfare, endeavour to promote contact between the child and the persons mentioned in that paragraph.

Health care and assessment

- 20. (1)** Subject to sub-regulations (3) and (4), the Department must—
- (a) before making a placement or, if that is not reasonably practicable, as soon as practicable and in any event not later than 14 working days after the placement is made, make arrangements for a medical practitioner or a nurse to conduct an assessment, which may include a physical examination, of the child's state of health;
 - (b) require any person specified in paragraph (a) who conducts an assessment to prepare a written report of the assessment, which addresses the matters listed in sub-regulation 17(1)(f) to (i), with particular reference to the child's state of mental health;
 - (c) ensure that a copy of any report prepared in accordance with paragraph (b) and any subsequent assessment report prepared under this regulation during the placement, is forwarded to the Senior Medical Officer/Clinical Director; and
 - (d) having regard to the matters listed in regulation 17(1)(f) to (i) and, unless sub-regulation (4) applies, to any assessment reports, prepare a plan for the future health care of the child if one is not already in existence.
- (2)** The Department must ensure that each child is provided during the placement with—
- (a) health care services, including medical, dental and mental health care and treatment; and
 - (b) advice and guidance on health, personal care and health promotion matters in accordance with the child's needs.
- (3)** Sub-regulation (1) does not apply if within the period of 3 months immediately preceding the placement, the child's health has been assessed and a report of the assessment prepared in accordance with that paragraph.
- (4)** Sub-regulations (1)(a) and (b) do not apply if the child, being of sufficient understanding to do so, refuses to consent to the assessment.

Establishment of records

- 21. (1)** The Department must establish, and maintain a written case record in respect of each child whom it places.
- (2)** The record must include—
- (a) a copy of the arrangements referred to in regulation 16;
 - (b) a copy of any written report in the Department's possession concerning the welfare of the child;
 - (c) a copy of any document considered or record established in the course of or as a

- result of a review of the child's case;
- (d) details of arrangements for contact, of contact orders and of other court orders relating to the child; and
- (e) written reasons provided in accordance with regulation 17(2)(f).

Register

22. (1) The Department must, in respect of every child placed by it enter into a register to be kept for the purpose—

- (a) the name, sex and date of birth of the child;
- (b) the name and address of the person or children's home with whom the child is placed and, if different, of those of the child's parents or other person not being a parent of the child who has parental responsibility for him or her;
- (c) where a child is placed in a children's home, the name of the member of the children's home with particular responsibility for protecting and promoting the health and educational welfare of the child and for liaison with education and health care providers on that child's behalf;
- (d) whether the child is at risk of being abused;
- (e) whether the child is a disabled child;
- (f) the date on which each placement of the child began and terminated and the reason for each termination;
- (g) whether the child is in the care of the Department;
- (h) any other particulars that are appropriate.

Retention and confidentiality of records and register

23. (1) A case record under regulation 21 relating to a child who is placed must be retained by the Department until the 75th anniversary of the date of birth of the child to whom it relates or, if the child dies before attaining the age of 18, for a period of 15 years beginning with the date of the child's death.

(2) Entries in the register kept in accordance with regulation 22 must be retained until the child to whom the entry relates attains the age of 25 or, if the child has died before attaining 25, the period of 5 years beginning with the date of the child's death.

(3) The records and entries in the register may be retained under sub-regulations (1) and (2) either by retaining the original written record or register, or a copy of it, or by keeping all of the information from such record or register in some other accessible form (including electronic form).

(4) The Department must secure the safe keeping of case records and the register and must take all necessary steps to ensure that information contained in them is treated as confidential, subject only to—

- (a) any provision of or made under or by virtue of, a statute under which access to such records or information may be obtained or given;
- (b) any court order under which access to such records or information may be obtained or given.

PART VI REGISTRATION OF CHILDREN'S HOMES

*General***Application for registration**

24. A person who wishes to apply for registration of a children's home under section 62 of the Ordinance must submit to the Department an application in Form E in Schedule 2.

Statement of purpose and children's guide

25. (1) The registered person must compile in relation to the children's home a written statement (in these Regulations referred to as "**the statement of purpose**") which must include:

- (a) a statement of—
 - (i) the overall aims of the children's home, and the objectives to be attained with regard to children accommodated in the home; and
 - (ii) the facilities and services to be provided for the children accommodated in the children's home;
- (b) the name and address of the registered provider, and of the registered manager if applicable;
- (c) the relevant qualifications and experience of the registered provider and, if applicable, the registered manager;
- (d) the number, relevant qualifications and experience of persons working at the children's home, and if the workers are all of one sex, a description of the means whereby the home will promote appropriate role models of both sexes;
- (e) the arrangements for the supervision, training and development of employees;
- (f) the organisational structure of the children's home;
- (g) the following particulars—
 - (i) the age-range, sex and numbers of children for whom it is intended that accommodation should be provided;
 - (ii) whether it is intended to accommodate children who are disabled, have special needs or any other special characteristics; and
 - (iii) the range of needs (other than those mentioned in paragraph (b)) that the home is intended to meet.
- (h) any criteria used for admission to the home, including the home's policy and procedures for emergency admissions, if the home provides for emergency admissions;
- (i) if the children's home provides or is intended to provide accommodation for more than 6 children, a description of the positive outcomes intended for children in a home of such a size, and of the home's strategy for counteracting any adverse effects arising from its size, on the children accommodated there;
- (j) a description of the children's home's underlying ethos and philosophy, and if this is based on any theoretical or therapeutic model, a description of that model;
- (k) the arrangements made to protect and promote the health of the children accommodated at the home;
- (l) the arrangements for the promotion of the education of the children accommodated there, including the facilities for private study;
- (m) the arrangements to promote children's participation in recreational, sporting and cultural activities;
- (n) the arrangements made for consultation with the children accommodated about

- the operation of the children's home;
- (o) the arrangements made for the control, restraint and discipline of children;
- (p) the arrangements made for child protection and to counter bullying;
- (q) the procedure for dealing with any unauthorised absence of a child from the children's home;
- (r) a description of any electronic or mechanical means of surveillance of children which might be used in the children's home;
- (s) the fire precautions and associated emergency procedures in the children's home;
- (t) the arrangements for the children's religious instruction and observance;
- (u) the arrangements for contact between a child and his or her parents, relatives and friends;
- (v) the arrangements for dealing with complaints;
- (w) the arrangements for dealing with reviews of placement plans;
- (x) the type of accommodation, including the sleeping accommodation, provided, and, where applicable, how children are to be grouped, and in what circumstances they are to share bedrooms;
- (y) details of any specific therapeutic techniques used in the home, and arrangements for their supervision;
- (z) a description of the children's home's policy in relation to anti-discriminatory practice as respects children and children's rights.

(2) The registered person must provide a copy of the statement of purpose to the Department and must make a copy of it available upon request for inspection by—

- (a) any person who works at the children's home;
- (b) any child accommodated in the children's home; and
- (c) the parent of any child accommodated in the children's home,

and in this paragraph references to a child who is accommodated in the children's home include a child in respect of whom accommodation in the children's home is being considered.

(3) The registered person must produce a guide to the children's home (in these Regulations referred to as "**the children's guide**") which must include—

- (a) a summary of the home's statement of purpose; and
- (b) a summary of the complaints procedure established under regulation 25(1)(v).

(4) The children's guide must be produced in a form appropriate to the age, understanding and communication needs of the children to be accommodated in the home.

(5) The registered person must supply a copy of the children's guide to the Department and, on admission, to each child accommodated in the home.

(6) Subject to sub-regulation (7), the registered person must ensure that the children's home is at all times conducted in a manner which is consistent with its statement of purpose.

(7) Nothing in sub-regulation (6) or in regulation 50 requires or authorises the registered person to contravene or not comply with—

- (a) any other provision of these Regulations; or
- (b) the conditions for the time being in force in relation to the registration of the registered person under Part IX of the Ordinance.

- (8) The registered person must—
 - (a) keep under review and, where appropriate, revise the statement of purpose and the children’s guide;
 - (b) notify the Department of any such revision within 28 days; and
 - (c) if the children’s guide is revised, supply a copy to each child accommodated in the home.

Registered persons

Fitness of registered provider

26. (1) A person must not carry on a children’s home unless he or she is fit to do so.

- (2) A person is not fit to carry on a children’s home unless the person—
 - (a) is an individual who carries on the children’s home—
 - (i) otherwise than in partnership with others, in which case the person must satisfy the requirements set out in sub-regulation (3);
 - (ii) in partnership with others, in which case the person and each of the person’s partners must satisfy the requirements set out in sub-regulation (3);
 - (b) is a partnership, in which case each of the partners must satisfy the requirements set out in sub-regulation (3);
 - (c) is an organisation, in which case—
 - (i) the organisation must have given notice to the Department of the name, address and position in the organisation of an individual (in these Regulations referred to as “**the responsible individual**”) who is a director, manager, secretary or other officer of the organisation responsible for supervising the management of the children’s home; and
 - (ii) that individual must satisfy the requirements set out in sub-regulation (3).
- (3) The requirements are that—
 - (a) the person is of integrity and good character;
 - (b) he or she is physically and mentally fit to carry on the children’s home; and
 - (c) full and satisfactory information is available in relation to him or her in respect of the following matters:
 - (i) proof of identity including a recent photograph;
 - (ii) a criminal record certificate from every country in which the person had resided for more than 6 months;
 - (iii) 2 written references, including a reference from the person’s most recent employer, if any;
 - (iv) if the person has previously worked in a position whose duties involved work with children or vulnerable adults, so far as reasonably practicable verification of the reason why the employment or position ended;
 - (v) documentary evidence of any relevant qualifications;
 - (vi) a full employment history, together with a satisfactory written explanation of any gaps in employment.

Appointment of manager

27. (1) The registered provider must appoint an individual to manage the

children's home if—

- (a) there is no registered manager in respect of the children's home; and
- (b) the registered provider is an organisation or a partnership; or
- (c) is not, or does not intend to be, in full-time day to day charge of the children's home.

(2) If the registered provider appoints a person to manage the children's home, the provider must give notice to the Department of—

- (a) the name of the person so appointed; and
- (b) the date on which the appointment is to take effect.

(3) A person must not manage a children's home unless he or she is fit to do so.

(4) A person is not fit to manage a children's home unless—

- (a) he or she is of integrity and good character;
- (b) having regard to the size of the children's home, its statement of purpose, and the number and needs (including any needs arising from any disability) of the children accommodated there, the person—
 - (i) has the qualifications, skills and experience necessary for managing the children's home; and
 - (ii) is physically and mentally fit to manage the children's home; and
- (c) full and satisfactory information is available in relation to the person in respect of each of the matters specified in regulation 26(3)(c).

Training requirements of registered person

28. (1) The registered provider and the registered manager must, having regard to the size of the children's home, its statement of purpose, and the number and needs (including any needs arising from any disability) of the children accommodated there, carry on or manage the home (as the case may be) with sufficient care, competence and skill.

(2) If the registered provider is—

- (a) an individual - he or she must undertake;
- (b) an organisation - it must ensure that the responsible individual undertakes;
- (c) a partnership - it must ensure that one of the partners undertakes,

from time to time such training as is appropriate to ensure that the person has the experience and skills necessary for carrying on the children's home.

(3) The registered manager must undertake from time to time such training as is appropriate to ensure that he or she has the experience and skills necessary for managing the children's home.

Notification of offences

29. If the registered person or the responsible individual is convicted of any criminal offence, whether in St Helena or elsewhere, he or she must give notice in writing to the Department of—

- (a) the date and place of the conviction;
- (b) the offence of which he or she was convicted; and
- (c) the penalty imposed on him or her in respect of the offence.

Conduct of children's home

Promotion of welfare

30. (1) The registered person must ensure that the children's home is conducted so as to—

- (a) promote and make proper provision for the welfare of children accommodated there; and
- (b) make proper provision for the care, education, supervision and, where appropriate, treatment, of children accommodated there.

(2) The registered person must make suitable arrangements to ensure that the home is conducted—

- (a) in a manner which respects the privacy and dignity of children accommodated there; and
- (b) with due regard to the sex, religious persuasion, racial origin, and cultural and linguistic background and any disability of children accommodated there.

Child's placement plan

31. (1) The registered person must, before providing accommodation for a child in a children's home, or if that is not reasonably practicable, as soon as possible thereafter, prepare in consultation with the Department a written plan (in these Regulations referred to as the "**placement plan**") for the child, setting out in particular—

- (a) how, on a day to day basis, the child will be cared for, and his or her welfare safeguarded and promoted by the home;
- (b) the arrangements made for his or her health care and education; and
- (c) any arrangements made for contact with his or her parents, relatives and friends.

(2) The registered person must keep under review and revise the placement plan as necessary.

(3) In preparing or reviewing the placement plan the registered person must, so far as practicable having regard to the child's age and understanding, seek and take account of the child's views.

(4) The registered person must—

- (a) ensure that the placement plan is consistent with any plan for the care of the child prepared by the Department; and
- (b) comply with requests made by the Department to—
 - (i) provide it with information relating to the child; and
 - (ii) provide a suitable representative to attend any meetings it may hold concerning the child.

Food provided for children

32. (1) The registered person must ensure that children accommodated in a children's home are provided with—

- (a) food that—

- (i) is served in adequate quantities and at appropriate intervals;
 - (ii) is properly prepared, wholesome and nutritious;
 - (iii) is suitable for their needs and meets their reasonable preferences; and
 - (iv) is sufficiently varied; and
- (b) access to fresh drinking water at all times.

(2) The registered person must ensure that any special dietary needs of a child accommodated in the home, which is due to his or her health, religious persuasion, racial origin or cultural background, are met.

Provision of clothing, pocket money and personal necessities

33. (1) The registered person must ensure that the needs and reasonable preferences of each child accommodated in the home for clothing, including footwear and personal necessities, are met.

(2) The registered person must provide children accommodated in the home with such sums of money in respect of their occasional personal expenses as is appropriate to their age and understanding.

Contact and access to communications

34. (1) The registered person must—
- (a) subject to sub-regulations (6) and (8), promote the contact of each child with his or her parents, relatives and friends in accordance with the arrangements set out in his or her placement plan; and
 - (b) subject to sub-regulation (3), ensure that suitable facilities are provided within the children's home for any child accommodated there to meet privately at any reasonable time with his or her parents, relatives and friends, and the persons listed in sub-regulation (2).

- (2) The persons are—
- (a) any advocate instructed to represent the child under section 159 of the Ordinance;
 - (b) any officer for the time being assigned to the child by the Department;
 - (c) any person appointed as a visitor for the child in accordance with Schedule 2 paragraph 3 of the Ordinance;
 - (d) any person authorised by the Department;
 - (e) any person authorised in accordance with section 66(2) of the Ordinance to conduct an inspection of the children's home and the children there.

(4) Subject to sub-regulations (6) and (8), the registered person must ensure that children accommodated in the home are provided at all reasonable times with access to the following facilities which they may use without reference to persons working in the home—

- (a) a telephone on which to make and receive telephone calls in private; and
- (b) facilities to send and receive post and, if the necessary facilities are provided for the use of children accommodated in the home, electronic mail, in private.

(5) The registered person must ensure that any disabled child accommodated in the

home is provided with access to any aids and equipment that the child requires as a result of the disability in order to facilitate his or her communication with others.

(6) The registered person may (subject to sub-regulations (7) and (8)) impose any restriction, prohibition or condition upon a child's contact with any person under sub-regulation (1) or access to communications under sub-regulation (4) that the person is satisfied is necessary for the purpose of safeguarding or promoting the welfare of the child in question.

(7) No measure may be imposed by the registered person in accordance with sub-regulation (6) unless—

- (a) the child's placing authority consents to the imposition of the measure; or
- (b) the measure is imposed in an emergency, and full details are given to the placing authority within 24 hours of its imposition.

(8) This regulation is subject to any relevant order of the court relating to contact between the child and any person.

Arrangements for the protection of children

35. (1) The registered person must prepare and implement a written policy which—

- (a) is intended to safeguard children accommodated in the children's home from abuse or neglect; and
- (b) sets out the procedure to be followed in the event of any allegation of abuse or neglect.

(2) The procedure under sub-regulation (1)(b) must in particular provide for—

- (a) liaison and co-operation with the Department in the case of any child protection enquiries in relation to any child accommodated in the children's home;
- (b) the prompt referral to the Department of any allegation of abuse or neglect affecting any child accommodated in the children's home;
- (c) detailed notification procedure, of the instigation and outcome of any child protection enquiries involving any child accommodated in the children's home, to the Department;
- (d) written records to be kept of any allegation of abuse or neglect, and of the action taken in response;
- (e) consideration to be given to the measures which may be necessary to protect children in the children's home following an allegation of abuse or neglect;
- (f) a requirement for persons working at the home to report any concerns about the welfare or safety of a child accommodated there to one of the following—
 - (i) the registered person;
 - (ii) a police officer; or
 - (iii) an officer of the Department;
- (g) arrangements to be made for persons working at the home and children accommodated there, to have access at all times and in an appropriate form, to information which would enable them to contact the Department concerning the welfare or safety of children accommodated in the home.

- (3) The registered person must prepare and implement as required—
 - (a) a written policy for the prevention of bullying in the children's home, which must in particular set out the procedure for dealing with an allegation of bullying; and
 - (b) a procedure to be followed when any child accommodated in a children's home is absent without permission.

Behaviour management, discipline and restraint

36. (1) No measure of control, restraint or discipline which is excessive, unreasonable or contrary to sub-regulation (5) is to be used at any time on children accommodated in a children's home.

(2) The registered person must prepare and implement a written policy (in this regulation referred to as **"the behaviour management policy"**) which sets out—

- (a) the measures of control, restraint and discipline which may be used in the children's home; and
- (b) the means whereby appropriate behaviour is to be promoted in the home.

(3) The registered person must—

- (a) keep under review and, if appropriate, revise the behaviour management policy; and
- (b) notify the Department of any such revision within 28 days.

(4) The registered person must ensure that within 24 hours of the use of any measure of control, restraint or discipline in a children's home, a written record is made in a volume kept for the purpose which must include—

- (a) the name of the child concerned;
- (b) details of the child's behaviour leading to the use of the measure;
- (c) a description of the measure used;
- (d) the date, time and location of the use of the measure, and, in the case of any form of restraint, the duration of the restraint;
- (e) the name of the person using the measure, and of any other person present;
- (f) the effectiveness and any consequences of the use of the measure; and
- (g) the signature of a person authorised by the registered provider to make the record.

(5) Subject to sub-regulation (6), the following must not be used as disciplinary measures on children accommodated in a children's home—

- (a) any form of corporal punishment;
- (b) any punishment relating to the consumption or deprivation of food or drink;
- (c) any restriction, other than one imposed by a court or in accordance with regulation 34, on—
 - (i) a child's contact with his or her parents, relatives or friends;
 - (ii) visits to the child by his or her parents, relatives or friends;
 - (iii) a child's communications with any of the persons listed in regulation 34(2); or
 - (iv) the child's access to any telephone helpline providing counselling for children;

- (d) any requirement that a child wear distinctive or inappropriate clothes;
 - (e) the use or withholding of medication or medical or dental treatment;
 - (f) the intentional deprivation of sleep;
 - (g) the imposition of any financial penalty, other than a requirement for the payment of a reasonable sum (which may be by instalments) by way of reparation;
 - (h) any intimate physical examination of the child;
 - (i) the withholding of any aids or equipment needed by a disabled child;
 - (j) any measure which involves—
 - (i) any child in the imposition of any measure against any other child; or
 - (ii) the punishment of a group of children for the behaviour of an individual child.
- (6) This regulation does not prohibit—
- (a) the taking of any action by, or in accordance with the instructions of, a medical practitioner or a registered dental practitioner which is necessary to protect the health of a child;
 - (b) the taking of any action immediately necessary to prevent injury to any person or serious damage to property; or
 - (c) the imposition of a requirement that a child wear distinctive clothing for sporting purposes, or for purposes connected with his or her education or with any organisation whose members customarily wear uniform in connection with its activities.

Education, employment and leisure activity

37. (1) The registered person must promote the educational attainment of children accommodated in a children's home, in particular by ensuring that—

- (a) the children make use of educational facilities appropriate to their age, aptitude, needs, interests and potential;
- (b) the routine of the home is organised so as to further children's participation in education, including private study; and
- (c) effective links are maintained with any schools attended by children accommodated in the home.

(2) The registered person must ensure that children accommodated in the home are—

- (a) encouraged to develop and pursue appropriate leisure interests; and
- (b) provided with appropriate leisure facilities and activities.

(3) If any child in a children's home has attained the age where he or she is no longer required to receive compulsory full-time education, the registered person must assist with the making of, and give effect to, the arrangements made for the child's education, training and employment.

Religious observance

38. The registered person must ensure that each child accommodated in a children's home is enabled, so far as practicable—

- (a) to attend the services of;

- (b) to receive instruction in; and
- (c) to observe any requirement (whether as to dress, diet or otherwise) of, the religious persuasion to which he or she belongs.

Health needs of children

39. (1) The registered person must promote and protect the health of the children accommodated in a children's home.

- (2) In particular the registered person must ensure that—
 - (a) each child has access to any medical, dental, nursing, psychological and psychiatric advice, treatment and other services he or she requires;
 - (b) each child is provided with any individual support, aids and equipment he or she requires as a result of any particular health needs or disability he or she has;
 - (c) each child is provided with guidance, support and advice on health and personal care issues appropriate to his or her needs and wishes;
 - (d) at all times, at least one person on duty at the children's home has a suitable first aid qualification;
 - (e) any person appointed to the position of nurse at the children's home is a registered nurse.

Medicines

40. (1) The registered person must make suitable arrangements for the recording, handling, safekeeping, safe administration and disposal of any medicines received into the children's home.

- (2) In particular the registered person must ensure, subject to paragraph (3), that—
 - (a) any medicine which is kept in a children's home is stored in a secure place so as to prevent any child accommodated there having unsupervised access to it;
 - (b) any medicine which is prescribed for a child is administered as prescribed, to the child for whom it is prescribed, and to no other child; and
 - (c) a written record is kept of the administration of any medicine to any child.
- (3) Sub-regulation (2) does not apply to a medicine which—
 - (a) is stored by the child for whom it is provided in such a way that others are prevented from using it; and
 - (b) may be safely self-administered by that child.

Use of surveillance

41. Subject to any requirements for electronic monitoring imposed by a court under any enactment, the registered person must ensure that electronic or mechanical monitoring devices for the surveillance of children are not used in a children's home, except for the purpose of safeguarding and promoting the welfare of the child concerned, or other children accommodated in the children's home, and that the following conditions are met—

- (a) the Department consents to the use of the measure in question;
- (b) it is provided for in the child's placement plan;
- (c) so far as practicable in the light of the child's age and understanding, the child

- in question is informed in advance of the intention to use the measure; and
- (d) the measure is no more restrictive than necessary, having regard to the child's need for privacy.

Hazards and safety

- 42.** The registered person must ensure that—
 - (a) all parts of the home to which children have access are so far as reasonably practicable free from hazards to their safety;
 - (b) any activities in which children participate are so far as reasonably practicable free from avoidable risks;
 - (c) unnecessary risks to the health or safety of children accommodated in the home are identified and so far as possible eliminated,
 and must make suitable arrangements for persons working at the children's home to be trained in first aid.

Complaints and representations

- 43. (1)** The registered person must establish a written procedure for considering complaints made by or on behalf of children accommodated in the home.
- (2)** The procedure must, in particular, provide—
 - (a) for an opportunity for informal resolution of the complaint at an early stage;
 - (b) that no person who is the subject of a complaint takes any part in its consideration other than, if the registered person considers it appropriate, at the informal resolution stage only;
 - (c) for dealing with complaints about the registered person;
 - (d) for complaints to be made by a person acting on behalf of a child;
 - (e) for arrangements for the procedure to be made known to—
 - (i) children accommodated in the home;
 - (ii) their parents;
 - (iii) the Department; and
 - (iv) persons working in the home.
- (3)** A copy of the procedure must be supplied on request to any of the persons mentioned in sub-regulation (2)(e).
- (4)** The registered person must ensure that a written record is made of any complaint, the action taken in response, and the outcome of the investigation.
- (5)** The registered person must ensure that—
 - (a) children accommodated in the home are enabled to make a complaint or representation; and
 - (b) no child is subject to any reprisal for making a complaint or representation.
- (6)** The registered person must supply to the Department at its request a statement containing a summary of any complaints made during the preceding 12 months and the action that was taken.

*Staffing***Staffing of children's homes**

44. (1) The registered person must ensure that there is at all times, having regard to—

- (a) the size of the children's home, the statement of purpose, and the number and needs (including any needs arising from any disability) of the children accommodated there; and
- (b) the need to safeguard and promote the health and welfare of the children accommodated in the home,

a sufficient number of suitably qualified, competent and experienced persons working at the children's home.

(2) The registered person must ensure that the employment of any persons on a temporary basis at the children's home will not prevent children from receiving such continuity of care as is reasonable to meet their needs.

Fitness of workers

45. (1) The registered person must not—

- (a) employ a person to work at the children's home unless that person is fit to work at a children's home; or
- (b) allow a person to whom sub-regulation (2) applies to work at the children's home unless that person is fit to work at a children's home.

(2) This sub-regulation applies to any person who is employed by a person other than the registered person to work at the children's home in a position in which he or she may in the course of his or her duties have regular contact with children accommodated there.

(3) For the purposes of sub-regulation (1), a person is not fit to work at a children's home unless—

- (a) he or she is of integrity and good character;
- (b) he or she has the qualifications, skills and experience necessary for the work he or she is to perform;
- (c) he or she is physically and mentally fit for the purposes of the work he or she is to perform; and
- (d) full and satisfactory information is available in relation to him or her in respect of each of the following matters:
 - (i) proof of identity including a recent photograph;
 - (ii) a criminal record certificate from every country in which the person has resided for more than 6 months;
 - (iii) 2 written references, including a reference from the person's most recent employer, if any;
 - (iv) if the person has previously worked in a position whose duties involved work with children or vulnerable adults, so far as reasonably practicable verification of the reason why the employment or position ended;
 - (v) documentary evidence of any relevant qualifications;

- (vi) a full employment history, together with a satisfactory written explanation of any gaps in employment.
- (4) The registered person must ensure that—
 - (a) any offer of employment to a person is subject to sub-regulation (3)(d) being complied with in relation to that person; and
 - (b) unless sub-regulation (5) applies, no person starts work at a children's home until sub-regulation (3)(d) has been complied with in relation to the person.
- (5) If the following conditions apply, the registered person may permit a person to start work at a children's home regardless of sub-regulation (4)(b)—
 - (a) the registered person has taken all reasonable steps to obtain full information in respect of each of the matters listed in sub-regulation (3)(d) in respect of that person, but the enquiries in relation to any of the matters listed in sub-regulations (3)(d)(iii) to (vi) are incomplete;
 - (b) full and satisfactory information in respect of that person has been obtained in relation to the matters specified in sub-regulations 3(d)(i) and (ii);
 - (c) the registered person considers that the circumstances are exceptional; and
 - (d) pending receipt of, and satisfying himself or herself with regard to any outstanding information, the registered person ensures that the person is appropriately supervised while carrying out his or her duties.
- (6) The registered person must take reasonable steps to ensure that any person working at the children's home who is not employed by him or her and to whom sub-regulation (2) does not apply, is appropriately supervised while carrying out his or her duties.

Employment of staff

- 46. (1)** The registered person must, prior to appointing a member of staff, submit to the Department an application in Form F in Schedule 2. No appointment may be made prior to the Department approving such appointment in writing. The registered person must also—
- (a) ensure that all permanent appointments are subject to the satisfactory completion of a period of probation; and
 - (b) provide all employees with a job description outlining their responsibilities.
- (2)** The registered person must operate a disciplinary procedure which, in particular—
- (a) provides for the suspension of an employee where necessary in the interests of the safety or welfare of children accommodated in the home; and
 - (b) provides that the failure on the part of an employee to report an incident of abuse, or suspected abuse, of a child accommodated in the home to an appropriate person is a ground on which disciplinary proceedings may be instituted.
- (3)** For the purposes of sub-regulation (2)(b), an appropriate person is the registered person, an officer of the Department or a police officer.
- (4)** The registered person must ensure that all persons employed by him or her—

- (a) receive appropriate training, supervision and appraisal; and
- (b) are enabled from time to time to obtain further qualifications appropriate to the work they perform.

Records

Children's case records

47. (1) The registered person must maintain in respect of each child who is accommodated in a children's home a record in permanent form which—

- (a) includes the information, documents and records specified in sub-regulation (2) relating to that child;
- (b) is kept up to date; and
- (c) is signed and dated by the author of each written entry.

(2) The information specified in sub-regulation (1)(a) includes—

- (a) the child's name and any name by which the child has previously been known, other than a name used by the child prior to adoption;
- (b) the child's date of birth and sex;
- (c) the child's religious persuasion, if any;
- (d) a description of the child's cultural and linguistic background;
- (e) the child's address immediately prior to entering the home;
- (f) the name, address, telephone number and the religious persuasion, if any, of the child's parents;
- (g) the date and circumstances of all absences of the child from the home, including whether the absence was authorised and any information relating to the child's whereabouts during the period of absence;
- (h) the date of, and reason for, any visit to the child whilst in the home;
- (i) details of any special educational needs of the child;
- (j) the date and circumstances of any measures of control, restraint or discipline used on the child;
- (k) any special dietary or health needs of the child;
- (l) details of the school attended by the child, and of any employer of the child;
- (m) every school report received in respect of the child while accommodated in the home;
- (n) arrangements for, including any restrictions on, contact between the child, his or her parents, and any other person;
- (o) a copy of any plan for the care of the child prepared by the Department and of the placement plan and date and result of any review thereof;
- (p) details of any accident or serious illness involving the child while accommodated in the home;
- (q) details of any immunisation, allergy, or medical examination of the child and of any medical or dental need or treatment of the child;
- (r) details of any health examination or developmental test conducted with respect to the child at or in connection with his or her school;
- (s) details of any medicines kept for the child in the home, including any medicines which the child is permitted to administer to himself or herself, and details of the administration of any medicine to the child;
- (t) the dates on which any money or valuables are deposited by or on behalf of a child for safekeeping, and the dates on which any money is withdrawn, and any

- valuables are returned;
- (u) the address, and type of establishment or accommodation, to which the child goes when he or she ceases to be accommodated in the home.

(2) The record mentioned in sub-regulation (1) may not be disclosed to any person except in accordance with—

- (a) any provision of, or made under, or by virtue of, a statute under which access to such records is authorised; or
- (b) any court order authorising access to such records.

(3) The record mentioned in sub-regulation (1) must be—

- (a) kept securely in the children's home so long as the child to whom it relates is accommodated there; and
- (b) thereafter retained in a place of security,

for at least 75 years from the date of birth of the child to whom it relates or, if the child dies before attaining the age of 18, for a period of 15 years from the date of the child's death.

Other records

48. (1) The registered person must maintain in the children's home the following records and must ensure that they are kept up to date—

- (a) a record in the form of a register showing in respect of each child accommodated in a children's home—
 - (i) the date of the child's admission to the home;
 - (ii) the date on which he or she ceased to be accommodated there;
 - (iii) his or her address prior to being accommodated in the home;
 - (iv) his or her address on leaving the home;
- (b) a record showing in respect of each person working at the home—
 - (i) his or her full name, date of birth, sex and home address;
 - (ii) his or her qualifications relevant to, and experience of, work involving children;
 - (iii) whether he or she works at the home full-time or part-time (whether paid or not), and if part-time, the average number of hours worked per week; and
 - (iv) whether he or she resides at the home;
- (c) a record of any persons who reside or work at any time at the children's home, who are not mentioned in the records kept in accordance with sub-regulations (a) or (b);
- (d) a record of all accidents occurring in the children's home, or to children whilst accommodated by the home;
- (e) a record of the receipt, disposal and administration of any medicine to any child;
- (f) a record of every fire drill or fire alarm test conducted, with details of any deficiency in either the procedure or the equipment concerned, together with details of the steps taken to remedy that deficiency;
- (g) a record of all money deposited by a child for safekeeping, together with the date on which that money was withdrawn, or the date of its return;
- (h) a record of all valuables deposited by a child and the date of their return;
- (i) records of all accounts kept in the children's home;
- (j) a record of menus served;

- (k) a copy of the staff duty roster of persons working at the children's home, and a record of the actual rosters worked;
- (l) a daily log of events occurring in the home;
- (m) a record of all visitors to the home and to children accommodated in the home, including the names of visitors and the reasons for the visit.

(2) The records referred to in sub-regulation (1) must be retained for at least 15 years from the date of the last entry, except for records of menus, which need be kept only for one year.

Notifiable events

49. (1) The registered person must without delay notify the Department if, in relation to a children's home, any of the following events takes place:

- (a) death of a child accommodated in the home;
- (b) serious illness or serious accident sustained by a child accommodated in the home;
- (c) outbreak of any infectious disease which in the opinion of a medical practitioner attending children at the home is sufficiently serious to be so notified;
- (d) allegation that a child accommodated at the home has committed a serious offence;
- (e) involvement or suspected involvement of a child accommodated at the home in prostitution;
- (f) a serious incident necessitating calling the police to the home;
- (g) absconding by a child accommodated at the home;
- (h) any serious complaint about the home or persons working there;
- (i) the instigation and outcome of any child protection enquiry involving a child accommodated at the home.

(2) The registered person must without delay notify the parent of any child accommodated in the home of any significant incident affecting the child's welfare unless to do so is not reasonably practicable or would place the child's welfare at risk.

(3) Any notification made in accordance with this regulation which is given orally must be confirmed in writing.

Premises

Fitness of premises

50. (1) The registered person must not use premises for the purposes of a children's home unless they are in a location, and of a physical design and layout, which are suitable for the purpose of achieving the aims and objectives set out in the home's statement of purpose.

(2) The registered person must ensure that all parts of the children's home used by children are—

- (a) adequately lit, heated and ventilated;
- (b) secure from unauthorised access;

- (c) suitably furnished and equipped;
- (d) of sound construction and kept in good structural repair externally and internally;
- (e) kept clean and reasonably decorated and maintained; and
- (f) equipped with what is reasonably necessary, and adapted as necessary, in order to meet the needs arising from the disability of any disabled child accommodated in the home so as to enable him or her to live as normal a life as possible.

(3) The registered person must ensure that the children's home is kept free from offensive odours and make suitable arrangements for the disposal of general and clinical waste.

(4) The registered person must ensure that there are within the children's home for use by children accommodated there in conditions of appropriate privacy—

- (a) a sufficient number of wash basins, baths and showers supplied with hot and cold running water; and
 - (b) a sufficient number of lavatories,
- for the number and sex of children accommodated.

(5) The registered person must provide for the number and needs of children accommodated in the children's home—

- (a) sufficient and suitable kitchen equipment, crockery, cutlery and utensils;
- (b) adequate facilities for the preparation and storage of food; and
- (c) so far as is practicable, adequate facilities for children to prepare their own food if they so wish, and are of an age and ability, to do so.

(6) The registered person must ensure that there are within a children's home adequate facilities for laundering linen and clothing, and, for children wishing to do so, to wash, dry and iron their own clothes.

(7) The registered person must ensure that there is provided within the children's home—

- (a) adequate communal space for sitting, recreation and dining; and
- (b) facilities for private study appropriate to the age and educational needs of the children accommodated.

(8) The registered person must ensure that each child is provided with sleeping accommodation which is—

- (a) suitable to his or her needs including his or her need for privacy; and
- (b) equipped with furniture, storage facilities, lighting, bedding and other furnishings including window and floor coverings suitable to his or her needs.

(9) The registered person must ensure that no child shares a bedroom with an adult, nor (except in the case of siblings) a child who is of the opposite sex or of a significantly different age to him or her.

(10) The registered person must provide for persons working at the children's home—

- (a) suitable facilities and accommodation, other than sleeping accommodation,

including—

- (i) facilities for the purpose of changing; and
- (ii) storage facilities; and
- (b) sleeping accommodation if the provision of such accommodation is needed in connection with their work at the home.

Fire precautions

- 51.** The registered person must after consultation with the fire and rescue service—
- (a) take adequate precautions against the risk of fire, including the provision of suitable fire equipment;
 - (b) provide adequate means of escape;
 - (c) make adequate arrangements—
 - (i) for detecting, containing and extinguishing fires;
 - (ii) for giving warnings of fires;
 - (iii) for evacuation in the event of fire;
 - (iv) for the maintenance of all fire equipment; and
 - (v) for reviewing fire precautions, and testing fire equipment, at suitable intervals;
 - (d) make arrangements for persons working at the home to receive suitable training in fire prevention; and
 - (e) ensure, by means of fire drills and practices at suitable intervals, that the persons working at the home and, so far as practicable, children accommodated there, are aware of the procedure to be followed in case of fire.

Management of homes

Visits by registered provider

52. (1) If the registered provider is an individual, but is not in day to day charge of the children's home, he or she must visit the home in accordance with this regulation.

(2) If the registered provider is an organisation or a partnership, the home must be visited in accordance with this regulation by—

- (a) the responsible individual or one of the partners, as the case may be;
- (b) another of the directors or other persons responsible for the management of the organisation or partnership; or
- (c) an employee of the organisation or partnership who is not directly concerned with the conduct of the home.

(3) Visits under sub-regulations (1) or (2) must take place at least once a month and may be unannounced.

- (4)** The person carrying out the visit must—
- (a) interview, with their consent and in private, such of the children accommodated there, their parents, relatives and persons working at the home as appears necessary in order to form an opinion of the standard of care provided in the home;
 - (b) inspect the premises of the children's home, its daily log of events and records of any complaints; and

- (c) prepare a written report on the conduct of the home.

(5) The registered provider must supply a copy of the report required to be made under sub-regulation (4)(c) to—

- (a) the Department;
- (b) the registered manager of the children's home; and
- (c) in the case of a visit under sub-regulation (2)—
 - (i) if the registered provider is an organisation - to each of the directors or other persons responsible for the management of the organisation; and
 - (ii) if the registered provider is a partnership - to each of the partners.

Review of quality of care

53. (1) The registered person must establish and maintain a system for—

- (a) monitoring the matters set out in sub-regulation (2) at appropriate intervals; and
- (b) improving the quality of care provided in the children's home.

(2) The following matters must be monitored under sub-regulation (1)(a) —

- (a) in respect of each child accommodated in the children's home - compliance with the Department's plan for the care of the child (where applicable) and the placement plan;
- (b) the deposit and issue of money and other valuables handed in for safekeeping;
- (c) daily menus;
- (d) all accidents and injuries sustained in the home or by children accommodated there;
- (e) any illnesses of children accommodated in the home;
- (f) complaints in relation to children accommodated in the home and their outcomes;
- (g) any allegations or suspicions of abuse in respect of children accommodated in the home and the outcome of any investigation;
- (h) staff recruitment records and conduct of required checks for new workers in the home;
- (i) visitors to the home and to children in the home;
- (j) notifications of the events listed in section 52(1);
- (k) any unauthorised absence from the home of a child accommodated there;
- (l) the use of measures of control, restraint and discipline in respect of children accommodated in the home;
- (m) risk assessments for health and safety purposes and subsequent action taken;
- (n) medicines, medical treatment and first aid administered to any child accommodated in the home;
- (o) duty rosters of persons working at the home, and the rosters actually worked;
- (p) the home's daily log of events;
- (q) fire drills and tests of alarms and of fire equipment;
- (r) records of appraisals of employees;
- (s) minutes of staff meetings.

(3) The registered person must supply to the Department a report in respect of any review conducted by the registered person for the purposes of sub-regulation (1), and make a copy of the report available on request to children accommodated in the home, their parents and placing authorities.

(4) The system referred to in sub-regulation (1) must provide for consultation with children accommodated in the home, their parents and placing authorities.

Regulations and guidance

54. The registered person must ensure that a copy of these Regulations (and of any amendments to them) are kept in the home and made available on request to—

- (a) any person working in the home;
- (b) any child accommodated in the home; and
- (c) the parent of any child accommodated in the home.

Financial position

55. (1) The registered provider must carry on the children's home in a manner likely to ensure that the home will be financially viable for the purpose of achieving the aims and objectives set out in its statement of purpose.

(2) The registered person must—

- (a) ensure that adequate accounts are maintained and kept up to date in respect of the children's home;
- (b) supply a copy of the accounts to the Department at its request.

(3) The registered person must provide the Department with any information as it requires for the purpose of considering the financial viability of the children's home, including—

- (a) the annual accounts of the home certified by an accountant;
- (b) information as to the financing and financial resources of the home; and
- (c) a certificate of insurance for the registered provider in respect of liability which might be incurred by the registered provider in relation to the home in respect of death, injury, public liability, damage or other loss.

Miscellaneous

Notice of absence

56. (1) If—

- (a) the registered provider, if he or she is the person in day to day charge of the children's home; or
- (b) the registered manager,

proposes to be absent from the home for a continuous period of 28 days or more, the registered person must give notice in writing to the Department of the proposed absence.

(2) Except in the case of an emergency, the notice referred to in sub-regulation (1) must be given no later than one month before the proposed absence commences, or within a shorter period agreed with the Department and the notice must specify with respect to the proposed absence—

- (a) its length or expected length;
- (b) the reason for it;
- (c) the arrangements which have been made for running the children's home;

- (d) the name, address and qualifications of the person who will be responsible for the home during the absence; and
- (e) in the case of the absence of the registered manager - the arrangements that have been or are proposed to be made for appointing another person to manage the children's home during the absence, including the proposed date by which the appointment is to be made.

(3) If the absence arises as a result of an emergency, the registered person must give notice of the absence within one week of its occurrence specifying the matters mentioned in sub-regulations (2)(a) to (e).

(4) If—

- (a) the registered provider, if he or she is the person in day to day charge of the home; or
- (b) the registered manager,

has been absent from the children's home for a continuous period of 28 days or more, and the Department has not been given notice of the absence, the registered person must without delay give notice in writing to the Department specifying the matters mentioned in sub-regulation (2)(a) to (e).

(5) The registered person must notify the Department of the return to duty of the registered provider or (as the case may be) the registered manager not later than 7 days after the date of the person's return.

Notice of changes

57. The registered person must give notice in writing to the Department as soon as it is practicable to do so if any of the following events take place or are proposed to take place—

- (a) a person other than the registered person carries on or manages the children's home;
- (b) a person ceases to carry on or manage the home;
- (c) if the registered provider is an individual - he or she changes his or her name;
- (d) if the registered provider is a partnership - there is any change in the membership of the partnership;
- (e) if the registered provider is an organisation—
 - (i) the name or address of the organisation is changed;
 - (ii) there is any change of director, manager, secretary or other similar officer of the organisation; or
 - (iii) there is to be any change in the identity of the responsible individual;
- (f) if the registered provider is an individual - when a trustee in bankruptcy is appointed, or he or she makes a composition or arrangement with his or her creditors;
- (g) if the registered provider is a company - when a receiver, manager, liquidator or provisional liquidator is appointed;
- (h) the premises of the home are significantly altered or extended, or additional premises are acquired.

Death of registered person

58. (1) If more than one person is registered in respect of a children's home, and a registered person dies, the other registered person must without delay notify the Department of the death in writing.

(2) If only one person is registered in respect of a children's home, and he or she dies, his or her personal representatives must notify the Department in writing—

- (a)* without delay of the death; and
- (b)* within 28 days of their intentions regarding the future running of the home.

(3) The personal representatives of the deceased registered provider may carry on the home without being registered in respect of it—

- (a)* for a period not exceeding 28 days;
- (b)* for any further period determined in accordance with sub-regulation (4).

(4) The Department may extend the period specified in sub-regulation (3)(a) by a further period, not exceeding one year, that the Department determines and must notify any such determination to the personal representatives in writing.

(5) The personal representatives must appoint a person to take full-time day to day charge of the home during any period in which in accordance with sub-regulation (3), they carry on the children's home without being registered in respect of it.

Offences

59. (1) A person other than the Department or any of its servants or agents acting in the course of duty who contravenes any of these Regulations commits an offence.
Penalty: A fine of £2,000.

(2) The Department must not bring proceedings against a person in respect of a contravention of a regulation in Part VI unless—

- (a)* subject to sub-regulation (4), the person is a registered person;
- (b)* notice has been given to the person in accordance with sub-regulation (3);
- (c)* the period specified in the notice, within which the registered person may make representations to the Department, has expired; and
- (d)* in a case where, in accordance with sub-regulation (3)(b), the notice specifies any action that is to be taken within a specified period - the period has expired and the action has not been taken within that period.

(3) If the Department considers that a registered person has contravened any regulation in Part VI, it may serve a notice on the registered person specifying—

- (a)* in what respect in its opinion the registered person has contravened or is contravening that regulation;
- (b)* if it is practicable for the registered person to take action for the purpose of complying with any of those regulations, the action which, in the opinion of the Department, the registered person should take for that purpose;
- (c)* the period, not exceeding 3 months, within which the registered person should take any action specified in accordance with sub-regulation (b);
- (d)* the period, not exceeding one month, within which the registered person may make representations to the Department about the notice.

(4) The Department may bring proceedings against a person who was once, but no longer is, a registered person, in respect of any previous failure to comply with these Regulations and for this purpose, references in sub-regulations (2) and (3) to a registered person ~~is taken to~~ include such a person.

Compliance with regulations

60. If there is more than one registered person in respect of a children's home, anything which is required under these Regulations to be done by the registered person is, if done by one of the registered persons, not required to be done by any of the other registered persons.

PART VII CHILD-MINDING AND DAY CARE

Application for registration as child-minder or provide day care

61. (1) A person who wishes to register with the Department as a child-minder or day care provider under section 76 of the Ordinance (or who wishes to renew any such registration), must submit to the Department an application in Form C in Schedule 2.

(2) An application for renewal of registration under sub-regulation (1) must be accompanied by the fee prescribed in Schedule 3.

Grounds for disqualification from providing child-minding or day care service

62. A person who is disqualified under regulation 15(1) and not exempt by decision of the Board under regulation 15(2) from privately fostering a child, or on whom a prohibition has been imposed under section 70 of the Ordinance, is disqualified from providing any child-minding or day care service.

Certification to look after older children

63. A person who wishes to be certified by the Department under section 79 of the Ordinance, must submit to the Department an application in Form D in Schedule 2.

PART VIII PROVISION RELATING TO SECURE ACCOMMODATION

Secure accommodation

64. A child must not be kept in secure accommodation without the authority of a court for a period of more than 72 hours. The court on application under section 34 of the Ordinance may make an order to keep the child in secure accommodation for a period of 3 months and on subsequent applications for periods of 6 months.

PART IX ASSISTANCE FOR DISABLED CHILDREN

Application for assistance

65. (1) A person who wishes to apply to the Department for assistance for disabled children under section 8 of the Ordinance, must submit to the Department an application in Form G in Schedule 2.

(2) The Department will assess any such application received in accordance with this section and will determine the application in accordance with section 8 of the Ordinance within a reasonable time.

Appeals

66. (1) An appeal against a decision of the Department made after application under regulation 65 may be made to the Board by the original applicant. The Board will usually determine any such appeal within 28 days of receipt of it in writing.

(2) The Board will notify the appellant in writing within 5 days of the determination of the appeal.

(3) The Board may grant the application in full or part or refuse the appeal.

SCHEDULE 1

(Regulation 15(1)(e))

DISQUALIFYING OFFENCES

Murder

Manslaughter

Kidnapping

Offences of a violent or sexual nature

Any offence under the Drugs (Prevention of Misuse) Ordinance, 2003

Any offence under the Drugs (Trafficking Offences) Ordinance, 2003

The term “**offence**” includes aiding, abetting, counselling, procuring or inciting the committing of any offence against a child or conspiring or attempting to commit any such offence.

SCHEDULE 2

(Regulations 7, 8, 24, 46, 61, 63 & 65)

FORMS

Form A: Parental responsibility agreement

Form B: Notification of proposal to foster a child privately

Form C: Application for registration of child-minder/ day care provider

Form D: Application for certification to look after older children

Form E: Application for registration of children’s home

Form F: Application for registration of a new member of staff to work at a children’s home

Form G: Assistance for disabled children – Request form

WELFARE OF CHILDREN ORDINANCE, 2008)
(Section 12(2))

FORM A

PARENTAL RESPONSIBILITY AGREEMENT
(Regulation 7)

This is a Parental Responsibility Agreement regarding:

Child Full Name: _____ (Boy/Girl)
Date of birth: _____
Date of 18th birthday: _____

Between:

Mother Name: _____
Address: _____

and

Father Name: _____
Address: _____

We declare that:

We are the mother and father of the above child and we agree that the child's father must have parental responsibility for the child (in addition to the mother having parental responsibility).

Signed (Mother)

Signed (Father)

Date

Date

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

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

Signed in the presence of:
Name of witness

Signed in the presence of:
Name of witness

Address:

Address:

Signature of Witness

Signature of Witness

[Justice of the Peace/Magistrate/
Judicial Officer]

[Justice of the Peace/Magistrate/
Judicial Officer]

NOTES ABOUT PARENTAL RESPONSIBILITY AGREEMENT

Read these notes before you make the Agreement

About the Parental Responsibility Agreement

The making of this agreement will affect the legal position of the mother and the father. You should both seek legal advice before you make the Agreement.

When you fill in the Agreement

Put the name of one child only. If the father is to have parental responsibility for more than one child, fill in a separate form for each child.

When you have filled in the Agreement

A Justice of the Peace, Magistrate or Judicial Officer will witness your signature and sign the certificate of the witness.

Ending the Agreement

Once a parental responsibility agreement has been made, it can only end—

- by an order of the court made on the application of any person who has parental responsibility for the child;
- by an order of the court made on the application of the child with permission of the court;
- when the child reaches the age of 18 years.

WELFARE OF CHILDREN ORDINANCE, 2008

(Sections 68 to 74)

FORM B

NOTIFICATION OF PROPOSAL TO FOSTER A CHILD PRIVATELY

(Regulation 8(5))

(Please complete one form per child)

Section 1 – Details of child

Please state child's full name

Age: Date of birth / /

Male/Female

Place of birth

Child's employer if any

Please state the child's school (if attending)

Please state any child minder, crèche or toddlers group that the child maybe attending.

Please state details of religious persuasion and cultural background.

Have there ever been any previous foster care arrangements?

YES/NO

(Please tick as appropriate) If Yes, please detail below:

(Please give dates of these arrangements and reason for ending these arrangements)

Who has parental responsibility for this child? (Please state full name)

Have any care or supervision orders been made at any time regarding this child.

YES/ NO

(Please tick as appropriate)

Please state the date that the arrangements are intended to start.

Please state the intended duration of these arrangements.

From / / to / /

Section 2 – Parental Details

A. Please state full name

Age: Date of birth / /

Male/Female

Place of birth

Employer if any

Address

Relationship to the child i.e. biological mother/father, step parent, guardian, foster carer

Parents/PR destination

Parents/PR employer

Contact details for parents/PR when off-island

Address:

Telephone No.

B. Please state Full Name

Age: Date of Birth / /

Male/Female

Place of birth

Employer if any:

Address

Relationship to the child i.e. biological mother/father, step parent, guardian, foster carer/parental responsibility

Parents/PR destination

Parents/PR employer

Contact details for parents/PR when off-island

Address:

Telephone No.

Section 3 – Details of Foster Carers

Intended Primary Carer

A. Please state full name

Age: Date of Birth / /

Male/Female

Place of Birth

Employer and occupation if any

Home Address

Home telephone No.

Work telephone No.

Relationship to the child i.e. Family member / relation

Please detail any records of offences or disqualifications you may have.

B. Please state full name

Age: Date of Birth / /

Male/Female

Place of Birth

Employer and occupation if any

Home Address

Home telephone No.

Work telephone No.

Relationship to the child i.e. Family member / relation

Please detail any records of offences or disqualifications you may have.

Section 4 – Details of siblings (i.e. all siblings, not just minors)

A. Please state child's full name

Age: Date of Birth / /

Male/Female

Place of Birth

Child's employer if any

Please state the child's school (if attending)

Please state any child minder, crèche or toddlers group that the child is attending.

Please state any arrangements that have been made for the care of this sibling
(if required)

B. Please state child's full name

Age: Date of Birth / /

Male/Female

Place of Birth

Child's employer if any

Please state the child's school (if attending)

Please state any child minder, crèche or toddlers group that the child maybe attending.

Please state any arrangements that have been made for the care of this sibling
(if required)

Section 5 – Details of other adults living or working in the foster home

A. Please state full name

Age: Date of Birth / /

Male/Female

Place of birth

Employer if any;

B. Please state full name

Age: Date of Birth / /

Male/Female

Place of birth

Employer if any

C. Please state Full Name

Age: Date of Birth / /

Male/Female

Place of birth

Employer if any

Additional details

Are the biological parents married?

Has a court order been made in regards to parental responsibility for this child?

Has a parental responsibility agreement been made in regards to the child?

Does the child have a Legal Guardian? (Please state name)

Name of person giving notice.....

I declare the foregoing information given by me in this form is true and correct to the best of my knowledge.

Signed..... Dated.....

WELFARE OF CHILDREN ORDINANCE, 2008

(Section 76)

FORM C

**APPLICATION FOR REGISTRATION OF
CHILD-MINDER/DAY CARE PROVIDER***

(Regulation 61(1))

*(*Delete whichever is not applicable)*

Name of body/applicant:

Former names (if applicable):

Date of birth (of individual):

Name of corporate body (if applicable) and registration number:

Directors/trustees of corporate body (if applicable):

(including names, former names and dates of birth)

Address of applicant:

Name of responsible individual/s (if different from applicant):

(being the individual/s who will be providing the actual child-minding or day care service)

Address of premises:

(where child-minding or day care service will be provided)

Are these domestic premises?

Proposed hours:

(for which applicant wishes to provide child-minding or day care services)

Relevant experience of applicant and any responsible individual:

(including previous work with children or elderly or disabled people whether paid or not)

Number and ages of children of the applicant and responsible individual:

(include any children for whom either is to be responsible, other than as child-minder)

or provider of day care, during the hours in which the child-minding or day care is to be provided)

Any relevant qualifications of the applicant and responsible individual:

Details of employment history of applicant and responsible individual:

Details of any criminal convictions of the applicant or responsible individual and any directors/trustees in the case of a corporate body:

Include:

- (a) date of offence;
- (b) nature of the offence;
- (c) place where offence occurred;
- (d) penalty imposed.

Yes / No*

(delete whichever not applicable)

Applicant

Responsible Person

Date

WELFARE OF CHILDREN ORDINANCE, 2008
(Section 79)

FORM D

APPLICATION FOR CERTIFICATION TO LOOK AFTER OLDER CHILDREN
(Regulation 63)

Full names / Name of corporate body:

Former names (if applicable):

Date of birth (of individual):

Registration number (in case of corporate body):

Directors/trustees of corporate body:

(including names, former names and dates of birth)

Address of applicant:

Name of responsible individual/s:

(being the individual/s who will be looking after the children)

Address of premises:

Are these domestic premises?

Proposed hours:

(for which applicant wishes to look after children)

Relevant experience of applicant and any responsible individual:

(including previous work with children or elderly or disabled people whether paid or not)

Number and ages of children of the applicant and responsible individual:

(include any children for whom either is to be responsible during the hours in which such other children will be looked after)

Any relevant qualifications of the applicant and responsible individual:

Details of employment history of applicant and responsible individual:

Details of any criminal convictions of the applicant or responsible individual and any directors/trustees in the case of a corporate body:

Include:

- (a) date of offence;
- (b) nature of the offence;
- (c) place where offence occurred;
- (d) penalty imposed.

WELFARE OF CHILDREN ORDINANCE 2008

(Section 62)

FORM E

APPLICATION FOR REGISTRATION OF CHILDREN'S HOME

(Regulation 24)

Note to the applicant- In submitting this form it is either expressed or implied that you are aware and agree to a full and detailed background check that may be carried out on any information or individual named in this document. This includes personal or criminal details that maybe held on St Helena or elsewhere.

Signed.....

Dated.....

Address and proposed name of children's home premises:

Name of corporate body of owner(s) of the children's home:

Details of individual responsible for registering children's home (the responsible individual):

(see section 62(3))

Full name:

Home address:

Date of birth: / /

Place of birth:

Former names: (if applicable)

Description of premises:

Size of premises:

(Sq Floor Area/No. of floors)

Number and ages of children if known at date of application:

Total number of rooms:

Number of rooms used for purposes of the home:

Number of toilets for purposes of the home:

Approximate number of children to be cared for at any one time:

Date of inspection by the Fire Service:

Details of proposed manager(s) of children's home:

Full Name:

Home Address:

Date of Birth: / /

Place of Birth:

Former names: (if applicable)

Please detail any relevant experience of applicant and any manager:
(including previous work with children whether paid or not)

Please detail any relevant qualifications:

I the undersigned understand that in signing and submitting this form I am aware and agree to a full and detailed background check that may be carried out on any information regarding my personal or criminal details held on St Helena or elsewhere.

Signed.....

Dated.....

Details of proposed employee of children's home:

Full Name:

Home Address:

Date of Birth: / /

Place of Birth:

Former names: (if applicable)

Proposed Position of applicant:

Please detail any relevant experience of applicant and any manager:
(including previous work with children whether paid or not)

Please detail any relevant qualifications:

I the undersigned understand that in signing and submitting this form I am aware and agree to a full and detailed background check that maybe carried out on any information regarding my personal or criminal details held on St Helena or elsewhere.

Signed.....

Dated.....

WELFARE OF CHILDREN ORDINANCE 2008

(Section 62)

FORM F**APPLICATION FOR REGISTRATION OF A NEW MEMBER OF STAFF TO
WORK AT A CHILDREN'S HOME**

(Regulation 46(1))

Note to the applicant In submitting this form you agree to a full and detailed background check that may be carried out on any information or individual so named in this document. This includes personal or criminal details that maybe held on St Helena or elsewhere.

Signed.....

Dated.....

Name and address of children's home premises:

Name of corporate body of owner(s) of the children's home:

Details of individual responsible for registering children's home (the responsible individual):

(see section 62(3))

Full name:

Home address:

Date of birth: / /

Place of birth:

Former names: (if applicable)

Details of new proposed staff member:

Full name:

Home address:

Date of birth: / /

Place of birth:

Former names: (if applicable)

Please detail any relevant experience of applicant:

(including previous work with children whether paid or not)

Please detail any relevant qualifications:

Please state what position it is proposed you will be applying for:

Please give details of any criminal conviction you may have, for any offence, whether spent or otherwise. Also when and where (including outside St Helena). If none, please state "NONE";

I the undersigned understand that in signing and submitting this form I agree to any full and

detailed background check that may be carried out on any information regarding my personal or criminal details held in St Helena or elsewhere.

Signed.....

Dated.....

WELFARE OF CHILDREN ORDINANCE 2008

(Section 8(2)(b), (c), (d))

FORM G

ASSISTANCE FOR DISABLED CHILDREN – REQUEST FORM

(Regulation 65(1))

Details of Parent or Guardian:

Full name:

Home address:

Date of birth: / /

Place of birth:

Tel No.

(Home) (Work)

Please state your relationship with child: (Mother/Father/Guardian/Other)

Please state the number of dependant members in your family:

(Names & ages)

Is there any other income within your family household?

Total amount received: £

Please state total financial resources within your family household:

Please state all financial outgoings within your household:

Details of disabled child:

Full name of both parents: (if different from above)

State nature of disability:

Level of care required:

Please detail support or nature of assistance requested:

I the undersigned declare that the information given in this document is true to the best of my knowledge and belief.

Signed.....

Dated.....

FOR OFFICIAL USE ONLY

Assessment carried out: (Please tick)

YES/NO

By whom?

Brief assessment findings:

Is the level of assistance appropriate to their condition? (Tick box)

YES/NO If NO please state reasons below:

Is the level of assistance appropriate to the circumstances of the parent/guardian? (Tick box)

YES/NO If NO please state reasons below:

Is there a cost associated with providing the request? (Tick box)

YES/NO

If Yes, please explain reasons below

Projected Cost: £

Is the assistance in line with section 8(2)(d)*? (Tick box)

YES/NO

Outline in what way

*“That the assistance referred to in paragraph (b) is designed to ensure that disabled children have effective access to and receive education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to their achieving the fullest possible social integration and individual development.”

YES/NO If NO please state reasons below:

Is there any proposed condition subject to which the assistance is granted? (Tick box)

YES/NO If YES please state conditions below:

- 1.
- 2.
- 3.
- 4.

Assessor's recommendations:

Signed.....

Dated.....

SCHEDULE 3
(Regulation 60(2))

FEEs

Application for renewal of registration as child-minder	£7
Application for renewal of registration as day care provider	£14
Application for registration of children's home	£20

COURTS (APPEALS AND RULES) ORDINANCE, 2017

COURTS (WELFARE OF CHILDREN)(FORMS) RULES, 2010
(Section 8)⁴

Citation

1. These Rules may be cited as the Courts (Welfare of Children) (Forms) Rules, 2010.

Forms

2. The forms set out in the Schedule are to be used for the purposes to which they are expressed to relate, with any modifications the circumstances may require.

SCHEDULE
(Rule 2)

- Form A: Application by biological father for parental responsibility
- Form B: Application for order with respect to children
- Form C: Application for order to make child ward of court
- Form D: Application for child to be kept in secure accommodation
- Form E: Application for care or supervision order
- Form F: Application for contact order
- Form G: Application for variation or revocation of care or supervision order
- Form H: Application for child assessment order
- Form I: Application for emergency protection order
- Form J: Application for extension of emergency protection order
- Form K: Application for recovery order
- Form L: Application for order to cancel or impose condition on registration as day care or child minding provider
- Form M: Application for adoption order
- Form N: Application to free child for adoption
- Form O: Application to revoke section 103 order
- Form P: Application for order to return child unlawfully removed from custody
- Form Q: Application for order for removal of protected child from unsuitable surroundings
- Form R: Application for attachment of earnings order
- Form S: Application for search warrant
- Form T: Warrant to search for child
- Form U: Application for stop order
- Form V: Application for order for financial provision in respect of child
- Form W: Application for contribution order

⁴ Previously section 2 of the Courts (Rules) Ordinance, 1968

WELFARE OF CHILDREN ORDINANCE, 2008**FORM A****APPLICATION BY BIOLOGICAL FATHER FOR PARENTAL RESPONSIBILITY**
(Section 12(1)(b))

To the Magistrates' Court

I (Name) of
 (Address)..... am the biological father of:
 (Name of Child).....
 of (Address).....
 and APPLY for an order declaring that I should have parental responsibility for the child on
 the grounds set out in the accompanying statement.

Dated this 20.....

 (Signature)
 Applicant

FORM B**WELFARE OF CHILDREN ORDINANCE, 2008****APPLICATION FOR ORDER WITH RESPECT TO CHILDREN**
(Sections 18 and 20)

To the Magistrates' Court

I (Name) of (Address).....
 APPLY for an order (Specify nature of order sought*)
with respect
 to (Name of Child).....
 of (Address)
 on the grounds set out in the accompanying statement(s) made
 by and

Dated this 20.....

 (Signature)
 Applicant

* *Insert whichever of the following is or are appropriate, or as the case may be—*

Residence order

Contact order

Prohibited steps order

Specific issue order

Leave to apply for section 18 order

FORM C

WELFARE OF CHILDREN ORDINANCE, 2008

APPLICATION FOR ORDER TO MAKE CHILD WARD OF COURT
(Section 27)

In the St Helena Supreme Court
To the Honourable the Chief Justice

I (Name) of (Address).....
APPLY for an order declaring that (Name of Child).....
of (Address)..... be made a ward of court.
This application is made on the grounds set out in the accompanying statement(s) made
by..... and

Dated this 20.....

(Signature)
Applicant

FORM D

WELFARE OF CHILDREN ORDINANCE, 2008

APPLICATION FOR CHILD TO BE KEPT IN SECURE ACCOMMODATION
(Section 34(2))

To the Juvenile Court

I (Name) of (Address).....
APPLY on behalf of the Public Health and Social Services Department for an order to keep
(Name of Child).....
of (Address)..... in secure accommodation at
(Address)
on the grounds set out in the accompanying statement(s) made
by and

Dated this 20.....

(Signature)
Applicant

FORM E**WELFARE OF CHILDREN ORDINANCE, 2008****APPLICATION FOR CARE OR SUPERVISION ORDER**

(Section 42)

To the Magistrates' Court

I (Name) of (Address).....

APPLY on behalf of the Public Health and Social Services Department for a
care order/supervision order* in respect of

(Name of Child)

of (Address)

I am satisfied on the grounds set out in the accompanying statement(s) made
by and that—

(a) the child is suffering, or likely to suffer, significant harm; and

(b) the harm, or likelihood of harm, is attributable to—

(i) the care given to the child, or likely to be given to him if the order were
not made, not being what it would be reasonable to expect a parent to
give to him; or

(ii) the child being beyond parental control.

I further declare that the child has not reached the age of 17 (or 16, in the case of a child who
is married).

Dated this 20.....

(Signature)

Applicant

Delete whichever is not applicable*FORM F****WELFARE OF CHILDREN ORDINANCE, 2008****APPLICATION FOR CONTACT ORDER**

(Section 44)

To the Magistrates' Court

I (Name) of (Address).....

APPLY for a contact order in respect of (Name of Child)

Of

(Address)

.....
with respect to the following person(s) and on the following basis:

.....

.....

The grounds for this application are set out in the accompanying statement(s) made by..... and

Dated this 20.....

(Signature)
Applicant

FORM G

WELFARE OF CHILDREN ORDINANCE, 2008

APPLICATION FOR VARIATION OR REVOCATION OF CARE OR SUPERVISION ORDER

(Section 48)

To the Magistrates' Court

I (Name) of (Address).....
APPLY for an order that the Care Order/Supervision Order* which was granted on
(Date)..... in respect of (Name of
Child).....
of (Address).....
be varied / revoked* (delete whichever is not applicable) on the grounds set out in the
accompanying statement(s) made
by
.....

Dated this 20.....

(Signature)
Applicant

**Delete whichever is not applicable*

FORM H

WELFARE OF CHILDREN ORDINANCE, 2008

APPLICATION FOR CHILD ASSESSMENT ORDER (Section 52)

To the Magistrates' Court

I (Name) of (Address).....
APPLY on behalf of the Public Health and Social Services Department for a child assessment
order in respect of (Name of Child)

of (Address)

I am satisfied on the grounds set out in the accompanying statement(s) made by and that—

- (a) there is reasonable cause to suspect that the child is suffering, or likely to suffer, significant harm; and
- (b) an assessment of the state of the child's health or development, or of the way in which he 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
- (c) it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an assessment order.

Dated this 20.....

(Signature)
Applicant

FORM I

WELFARE OF CHILDREN ORDINANCE, 2008

APPLICATION FOR EMERGENCY PROTECTION ORDER

(Section 53)

To the Magistrates' Court

I (Name) of (Address).....

APPLY for an emergency protection order in respect of:

(Name of Child)

of (Address).....

I am satisfied on the grounds set out in the accompanying statement(s) made by and that—

- (a) there is reasonable cause to believe that the child will suffer, or be likely to suffer, significant harm if—
 - (i) he is not removed to accommodation provided by or on behalf of the applicant; or
 - (ii) he does not remain in the place in which he is then being accommodated; or
- (b) in the case of an application made by the Department—
 - (i) enquiries are being made with respect to the child under section 36; and
 - (ii) such enquiries are being frustrated by access to the child being unreasonably refused to a person authorised by the Department to seek access in connection with the enquiries; and
 - (iii) the Department has reasonable cause to believe that such access is required as a matter of urgency.

Dated this 20.....

(Signature)
Applicant

FORM J

WELFARE OF CHILDREN ORDINANCE, 2008

APPLICATION FOR EXTENSION OF EMERGENCY PROTECTION ORDER
(Section 55)

To the Magistrates' Court

I (Name) of (Address).....
APPLY for extension / revocation* of the emergency protection order granted on
(Date)..... in respect of
(Name of Child)
of (Address)
on the grounds set out in the accompanying statement(s) made
by and

Dated this,20.....

(Signature)
Applicant

* *Delete whichever is not applicable*

FORM K

WELFARE OF CHILDREN ORDINANCE, 2008

APPLICATION FOR RECOVERY ORDER
(Section 60)

To the Magistrates' Court

I (Name) of (Address).....
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 statement(s) made
by and
that such child—

- (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

FORM L

WELFARE OF CHILDREN ORDINANCE, 2008

APPLICATION FOR ORDER TO CANCEL OR IMPOSE CONDITION ON REGISTRATION AS DAY CARE OR CHILD MINDING PROVIDER (Section 78)

To the Magistrates' Court

I (Name) of (Address).....
APPLY on behalf of the Public Health and Social Services Department for an Order to
cancel/ impose condition on the registration of:
(Name of person).....
as a child minder or day care provider on the grounds set out in the accompanying written
statement.

Dated this 20.....

(Signature)
Applicant

** Delete whichever is not applicable*

FORM M

WELFARE OF CHILDREN ORDINANCE, 2008

APPLICATION FOR ADOPTION ORDER (Sections 98 to 102)

To the Magistrates' Court

I/We (Name/s)
of (Address).....

wish to adopt:

(Name of Child).....

of (Address)

and give the following details in support of my/our application:

PART 1: DETAILS OF APPLICANT/S

First Applicant:

(a) Full Names:

(b) Address:

(c) Telephone Number:

(d) Nationality:

(e) Occupation:

(f) Domicile and habitual residence:

Second Applicant:

(a) Full Names:

(b) Address:

(c) Telephone Number:

(d) Nationality:

(e) Occupation:

(f) Domicile and habitual residence:

Status of Applicant:

If you are applying to adopt as a couple, please go straight to Part 2: Details of Child; paragraphs (g) to (m) do not apply to you.

If you are applying to adopt alone, please tick the boxes at (g) to (m) below that apply to you.

(g) I am the partner of the child's: Father/Mother / Other parent*

If you have ticked box (g), please continue straight to Part 2: Details of Child. Paragraphs (h) to (m) do not apply to you.

(h) I am the partner (not the spouse or civil partner) of a person who is not the child's parent and I am applying to adopt alone because:

(Please give reasons below, continuing on a separate sheet if necessary)

If you have ticked box (h), please continue to Part 2: Details of Child; paragraphs (i) to (m) do not apply to you.

(i) I am not married/I do not have a civil partner

(j) I am divorced/my civil partnership has been dissolved

(k) I am a widow/a widower/a surviving civil partner

(l) I am married/I have a civil partner, and I can satisfy the court that:

(i) my spouse cannot be found; or

(ii) we have separated and are living apart, and the separation is likely to be permanent; or

(iii) my spouse is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.

(m) I am applying alone for an adoption order in respect of my own child and I can satisfy the court that:

(i) the other natural parent has died; or

(ii) the other natural parent cannot be found; or

(iii) the other natural parent's exclusion from this application is justified (Please give reasons below):

* *Delete whichever is not applicable*

PART 2: DETAILS OF CHILD

Sex of child:

Date of birth:

Place of birth:

Nationality of child:

I/We confirm that the child is the person to whom the attached certified copy of the entry in the Register of Live Births relates. (Attach copy of birth record)

I/We confirm that the child is not and has never been married or a civil partner.

I/We confirm that: (*check whichever is applicable*)

- (a) A freeing order was made under section 103 in respect of the child on (date)
- (b) Each parent or guardian of the child freely, and with full understanding of what is involved, agrees unconditionally to the making of an adoption order (whether or not he or she knows the identity of the applicants).
- (c) The parent or guardian of the child:
 - (i) cannot be found or is incapable of giving agreement;
 - (ii) is withholding his agreement unreasonably;
 - (iii) has persistently failed without reasonable cause to discharge the parental responsibilities in relation to the child;
 - (iv) has abandoned or neglected the child;
 - (v) has persistently ill-treated the child;
 - (vi) has seriously ill-treated the child.

Dated this 20.....

(Signature)
Applicant

(Signature)
Applicant

FORM N

WELFARE OF CHILDREN ORDINANCE, 2008

APPLICATION TO FREE CHILD FOR ADOPTION

(Section 103)

To the Magistrates' Court

I (Name) of (Address).....

APPLY on behalf of the Public Health and Social Services Department for an order to declare

(Name of Child)

of (Address)

free for adoption on the grounds set out in the accompanying statement(s) made by and

Please indicate whether—

- (a) this application is made with the consent of a parent or guardian of a child; or
 (b) the child is in the care of the Department and the Department is applying under section 103(1)(b) of the Ordinance for dispensation of the agreement of each parent or guardian of the child.

Dated this 20.....

 (Signature)
 Applicant

FORM O

WELFARE OF CHILDREN ORDINANCE, 2008

APPLICATION TO REVOKE SECTION 103 ORDER
 (Section 105)

To the Magistrates' Court

I (Name) of (Address).....
 APPLY for the order granted on (Date)..... declaring
 (Name of Child)
 of (Address)
 free for adoption to be REVOKED on the grounds set out in the accompanying statement(s)
 made by and

Dated this 20.....

 (Signature)
 Applicant

FORM P

WELFARE OF CHILDREN ORDINANCE, 2008

**APPLICATION FOR ORDER TO RETURN CHILD UNLAWFULLY REMOVED
 FROM CUSTODY**
 (Section 113)

To the Magistrates' Court

In the matter between:

[A.B.] Applicant

and

[C.D.] Respondent

I (Name) of (Address).....

(a) on behalf of the Public Health and Social Services Department*; or

(b) on my own behalf being the person from whose actual custody the child mentioned below has been or is about to be removed in breach of section 111/112 of the Ordinance*,

APPLY for an order to direct the Respondent to return such child to, or refrain from removing such child from, the actual custody of:

(Name).....

of (Address)

(Name of Child)

The accompanying statement(s) made by

and are attached in support of the application.

**Delete whichever is not applicable*

Dated this 20.....

(Signature)

Applicant

FORM Q**WELFARE OF CHILDREN ORDINANCE, 2008****APPLICATION FOR ORDER FOR REMOVAL OF PROTECTED CHILD FROM
UNSUITABLE SURROUNDINGS**

(Section 116)

To the Magistrates' Court

I (Name) of (Address).....

APPLY on behalf of the Public Health and Social Services Department for an order for the removal of

(Name of Child)

to the care of the Department until he can be restored to a parent, relative or guardian of his or other arrangements can be made with respect to such child.

I am satisfied on the grounds set out in the accompanying statement(s) made

by and that such child is a protected child and that he/she is being kept or is about to be received—

(a) by a person who is unfit to have his care; or

(b) in any premises or any environment detrimental or likely to be detrimental to him.

Dated this 20.....

(Signature)
Applicant

FORM R

WELFARE OF CHILDREN ORDINANCE, 2008

APPLICATION FOR ATTACHMENT OF EARNINGS ORDER (Sections 151 and 152)

To the Magistrates' Court

I (Name) of (Address).....

APPLY for an order directing (Name of employer).....

who is the employer of (Name of payer).....

- (a) to make periodical deductions from the payer's earnings in accordance with the payment order; and
- (b) to pay the amounts deducted to the Clerk of the Peace.

A payment order was made under the Ordinance against the payer on (Date)..... in respect of (Name of Child) of (Address)

The number of periodical deductions and amount of payment requested are as follows:

.....
.....

Dated this 20.....

(Signature)
Applicant

FORM S

WELFARE OF CHILDREN ORDINANCE, 2008

APPLICATION FOR SEARCH WARRANT (Section 162)

To the Magistrates' Court

I (Name) of (Address).....

APPLY for a search warrant to be issued in respect of:

(Name of Child).....
 of (Address).....
 and authorising any police officer to assist in the exercise of—
 (a) the powers under the emergency protection order granted on
 (Date).....; or
 (b) the powers under section 100,
 and that such police officer may use reasonable force if necessary.

I am satisfied on the grounds set out in the accompanying statement(s) made
 by and that the person
 attempting to exercise such powers has been or is likely to be prevented from doing so by
 being refused entry to premises or refused access to the child.

Dated this 20.....

 (Signature)
 Applicant

FORM T

WELFARE OF CHILDREN ORDINANCE, 2008

WARRANT TO SEARCH FOR CHILD

(Section 162)

To the Director of Police
 and to each and every police officer

Whereas it appears to me, a Justice of the Peace for St Helena, on information on oath laid by
 (a) that there is reasonable cause to suspect that
 (b) who is attempting to exercise powers under an emergency
 protection order or a power under section 100 of the Welfare of Children Ordinance, 2008,
 has been or is likely to be prevented from doing so by being refused entry to premises or
 refused access to a child, I hereby authorising you to assist such person in the exercise of
 those powers, using reasonable force if necessary.

*And you are further authorised to enter, if need be by force, the premises situated at
 (c) and to search for (d)..... and to remove
 him/her therefrom.

*And I direct that you be accompanied during the search by (e), a
 duly qualified medical practitioner.

And for so doing this is your Warrant.

Given under my hand this day of 20.....

 Justice of the Peace

- (a) *Insert name of informant.*
- (b) *Insert name of person attempting to exercise powers.*
- (c) *Insert particulars of the premises to be searched.*
- (d) *Insert name of child, if known.*
- (e) *Insert designation or name of medical practitioner.*

**Delete if not required*

FORM U

WELFARE OF CHILDREN ORDINANCE, 2008

APPLICATION FOR STOP ORDER

(Section 164)

To the Magistrates' Court

In the matter between:

[A.B.] Applicant

and

[C.D.] Respondent

I (Name) of (Address).....

(a) on behalf of the Public Health and Social Services Department; or

(b) being a relative or step parent of the child named below *,

APPLY for an order forbidding the Respondent who has the parental responsibility for the child from leaving St Helena without the court's consent.

(Name of Child)

The accompanying statement(s) made by
and are attached in support of the application.

Dated this 20.....

(Signature)

Applicant

**Delete whichever is not applicable*

FORM V

WELFARE OF CHILDREN ORDINANCE, 2008

**APPLICATION FOR ORDER FOR FINANCIAL PROVISION IN RESPECT OF
CHILD**
(Schedule 1)

In the Magistrates' Court

Between:

[A.B.] Applicant

and

[C.D.] Respondent

I (Name) of (Address).....

APPLY for the following order for financial provision against the Respondent in respect of
(Name of Child)

of (Address)

Details of order for financial provision applied for:

.....
.....
.....

The grounds for this application are set out in the accompanying statement(s) made
by..... and

Dated this 20.....

(Signature)
Applicant

FORM W

WELFARE OF CHILDREN ORDINANCE, 2008

APPLICATION FOR CONTRIBUTION ORDER
(Schedule 3)

In the Magistrates' Court

Between:

[A.B.] Applicant

and

[C.D.] Respondent

I (Name) of (Address).....

APPLY for a contribution order against the Respondent in respect of

(Name of Child)

of (Address)

The Respondent was served with a contribution notice on (Date) and has—

- (a) failed to reach any agreement with the Department as mentioned in paragraph 2(6) of Schedule 3 of the Ordinance within the period of one month beginning with the day on which the contribution notice was served; or
- (b) served a notice under paragraph 2(7) of Schedule 3 withdrawing his/her agreement,

as set out in the accompanying statement(s) made by.....
and

Details of contribution order applied for:

.....
.....
.....

Dated this 20.....

(Signature)

Applicant

WELFARE OF CHILDREN ORDINANCE, 2008

WELFARE OF CHILDREN (ADOPTION) REGULATIONS, 2015

(Sections 35 & 39)

TABLE OF CONTENTS

1. Citation and commencement
2. Adoption panel
3. Constitution of adoption panel
4. Assessment of prospective adopter
5. Matching of child freed for adoption with an approved adopter
6. Referral of application to adoption panel
7. Recommendation by adoption panel
8. Decision of Department
9. Records of adoption panel

Citation and commencement

1. These Regulations may be cited as the Welfare of Children (Adoption) Regulations, 2015, and come into force on 7th October 2015.

Adoption panel

2. The Safeguarding of Children Board may sit as an adoption panel, as and when necessary, in any case brought by the Department to consider and make a recommendation as to whether—

- (a) a prospective adopter should be approved as suitable to adopt;
- (b) a child should be matched to an approved adopter.

Constitution of adoption panel

3. (1) The adoption panel is properly constituted when the chief officer of the Department (or his or her nominee) and at least 6 other members of the Safeguarding of Children Board are in attendance, provided that for purposes of the adoption panel's deliberations and decisions, such chief officer and any other employees of the Department, must abstain from voting.

(2) The Chair of the Safeguarding of Children Board, or in his or her absence his or her nominee, is the Chair of the adoption panel.

- (3) A person is disqualified from sitting on the adoption panel in any matter if—
 - (a) such person is related by blood or affinity in the second degree to either the subject child or the prospective adopter in such matter; or
 - (b) there are any other reasons that may bring the process into disrepute if such person did not withdraw from sitting on the panel.

Assessment of prospective adopter

4. (1) If the Department receives an application from a prospective adopter for an

assessment of his or her suitability to adopt a child, the Department must carry out an assessment in respect of that prospective adopter and consider his or her suitability to adopt a child.

(2) The Department must prepare a prospective adopter's report which must contain—

- (a) a police background check of all the individuals living in the prospective adopter's home;
- (b) a written report from a medical practitioner about the health of the prospective adopter;
- (c) a written report of each of the interviews with the persons nominated by the prospective adopter to provide personal references for him or her;
- (d) the Department's assessment of the prospective adopter's suitability to adopt a child; and
- (e) any other information which the Department considers to be relevant.

Matching of child freed for adoption with an approved adopter

5. (1) The Department must only match a child for adoption to a prospective adopter who has been approved.

(2) If the Department is considering matching a child for adoption with a particular approved adopter, the Department must prepare a permanence report with respect to the child which must contain—

- (a) information about the child and his or her family;
- (b) a summary of the state of the child's health;
- (c) the wishes and feelings of the child;
- (d) the wishes and feelings of the child's parent or guardian;
- (e) the views of the Department about the child's need for contact with his or her parent or guardian or other relative or with any other person the Department considers relevant and the arrangements the Department proposes to make for allowing any person contact with the child;
- (f) an assessment of the child's emotional and behavioural development and any related needs;
- (g) an assessment of the parenting capacity of the child's parent or guardian;
- (h) a chronology of the decisions and actions taken by the Department with respect to the child;
- (i) an analysis of the options for the future care of the child which have been considered by the Department and why placement for adoption is considered the preferred option; and
- (j) any other information which the Department considers relevant.

Referral of application to adoption panel

6. (1) The Department must refer any matter under Regulation 4 or 5 to the adoption panel for consideration and recommendation.

(2) The Department must, at least 5 working days before the meeting of the adoption panel, provide the panel with the reports referred to in Regulations 4(2) and 5(2), as applicable.

(3) For purposes of considering and making a recommendation to the Department as to whether the prospective adopter is suitable to adopt a child, the adoption panel—

- (a) must consider and take into account all the information and reports;
- (b) may request the Department to obtain any other relevant information which the panel considers necessary;
- (c) may invite the prospective adopter to attend a meeting of the panel that may take place in person or through any other means of telephonic or electronic communication; and
- (d) may obtain legal advice as it considers necessary in relation to the case.

(4) For purposes of considering and making a recommendation to the Department as to whether a child for adoption should be matched with a particular approved adopter, the adoption panel must—

- (a) consider the child's permanence report referred to in Regulation 5(2) and any other information the Department considers relevant;
- (b) consider the prospective adopter's report referred to in Regulation 4(2) for such approved adopter;
- (c) meet the approved adopter in person or through any other means of telephonic or electronic communication to discuss the proposed placement; and
- (d) may obtain legal advice as it considers necessary in relation to the case.

Recommendation by adoption panel

7. (1) If the adoption panel considers and recommends to the Department that the prospective adopter is suitable to adopt a child, the panel may also consider and recommend to the Department the number of children the prospective adopter may be suitable to adopt, their age range, sex, likely needs and background.

(2) If the adoption panel considers that a child for adoption should be matched to an approved adopter, the panel may recommend so to the Department.

Decision of Department

8. If the Department, after consideration of the adoption panel's recommendation, considers—

- (a) the prospective adopter to be suitable to adopt a child, the chief officer of the Department must approve the adopter and notify him or her in writing of this decision;
- (b) the prospective adopter not suitable to adopt a child, the chief officer of the Department must notify the prospective adopter thereof in writing with reasons for this decision.
- (c) an approved adopter suitable to be matched with a particular child, the chief officer of the Department must notify him or her in writing of its decision;
- (d) an approved adopter not suitable to be matched with a particular child, the chief officer of the Department must notify the approved adopter thereof in writing with reasons for this decision.

Records of adoption panel

9. All matters considered by the adoption panel is recorded including, in particular, any reasons for its decisions.
-

WELFARE OF CHILDREN ORDINANCE, 2008

WELFARE OF CHILDREN (OFFICIAL FOSTER CARE) REGULATIONS, 2017 (Sections 35 & 166)

TABLE OF CONTENTS

PART 1 PRELIMINARY

1. Citation and commencement
2. Interpretation

PART 2 FOSTERING PANEL

3. Constitution of fostering panel
4. Functions of fostering panel

PART 3 ASSESSMENT AND APPROVAL OF OFFICIAL FOSTER CARERS

5. Minimum requirements for approval
6. Application and assessment
7. Criminal offences
8. Approval process
9. Register of official foster carers
10. Official foster carer agreement
11. Supervising social worker
12. Official foster carer review
13. Retention and confidentiality of records

PART 4 PLACEMENT OF CHILDREN

14. Types of placements
15. Assessment of official foster carer's suitability to care for particular child
16. Placement matching
17. Pre-placement agreement and meeting
18. Circumstances where child may be placed before assessment is complete
19. Emergency placement with an official foster carer
20. Support for the official foster carer
21. Monetary recompense
22. Frequency of visits to child in official foster care
23. Conduct of visits to child in official foster care

- 24. Contact between child in foster care and family
- 25. Review of placement
- 26. Official foster care record keeping
- 27. Conclusion of placement
- 28. Official foster carer supervision and support

PART 5 COMPLAINT PROCEDURES

- 29. Complaint procedure
 - 30. Complaints by official foster carers
- Schedule 1: Matters to be taken into account when assessing suitability of official foster carer applicant

PART 1 PRELIMINARY

Citation and commencement

- 1. These Regulations may be cited as the Welfare of Children (Official Foster Care) Regulations, 2017, and come into force on the date of publication.

Interpretation

- 2. In these Regulations—
“fostering panel” means the panel referred to in regulation 3;
“Register” means the Official Foster Carer Register referred to in regulation 9.

PART 2 FOSTERING PANEL

Constitution of fostering panel

- 3. (1) The Safeguarding of Children Board may sit as a fostering panel, as and when necessary, in any case brought by the Department to consider and make a recommendation as to any of the matters in regulation 4.

(2) The fostering panel is properly constituted when the Chief Officer of the Department (or his or her nominee) and at least 6 other members of the Safeguarding of Children Board are in attendance, provided that for purposes of the fostering panel’s deliberations and decisions, the Chief Officer and any other employees of the Department must abstain from voting.

- (3) The Chair of the Safeguarding of Children Board, or in his or her absence his or her nominee, must chair the fostering panel.

- (4) A person is disqualified from sitting on the fostering panel in any matter if—
 - (a) the person is related by blood or affinity in the second degree to either the subject child or the prospective official foster carer in that matter; or
 - (b) there are any other reasons that may bring the process into disrepute if that person

did not withdraw from sitting on the panel.

Functions of fostering panel

- 4. (1)** The fostering panel must—
 - (a) consider all applications for approval as an official foster carer and, if the applicant and the applicant's household are deemed suitable, the panel may approve the applicant as an official foster carer;
 - (b) if an applicant is considered suitable, consider and where necessary approve the applicant subject to conditions (which may include the number of children to be fostered at any one time, the age of the children to be fostered, the type of placements to be offered and whether additional support is required);
 - (c) on the first anniversary of approval of an official foster carer and annually after that, consider whether or not a person remains suitable to be an official foster carer and whether or not the terms of his or her approval, if any, remain appropriate and either affirm the approval, revoke the approval or amend the conditions of approval;
 - (d) give advice and make recommendations to the Department on assessment and review process of official foster carers;
 - (e) determine and annually review the standard rate of financial support for official foster carers and publish that rate in the *Gazette*;
 - (f) consider and decide upon any requests for an increase to the standard rate of financial support; and
 - (g) undertake such further or other functions as directed by the Governor.
- (2)** In undertaking its work, the fostering panel must consider and take into account all information received.
- (3)** The fostering panel may request the Department to obtain any other relevant information or to provide such assistance as it considers necessary and the Department must comply with any such request.

PART 3

ASSESSMENT AND APPROVAL OF OFFICIAL FOSTER CARERS

Minimum requirements for approval

- 5.** A person may be approved as an official foster carer only if the person—
 - (a) is over the age of 21;
 - (b) has successfully completed suitable training required by the Department; and
 - (c) has been assessed as suitable by the Department and approved for that purpose by the fostering panel.

Application and assessment

- 6. (1)** A person may apply to the Department to be assessed as an official foster carer.
- (2)** The Department must complete the assessment of an applicant under sub-regulation (1) within 3 months from the date of the application:

Provided that if at the time there is no-one on St Helena who is suitably qualified to assess that person, the Department must complete the assessment as soon as is practicable and must immediately inform the prospective official foster carer of the date by which the assessment will be completed.

(3) The assessment must include, but is not limited to, the matters listed in Schedule 1 and the following investigations:

- (a) a full St Helena police check of the applicant and all members of his or her household and, if any of those persons have lived abroad, police checks from the relevant country;
- (b) a full medical assessment undertaken by the Senior Medical Officer or a person appointed or approved by the Senior Medical Officer;
- (c) a minimum of 3 personal references who have known the applicant for at least 5 years, 2 of whom must not be related to the applicant by blood or affinity in the second degree and the assessor must speak to the referees in person in order to complete the assessment;
- (d) a minimum of 5 meetings with the applicant;
- (e) an assessment of the applicant's accommodation, home environment and safety within the home and, in particular, the proposed sleeping arrangements for any child;
- (f) an assessment of the dynamics of the applicant's family and household;
- (g) a minimum of 2 meetings with members of the applicant's household;
- (h) an assessment of the applicant's understanding of child protection;
- (i) an assessment of the applicant's ability to care for someone else's child, including child development in the context of abuse and/or neglect;
- (j) an assessment of the applicant's understanding of the role of an official foster carer.

(4) If the applicant lives outside St Helena and the applicant cannot be assessed directly, the Department may decline to assess that person or may make arrangements with the relevant government authority responsible for social services in the applicant's location or engage a suitably qualified person to undertake the assessment.

(5) The Department must discuss the outcome of the assessment with the applicant within 7 days of its completion and must provide the applicant with a written copy of the assessment.

(6) If the applicant so wishes, the applicant may provide a written response to the assessment within 7 days of its receipt and the Department must assist the applicant in preparing the written response if the applicant so requests.

(7) Within 14 days of completion of the assessment, the Department must send copies of the assessment and any response from the applicant to each member of the fostering panel.

Criminal offences

7. (1) An applicant is deemed not to be suitable as an official foster carer if the applicant or any member of the applicant's household has been convicted of any of the following offences:

- (a) any offence against a child;
- (b) any sexual offence;
- (c) any offence which involves any form of violence or threat of violence or bodily harm;
- (d) conspiring or attempting to commit any of the foregoing offences;
- (e) any other offence so declared by the Governor.

(2) Any other offence, caution, warning or investigation related to an applicant or member of the applicant's household will be considered as part of the assessment of the applicant's suitability to be an official foster carer.

(3) An official foster carer is required to inform the Department immediately of any of the following in relation to the applicant or a member of the applicant's household while the applicant remains registered:

- (a) any police investigation;
- (b) any warnings or cautions received;
- (c) any court proceedings; and
- (d) any criminal convictions.

(4) If an official foster carer or a member of his or her household commits any of the offences mentioned in sub-regulation (1) while registered, the official foster carer must be immediately removed from the Register.

Approval process

8. (1) Upon completion of the assessment of an applicant, the Department must submit the assessment to the fostering panel for consideration and approval of the applicant as an official foster carer.

(2) The fostering panel must convene a meeting to consider the application of a prospective official foster carer within 21 days of receipt of the Department's assessment and any response from the applicant.

(3) The author of the assessment must attend the fostering panel meeting; but if the author is resident abroad, the fostering panel will use its best endeavours to enable the author to participate.

(4) The applicant must be invited to attend all or part of the fostering panel meeting, which attendance may be in person or by phone, skype or other means.

(5) The fostering panel must, on the same day or as soon as possible thereafter, make a decision whether or not to approve the applicant as an official foster carer and, if so, on what terms.

- (6) An official foster carer must not be approved by the fostering panel unless—
 - (a) the Department has completed its assessment of the applicant's suitability;
 - (b) any response from the applicant has been received; and
 - (c) the application has been considered fully and in line with these Regulations.

Register of official foster carers

9. (1) The Chief Officer of the Department must maintain a Register of all approved official foster carers.

(2) The contents of the Register must remain confidential unless some other agreement is reached by the official foster carer and the Department or a court otherwise orders.

(3) The Register must include, but is not limited to—

- (a)* the details of each child placed with the official foster carer;
- (b)* any conditions to be taken into account when deciding whether to place with the official foster carer;
- (c)* details of the police conviction checks relating to the official foster carer;
- (d)* the persons present in the home of the official foster carer, including their ages and relationship to the official foster carer and details of the police conviction checks in relation to them;
- (e)* the type of placements the official foster carer is willing to provide;
- (f)* any complaints or allegations made in relation to the official foster carer;
- (g)* any investigations undertaken in relation to the official foster carer; and
- (h)* the official foster carer agreement.

(5) Each official foster carer is required to inform the Department immediately if any of the details retained on the Register change subsequent to their first entry on it.

(6) The Department must undertake a review of each official foster carer's Register on a yearly basis.

Official foster carer agreement

10. (1) Upon being approved by the fostering panel, the official foster carer must enter into an agreement with the Department.

(2) The agreement must set out the expectations of the official foster carer, including the policies that must be followed whilst the official foster carer has a child in placement, and what support will be provided by the Department.

(3) The official foster carer agreement must be placed on the Register.

Supervising social worker

11. (1) A supervising social worker must be appointed for each approved official foster carer.

(2) The supervising social worker must provide advice and support and identify further training for the official foster carer.

(3) The official foster carer is not required to undertake any such training, but failure to do so will be taken into account when considering whether to renew the appointment as an official foster carer.

Official foster carer review

12. (1) The approval of each official foster carer and the terms of approval must be reviewed on a yearly basis by the fostering panel.

(2) The fostering panel must undertake a review of every official foster carer who has been investigated following a complaint or allegation against that foster carer or a member of the household.

(3) The Department may at any other time request that the fostering panel undertake a review of an official foster carer and if the fostering panel considers that such review is necessary, it must undertake such a review.

(4) Prior to any review, the Department must prepare a report to include—

- (a)** the written report at the conclusion of any investigation in respect of the official foster carer or member of the family subsequent to the previous review or initial approval decision, whichever is the latter;
- (b)** any change in circumstance subsequent to the previous review or initial approval decision, whichever is the latter;
- (c)** the views of the official foster carer; and
- (d)** the views of any child, subject to their age and understanding, who has been placed with the official foster carer subsequent to the previous review or initial approval decision, whichever is the latter.

(5) At all reviews the fostering panel must—

- (a)** take into account the views of the official foster carer and any child placed, subject to the child's age and understanding; and
- (b)** provide a written report outlining the findings and whether the terms of approval continue to be appropriate.

(6) If the fostering panel decides to revoke the approval or revise and add conditions to the official foster carer's approval, the reasons for this must be provided to the official foster carer.

(7) The official foster care may make representations in writing, within 14 days after receipt of the reasons, to the Chair of the fostering panel who will consider whether to uphold or vary the decision and the decision of the Chair will be final.

Retention and confidentiality of records

13. The Department must retain the records relating to each official foster carer for 30 years from the date of approval.

PART 4 PLACEMENT OF CHILDREN

Types of placement

14. (1) At the time of being approved, the Department must discuss with each

official foster carer the type of placement they are willing to provide.

(2) The decision as to the type of placement that the official foster carer wishes to provide must be made by the official foster carer only, subject to the fostering panel indicating that one or more types of placement are not appropriate.

(3) The types of placement are—

(a) **Emergency:**

Foster carers who provide time limited placements at short notice;

(b) **Respite:**

Foster carers who care for children for short periods, usually on a regular basis to provide a break from their usual home or placement;

(c) **Short term:**

Foster carers who look after children full time in their home but the length of stay varies depending on the child's family circumstances;

(d) **Longer term:**

Foster carers who provide longer term care for children to offer permanency;

(e) **Remand:**

Foster carers who care for children who are remanded by a court to accommodation provided by the Department while they await court proceedings.

Assessment of official foster carer's suitability to care for particular child

15. (1) Before a decision is made to place a particular child with an official foster carer, the Department must—

(a) assess the suitability of the official foster carer to care for the particular child, including the suitability of—

(i) the proposed accommodation; and

(ii) all other persons who are members of the household in which it is proposed that the child will live;

(b) consider whether, in all the circumstances and taking into account the services to be provided by the Department, the placement will safeguard and promote the child's welfare and meet the child's needs set out in the care plan; and

(c) consider whether there should be a change in the standard rate of financial support; and if such a change is recommended, the Department must present the request to the fostering panel.

Placement matching

16. (1) The decision to place the child with an official foster carer lies with Chief Officer of the Department.

(2) A placement cannot be made until matching under regulation 15 has been approved by the Department and a care plan has been prepared for the child.

(3) Before approving a decision under this regulation, the Chief Officer must be satisfied that—

(a) the requirements of regulation 15 have been complied with;

(b) the placement will safeguard and promote the child's welfare; and

(c) all attempts have been made to place sibling groups together.

Pre-placement agreement and meeting

17. (1) Subject to sub-regulation (2), the official foster carer and the Department must meet before a placement—

- (a) to discuss the child's needs;
- (b) for a care plan to be agreed and signed by all parties;
- (c) to discuss what, if any, contact will take place between the child and the child's relatives and friends and how the official foster carer will be involved in this; and
- (d) to consider further the foster care agreement and whether any amendments are required to ensure the child's needs are met.

(2) In the case of an emergency, the meeting referred to in sub-regulation (1) may be held on the next working day or no later than 72 hours after placement, whichever is the earliest.

Circumstances where child may be placed before assessment is complete

18. (1) If the Chief Officer of the Department considers it to be necessary and consistent with the child's welfare, the Department may place the child with an official foster carer before a regulation 15 assessment is completed, provided that the Department—

- (a) arranges for the official foster carer to be interviewed in order to obtain as much information about them and the other members of their household as soon as possible;
- (b) ensures that the assessment is completed in accordance with regulation 15 within 10 working days of the child being placed with the official foster carer; and
- (c) ensures that a decision in accordance with regulation 16 is made and approved within 10 working days after the assessment is completed, and if the decision is—
 - (i) to confirm the placement, review the placement plan and, if appropriate, amend it; and
 - (ii) not to confirm the placement, terminate the placement.

Emergency placement with an official foster carer

19. (1) If it is necessary to place the child in an emergency, the Department may place the child with an official foster carer previously approved by it, even if the terms of that approval are not consistent with the placement, but the placement must not be for longer than 6 working days.

(2) When the period of 6 working days referred to in sub-regulation (1) expires, the Department must terminate the placement unless the terms of that official foster carer's approval have been amended to be consistent with the placement.

Support for the official foster carer

20. If the child is placed, or is to be placed, with an official foster carer, the Department must, where funds are available for this purpose, endeavour to provide such services and support to the official foster carer as appear to the Department to safeguard and promote the child's welfare and must record details of such services and support in the child's care plan.

Monetary recompense

21. (1) A standard rate of financial support must be provided to all official foster carers while having a child placed in their care.

(2) Payments may change depending on the complexity of the child's needs, and any increase above the standard rate must first be submitted for the fostering panel's approval.

Frequency of visits to child in official foster care

22. (1) The Department must ensure that a social worker or a social care officer visits every child placed with an official foster carer—

- (a)* within one week of the start of every placement;
- (b)* at intervals of not more than 6 weeks for the first year of the placement; and
- (c)* thereafter—
 - (i)* where the placement is intended to last until the child is aged 18 - at intervals of not more than 3 months; and
 - (ii)* in any other case - at intervals of not more than 6 weeks.

Conduct of visits to child in official foster care

23. (1) On each visit, the Department's social worker or social care officer must speak to the child in private, unless—

- (a)* the child, being of sufficient age and understanding to do so, refuses;
- (b)* the social worker or social care officer considers it inappropriate to do so, having regard to the child's age and understanding; or
- (c)* the social worker or social care officer is unable to do so for another reason, in which case the social worker or social care officer must arrange a further visit within 7 days to speak with the child.

Contact between child in foster care and family

24. (1) Unless it is deemed not to be in the child's best interests, the Department must promote and facilitate contact between the child and the child's family and friends while residing with an official foster carer.

(2) Official foster carers must promote such contact between the child in placement and the child's family and friends as is advised by the Department.

(3) An official foster carer may be required to supervise direct contact or escort a child to and from direct contact.

Review of placement

25. (1) The Department must hold a review meeting of each official foster care placement every 3 months.

(2) The review meeting must be attended by the official foster carer and the relevant representative of the Department.

- (3) In advance of the meeting, the Department must investigate and ascertain—
 - (a) the progress of the child’s emotional, health and education needs whilst in placement, which must include liaising with the child’s school and medical practitioner;
 - (b) the child’s wishes and feelings;
 - (c) the official foster carer’s views on the placement; and
 - (d) any other matters that are considered appropriate in the circumstances of the case.

(4) In advance of the meeting, the Department must provide a summary of its investigations.

(5) Subject to the child’s age and understanding, the child must be invited to attend all or part of the review meeting.

(6) The review must include consideration of the child’s care plan and whether any changes are required.

Official foster carer record keeping

- 26. (1) The official foster carer must maintain detailed records of—
 - (a) the official foster carer’s agreement;
 - (b) any significant occurrences whilst a child is in the placement;
 - (c) the child’s educational and health progress;
 - (d) any matters specifically requested by the Department; and
 - (e) any other matters that the official foster carer considers relevant.

Conclusion of placement

- 27. (1) Any plan to end a placement must be discussed at the placement review.

(2) In the event that a placement ends unexpectedly, the Department must ensure that the child, the family and the official foster carer meet as soon as possible after the termination of placement to discuss what occurred and to ensure all persons are appropriately supported.

(3) Following a premature termination of placement, the Department must meet with the official foster care to discuss—

- (a) why the placement was terminated;
- (b) what can be learned from the situation and how to avoid it in the future;
- (c) identify what services, support or training is further required;
- (d) whether the official foster carer agreement should be amended; and
- (e) any other matters deemed appropriate in the particular circumstances.

Official foster carer supervision and support

28. (1) A representative of the Department must meet with each official foster carer at their home, whilst caring for a child, within 7 days of placement and thereafter every 4 weeks until the child has been placed for 6 months, when meetings must take place every 3 months.

(2) Any other further meetings must be in accordance with these Regulations, any guidelines provided by the Department and as the Department and official foster carer consider necessary.

(3) The Department must provide training to official foster carers.

PART 5 COMPLAINT PROCEDURES

Complaint procedure

29. (1) In the event that an allegation or complaint is made against an official foster carer or a member of the household, the Department must—

- (a) consider whether the concerns justify removing the child from the placement;
- (b) start investigating immediately; and
- (c) at the conclusion of the investigation, provide the official foster carer with a written record of the outcome.

(2) The Department must provide the official foster carer with a reasonable opportunity to present the official foster carer's views in person or in writing as the Department deems appropriate, in relation to the allegation or complaint.

(3) In the event that the allegation is made by a child, the Department must ensure that the child is spoken to by a person trained in achieving best evidence, unless—

- (a) the police indicate that it would not be appropriate at that time due to a police enquiry; or
- (b) a medical professional indicates it is not in the best interests of the child.

(4) The Department must prepare a policy document detailing the procedure to follow when investigating an allegation or complaint against an official foster carer.

Complaints by official foster carers

30. (1) If an official foster carer wishes to make a complaint about a staff member of the Department, this should be done in writing and addressed to the Chief Officer of the Department who will investigate the complaint and respond within 14 days.

(2) If an official foster carer is not satisfied with the response to the complaint, then the official foster carer should follow the St Helena Complaints Procedure.

SCHEDULE 1 (Regulation 6(3))

Matters to be taken into account when assessing suitability of official foster carer applicant

1. The applicant's capacity to care for children, and in particular the applicant's capacity to—

- (a) provide for the child's physical needs and appropriate medical and dental care;
- (b) protect the child adequately from harm or danger, including from any person who

- presents a risk of harm to the child;
 - (c) ensure that the home environment is safe for the child;
 - (d) ensure that the child's emotional needs are met and the child is provided with a positive sense of self, including any particular needs arising from the child's religious persuasion, racial origin and cultural and linguistic background, and any disability the child may have;
 - (e) promote the child's learning and intellectual development through encouragement, cognitive stimulation and the promotion of educational success and social opportunities;
 - (f) enable the child to regulate the child's emotions and behaviour, including by modelling appropriate behaviour and interactions with others;
 - (g) provide a stable family environment to enable the child to develop and maintain secure attachments to the applicant and other persons who provide care for the child.
 - 2. The applicant's state of health including physical, emotional and mental health and medical history including any current or past issues of domestic violence, substance misuse or mental health problems.
 - 3. The applicant's family relationships and the composition of the household, including—
 - (a) the identity of all other members of the household, including their age and the nature of their relationship with the applicant and with each other, including any sexual relationship;
 - (b) any relationship with any person who is a parent of the child;
 - (c) other adults not being members of the household who are likely to have regular contact with the child; and
 - (d) any current or previous domestic violence between members of the household, including the applicant.
 - 4. The applicant's family history, including—
 - (a) particulars of the applicant's childhood and upbringing including the strengths and difficulties of the applicant's parents or other persons who cared for the applicant as a child;
 - (b) the applicant's relationships with parents and siblings, and their relationship with each other;
 - (c) applicant's educational achievement and any specific learning difficulty or disability;
 - (d) a chronology of significant life events; and
 - (e) particulars of other relatives and their relationships with the applicant.
 - 5. The applicant's convictions or cautions, if any.
 - 6. The applicant's past and presents employment and other sources of income.
 - 7. The resources available in the community to support any child placed with the applicant and also the applicant.
 - 8. The applicant's ability to drive and any driving offences.
-

WELFARE OF CHILDREN ORDINANCE, 2008

**WELFARE OF CHILDREN (CHILDREN'S RESIDENTIAL HOME)
REGULATIONS, 2018**

(Sections 35 and 166)

**PART I
PRELIMINARY**

Citation and commencement

1. These Regulations may be cited as the Welfare of Children (Children's Residential Home) Regulations, 2018, and come into force on the date of publication.

Interpretation

2. In these Regulations—
“Children's Residential Home” means a facility managed by the Government, which provides or usually provides or is intended to provide, long term or temporary overnight care and accommodation for children who are in the care of the Department;
“placement plan” means a plan referred to in regulation 7;
“statement of purpose” means the written statement referred to in regulation 10(1).

**PART II
PLACING OF CHILDREN IN CHILDREN'S RESIDENTIAL HOME**

Management of Children's Residential Home

3. Any Children's Residential Home managed by the Government, through the Department or otherwise, must comply with these Regulations.

Placing of children

4. (1) Before placing a child in the Children's Residential Home, the Department must, so far as is reasonably practicable, make immediate and long-term arrangements for that placement, and for promoting the welfare of the child who is to be placed.

(2) If it is not practicable to make arrangements under sub-regulation (1) before the placement, the Department must make them as soon as reasonably practicable thereafter.

(3) In the case of a child who is in care of the Department, the Department must ascertain the wishes and feelings of the child in relation to the arrangements as far as reasonably practicable. In the event that this cannot be done before the placement is made, then it must be undertaken as soon as reasonably practicable thereafter.

(4) In any other case in which a child is to be placed in the Children's Residential Home but is not in the care of the Department, the arrangements must, before a placement is made, and if that is not practicable as soon as reasonably practicable thereafter and so far as reasonably practicable, be agreed by the Department with—

- (a) a person with parental responsibility for the child; or
- (b) if there is no such person, the person who is caring for the child.

(5) Any arrangements made by the Department under this regulation must be recorded in writing.

Considerations on making placement and contents of arrangements

5. (1) In considering a placement of a child in the Children's Residential Home, the Department must, as far as is reasonably practicable, have regard to—

- (a) in the case of a child who is in care, whether an application should be made to discharge the care order;
- (b) the child's state of health including his or her physical, emotional and mental health;
- (c) the child's health history including, so far as is practicable, his or her family health history and the effect of the child's health and health history on his or her development;
- (d) any need the child has for mental health services;
- (e) whether the child's health needs will be met in the Children's Residential Home taking into account the information under paragraphs (b) to (d);
- (f) the child's educational history;
- (g) the need to achieve continuity in the child's education and to promote the child's educational achievement;
- (h) the need to identify any educational need which the child may have and to take action to meet that need;
- (i) whether the child's educational needs will be met in the Children's Residential Home, taking into account the information available under paragraphs (f) to (h);
- (j) the wishes and feelings of the child.

(2) The arrangements referred to in regulation 4 must include, where practicable and appropriate—

- (a) the name of any person who will be responsible for the child at the Children's Residential Home;
- (b) details of any services to be provided for the child;
- (c) the respective responsibilities of the Department and—
 - (i) the child;
 - (ii) any parent of the child; and
 - (iii) any person who is not a parent of the child but who has parental responsibility for him or her;
- (d) what delegation there has been by the persons referred to in paragraph (c)(ii) and (iii) to the Department of parental responsibility for the child's day to day care;
- (e) the arrangements for involving those persons and the child in decision-making with respect to the child;
- (f) the arrangements for contact between the child and—
 - (i) his or her parents;
 - (ii) any person who is not a parent of the child but who has parental responsibility for him or her; and
 - (iii) any relative, friend or other person connected with him or her, and, if appropriate, the reasons why contact with any such person would not be reasonably practicable or would be inconsistent with the child's welfare;

- (g) the arrangements for notifying changes in arrangements for contact to any of the persons referred to in paragraph (f);
- (h) the expected duration of arrangements and the steps which should apply to bring the arrangements to an end, including arrangements for rehabilitation of the child with the person with whom he or she was living before the arrangements were made or some other suitable person;
- (i) the Department's immediate and long term arrangements for the child, previous arrangements in respect of the child, and whether a change in those arrangements is needed, and consideration of alternative courses of action; and
- (j) whether arrangements need to be made for the time when the child will no longer be looked after by the Department.

Notification of arrangements

6. (1) The Department must, so far as is reasonably practicable and consistent with the child's welfare, notify the following persons in writing of the arrangements to place a child, before the placement is made:

- (a) any person who is caring for the child immediately before the arrangements are made;
- (b) except in the case of a child in the care of the Department, any person in whose favour a contact order is in force with respect to the child; and
- (c) in the case of a child in the care of the Department, any person who has contact with the child pursuant to section 44 of the Ordinance or to an order under that section.

(2) If it is not practicable to give the notification before the placement, it must be given as soon as reasonably practicable thereafter and in any event no later than 10 working days from the date the placement is made.

(3) The Department must send a copy of the arrangements referred to in regulation 15 or such part of the arrangements as they consider will not prejudice the welfare of the child, with the notification referred to in sub-regulation (1).

(4) Subject to sub-regulation (3), the Department must in the notification to the persons specified in sub-regulation (1)(a) and (b) provide copies of any relevant report or assessment available at the time the placement is made or obtained subsequently during the placement.

Health care and assessment

7. (1) Subject to sub-regulations (3) and (4), the Department must—

- (a) before making a placement or, if that is not reasonably practicable, not later than 14 working days after the placement is made, make arrangements for a medical practitioner or a nurse to conduct an assessment, which may include a physical examination, of the child's state of health;
- (b) require any person specified in paragraph (a) who conducts an assessment to prepare a written report of the assessment, which addresses the matters listed in sub-regulation 5(1)(b) to (e), with particular reference to the child's state of mental health;
- (c) ensure that a copy of any report prepared in accordance with paragraph (b) and

- any subsequent assessment report prepared under this regulation during the placement, is forwarded to the Senior Medical Officer; and
- (d) having regard to the matters listed in regulation 5(1)(b) to (e) and, unless sub-regulation (4) applies, to any assessment reports, prepare a plan for the future health care of the child if one is not already in existence.
- (2) The Department must ensure that each child is provided during the placement with—
- (a) health care services, including medical, dental and mental health care and treatment; and
- (b) advice and guidance on health, personal care and health promotion matters in accordance with the child's needs.
- (3) Sub-regulation (1) does not apply if within the period of 3 months immediately preceding the placement, the child's health has been assessed and a report of the assessment prepared in accordance with that paragraph.
- (4) Sub-regulations (1)(a) and (b) do not apply if the child, being of sufficient understanding to do so, refuses to consent to the assessment.

Child's placement plan

8. (1) Before a child is accommodated in the Children's Residential Home, or if that is not reasonably practicable, as soon as possible thereafter, the Department must prepare a written plan for the child, setting out in particular—
- (a) how, on a day to day basis, the child will be cared for and his or her welfare safeguarded and promoted by the Children's Residential Home;
- (b) the arrangements made for his or her health care and education; and
- (c) any arrangements made for contact with his or her parents, relatives and friends.
- (2) The Department must keep under review and revise the placement plan as necessary.
- (3) In preparing or reviewing the placement plan the Department must, so far as practicable, having regard to the child's age and understanding, seek and take account of the child's views.

Establishment of records

9. (1) The Department must establish, and maintain a written record in respect of each child whom it places in the Children's Residential Home.
- (2) The record must include, but not exclusively—
- (a) copies of the following documents:
- (i) the arrangements referred to in regulation 5;
- (ii) any written report in the Department's possession concerning the welfare of the child;
- (iii) any document considered or record established in the course of or as a result of a review of the child's case;
- (b) the following details:

- (i) arrangements for contact, of contact orders and of other court orders relating to the child;
- (ii) written reasons provided in accordance with regulation 5(2)(f);
- (iii) the name (and any other name by which the child has previously been known), gender and date of birth of the child;
- (iv) the name, address and telephone number of the child's parents or other person not being a parent of the child who has parental responsibility for him or her;
- (v) the name of the member of the Children's Residential Home with particular responsibility for protecting and promoting the health and educational welfare of the child and for liaison with education and health care providers on that child's behalf;
- (vi) the date on which each placement of the child began and terminated and the reason for each termination;
- (c) confirmation as to whether the child:
 - (i) is at risk of being abused;
 - (ii) is a disabled child;
 - (iii) is in the care of the Department;
- (d) the placement plan in accordance with regulation 7;
- (e) the child's religious persuasion and the parent's religious persuasion (if any);
- (f) the child's cultural and linguistic background;
- (g) the date and circumstances of all absences of the child from the Children's Residential Home, including whether the absence was authorised and any information relating to the child's whereabouts during the period of absence;
- (h) the date of, and reason for, any visit to the child whilst in the Children's Residential Home;
- (i) details of any special educational needs of the child;
- (j) the date and circumstances of any measures of control, restraint or discipline used on the child;
- (k) any special dietary or health needs of the child;
- (l) details of the school attended by the child, and of any employer of the child;
- (m) every school report received in respect of the child while accommodated in the Children's Residential Home;
- (n) arrangements for, including any restrictions on, contact between the child, his or her parents, and any other person;
- (o) details of any accident or serious illness involving the child while accommodated in the Children's Residential Home;
- (p) details of any immunisation, allergy or medical examination of the child and of any medical or dental need or treatment of the child;
- (q) details of any health examination or developmental test conducted with respect to the child at or in connection with his or her school;
- (r) details of any medicines kept for the child in the Children's Residential Home, including any medicines which the child is permitted to administer to himself or herself, and details of the administration of any medicine to the child;
- (s) the dates on which any money or valuables are deposited by or on behalf of a child for safekeeping, and the dates on which any money is withdrawn, and any valuables are returned; and
- (t) the address, and type of establishment or accommodation, to which the child goes when he or she ceases to be accommodated in the Children's Residential Home.

Retention and confidentiality of records

10. (1) A record under regulation 9 relating to a child who is placed must be retained by the Department until the 75th anniversary of the date of birth of the child to whom it relates.

(2) The records may be retained under sub-regulation (1) either by retaining the original written record, or a copy of it, or by keeping all of the information from such record in some other accessible form (including electronic form).

(3) The Department must secure the safe keeping of the records and must take all necessary steps to ensure that information contained in them is treated as confidential, subject only to—

- (a)* any provision of, or made under or by virtue of, an Ordinance or Regulations under which access to such records or information may be obtained or given;
- (b)* any court order under which access to such records or information may be obtained or given.

PART III MANAGEMENT OF CHILDREN'S RESIDENTIAL HOME

General

Statement of purpose and children's guide

11. (1) The Department must compile and retain a written statement in relation to the Children's Residential Home which must include—

- (a)* a statement of—
 - (i)* the overall aims of the Children's Residential Home, and the objectives to be attained with regard to children accommodated; and
 - (ii)* the facilities and services to be provided for the children accommodated;
- (b)* the name and address of the manager;
- (c)* the relevant qualifications and experience of the manager;
- (d)* the number, relevant qualifications and experience of persons working at the Children's Residential Home, and if all of one gender, a description of the means whereby the Children's Residential Home will promote appropriate role models of both genders;
- (e)* the arrangements for the supervision, training and development of persons working at the Children's Residential Home;
- (f)* the organisational structure of the Children's Residential Home;
- (g)* the following particulars—
 - (i)* the age-range, gender and numbers of children for whom it is intended that accommodation should be provided;
 - (ii)* whether it is intended to accommodate children who are disabled, have special needs or any other special characteristics; and
 - (iii)* the range of needs (other than those mentioned in paragraph (ii)) that the home is intended to meet.
- (h)* any criteria used for admission, including the policy and procedures for emergency admissions;
- (i)* if the Children's Residential Home provides or is intended to provide

accommodation for more than 6 children in each building, a description of the positive outcomes intended for children in a Children's Residential Home of such a size, and of the Children's Residential Home's strategy for counteracting any adverse effects arising from its size, on the children accommodated there;

- (j) a description of the Children's Residential Home's underlying ethos and philosophy, and if this is based on any theoretical or therapeutic model, a description of that model;
- (k) the arrangements made to protect and promote the health of the children accommodated;
- (l) the arrangements for the promotion of the education of the children accommodated, including the facilities for private study;
- (m) the arrangements to promote children's participation in recreational, sporting and cultural activities;
- (n) the arrangements made for consultation with the children accommodated about the operation of the Children's Residential Home;
- (o) the arrangements made for the control, restraint and discipline of children;
- (p) the arrangements made for child protection and to counter bullying;
- (q) the procedure for dealing with any unauthorised absence of a child from the Children's Residential Home;
- (r) a description of any electronic or mechanical means of surveillance of children which are available to be used;
- (s) the fire precautions and associated emergency procedures;
- (t) the arrangements for the children's religious instruction and observance;
- (u) the arrangements for contact between a child and his or her parents, relatives and friends;
- (v) the arrangements for dealing with complaints;
- (w) the arrangements for dealing with reviews of placement plans;
- (x) the type of accommodation, including the sleeping accommodation, provided, and, where applicable, how children are to be grouped, and in what circumstances they are to share bedrooms;
- (y) details of any specific therapeutic techniques used, and arrangements for their supervision;
- (z) a description of the policy in relation to anti-discriminatory practice as respects children and children's rights.

(2) The Department must make a copy of the statement of purpose available upon request for inspection by—

- (a) any person who works at the Children's Residential Home;
- (b) any child accommodated in the Children's Residential Home; and
- (c) the parent or guardian of any child accommodated in the Children's Residential Home; and
- (d) any child and the parent or guardian of any child and any other person with parental responsibility for any child in respect of whom accommodation in the Children's Residential Home is being considered.

(3) The Department must produce a guide to the Children's Residential Home ("the children's guide") which must include—

- (a) a summary of the Children's Residential Home's statement of purpose; and
- (b) a summary of the complaints procedure established under regulation 27.

(4) The children's guide must be produced in a form appropriate to the age, understanding and communication needs of the children to be accommodated in the Children's Residential Home.

(5) The Department must supply a copy of the children's guide on admission to each child accommodated in the Children's Residential Home.

(6) Subject to sub-regulation (7), the Department must ensure that the Children's Residential Home is at all times conducted in a manner which is consistent with its statement of purpose.

(7) Nothing in sub-regulation (6) requires or authorises the Department to contravene or not comply with any other provision of these Regulations.

(8) The Department must—

- (a) keep under review and, where appropriate, revise the statement of purpose and the children's guide;
- (b) if the children's guide is revised, supply a copy to each child accommodated in the Children's Residential Home; and
- (c) if the statement of purpose is revised, make each child accommodated and parent or guardian of a child accommodated aware of the revision.

Manager

Appointment of manager

12. (1) The Department must appoint an individual to manage the Children's Residential Home.

(2) A person must not manage the Children's Residential Home unless he or she is fit to do so.

(3) A person is not fit to manage the Children's Residential Home unless—

- (a) he or she is of integrity and good character;
- (b) having regard to the size of the Children's Residential Home, its statement of purpose and the number and needs (including any needs arising from any disability) of the children accommodated there, the manager—
 - (i) has the qualifications, skills and experience necessary for managing the Children's Residential Home; and
 - (ii) is physically and mentally fit to manage the Children's Residential Home; and
- (c) full and satisfactory information is available in relation to him or her in respect of the following matters:
 - (i) proof of identity including a recent photograph;
 - (ii) a full criminal record certificate from every country in which the person had resided for more than 6 months;
 - (iii) 2 written references, including a reference from the person's most recent employer, if any;
 - (iv) if the person has previously worked in a position whose duties involved work with children or vulnerable adults, so far as is reasonably practicable,

- verification of the reason why the employment or position ended;
- (v) documentary evidence of any relevant qualifications;
- (vi) a full employment history, together with a satisfactory written explanation of any gaps in employment.

Training requirements of manager

13. (1) The manager must, having regard to the size of the Children's Residential Home, its statement of purpose and the number and needs (including any needs arising from any disability) of the children accommodated there, carry on or manage the Children's Residential Home (as the case may be) with sufficient care, competence and skill.

(2) The manager must undertake such training as is appropriate to ensure that he or she has the experience and skills necessary for managing the Children's Residential Home.

Notification of offences

14. (1) If the manager is convicted of any criminal offence, whether in St Helena or elsewhere, he or she must give notice in writing to the Department of—

- (a) the date and place of the conviction;
- (b) the offence of which he or she was convicted; and
- (c) the penalty imposed on him or her in respect of the offence.

(2) Failure by the manager to comply with subregulation (1) amounts to gross misconduct.

Conduct of Children's Residential Home

Promotion of welfare

15. The Department must ensure that the Children's Residential Home is conducted so as to—

- (a) promote and make proper provision for the welfare of children accommodated;
- (b) make proper provision for the care, education, supervision and, where appropriate, treatment, of children accommodated;
- (c) respect the privacy and dignity of children accommodated; and
- (d) have due regard to the sex, religious persuasion, racial origin, cultural and linguistic background and any disability of any children accommodated there.

Food provided for children

16. (1) The Department must ensure that children accommodated in the Children's Residential Home are provided with—

- (a) food which is—
 - (i) served in adequate quantities and at appropriate intervals;
 - (ii) properly prepared, wholesome and nutritious;
 - (iii) suitable for their needs and that meets their reasonable preferences; and
 - (iv) sufficiently varied; and
- (b) access to fresh drinking water at all times.

(2) The Department must ensure that any special dietary needs of a child accommodated in the Children's Residential Home, which is due to his or her health, religious persuasion, racial origin or cultural background, are met.

Provision of clothing, pocket money and personal necessities

17. (1) The Department must ensure that the needs and reasonable preferences of each child accommodated in the Children's Residential Home for clothing, including footwear and personal necessities, are met.

(2) The Department must provide children accommodated in the Children's Residential Home with such sums of money in respect of their occasional personal expenses as is appropriate to their age and understanding.

Contact and access to communications

18. (1) The Department must—

- (a) subject to sub-regulations (5) and (7), promote the contact of each child with his or her parents, relatives and friends in accordance with the arrangements set out in his or her placement plan; and
- (b) subject to sub-regulation (3), ensure that suitable facilities are provided within the Children's Residential Home for any child accommodated there to meet privately at any reasonable time with his or her parents, relatives and friends, and the persons listed in sub-regulation (2).

(2) The persons are—

- (a) any advocate instructed to represent the child under section 159 of the Ordinance;
- (b) any officer for the time being assigned to the child by the Department;
- (c) any person appointed as a visitor for the child in accordance with Schedule 2 paragraph 3 of the Ordinance;
- (d) any person authorised by the Department.

(3) Subject to sub-regulations (5) and (7), the Department must ensure that children accommodated in the Children's Residential Home are provided, at all reasonable times, with access to the following facilities which they may use without reference to persons working in the Children's Residential Home —

- (a) a telephone on which to make and receive telephone calls; and
- (b) facilities to send and receive post and, if the necessary facilities are provided for the use of children accommodated in the Children's Residential Home, electronic mail.

(4) The Department must ensure that any disabled child accommodated in the Children's Residential Home is provided with access to any aids and equipment that the child requires as a result of the disability in order to facilitate his or her communication with others.

(5) The Department may (subject to sub-regulations (6) and (7)) impose any restriction, prohibition or condition upon a child's contact with any person under sub-regulation (1) or access to communications under sub-regulation (3) that the Department is satisfied is necessary for the purpose of safeguarding or promoting the welfare of the child in

question.

(6) No measure may be imposed by the Department in accordance with sub-regulation (5) unless the measure is imposed in an emergency, and full details are given to the person who has been appointed as Children's Champion within 24 hours of its imposition.

(7) This regulation is subject to any relevant order of the court relating to contact between the child and any person and subject to any provision contained within the Ordinance.

Arrangements for the protection of children

19. (1) The Department must prepare and implement a written policy which—
- (a) is intended to safeguard children accommodated in the Children's Residential Home from abuse or neglect; and
 - (b) sets out the procedure to be followed in the event of any allegation of abuse or neglect.
- (2) The procedure under sub-regulation (1)(b) must in particular, but not exclusively, provide for—
- (a) liaison and co-operation between the manager and the Department in the case of any child protection enquiries in relation to any child accommodated in the Children's Residential Home;
 - (b) the prompt referral by the manager to the Department of any allegation of abuse or neglect affecting any child accommodated in the Children's Residential Home;
 - (c) written records to be kept of any allegation of abuse or neglect, and of the action taken in response;
 - (d) consideration to be given to the measures which may be necessary to protect children in the Children's Residential Home following an allegation of abuse or neglect;
 - (e) a requirement for persons working at the Children's Residential Home to report any concerns about the welfare or safety of a child accommodated there to one of the following immediately or no later than 24 hours after being made aware of the concern:
 - (i) the manager;
 - (ii) a police officer; or
 - (iii) the Department;
 - (f) arrangements to be made for persons working at the Children's Residential Home and children accommodated there, to have access at all times and in an appropriate form, to information which would enable them to contact the Department concerning the welfare or safety of children accommodated in the Children's Residential Home.
- (3) The Department must prepare and ensure implementation as required—
- (a) a written policy for the prevention of bullying in the Children's Residential Home, which must in particular set out the procedure for dealing with an allegation of bullying; and
 - (b) a procedure to be followed when any child accommodated in the Children's Residential Home is absent without permission.

Behaviour management, discipline and restraint

20. (1) No measure of control, restraint or discipline which is excessive, unreasonable or contrary to sub-regulation (5) is to be used at any time on children accommodated in the Children's Residential Home.

(2) The Department must prepare and ensure implementation of a written policy which sets out—

- (a) the measures of control, restraint and discipline which may be used in the Children's Residential Home; and
- (b) the means whereby appropriate behaviour is to be promoted in the Children's Residential Home.

(3) The Department must keep under review and, if appropriate, revise the behaviour management policy referred to in sub-regulation (2).

(4) The manager must ensure that within 24 hours of the use of any measure of control, restraint or discipline in the Children's Residential Home, a written record is made in a volume kept for the purpose which must include—

- (a) the name of the child concerned;
- (b) details of the child's behaviour leading to the use of the measure;
- (c) a description of the measure used;
- (d) the date, time and location of the use of the measure and, in the case of any form of restraint, the duration of the restraint;
- (e) the name of the person using the measure, and of any other person present;
- (f) the effectiveness and any consequences of the use of the measure; and
- (g) the signature of a person authorised by the manager to make the record.

(5) Subject to sub-regulation (6), the following must not be used as disciplinary measures on children accommodated in the Children's Residential Home—

- (a) any form of corporal punishment;
- (b) any punishment relating to the consumption or deprivation of food or drink;
- (c) any restriction, other than one imposed by a court or in accordance with regulation 34, on—
 - (i) a child's contact with his or her parents, relatives or friends;
 - (ii) visits to the child by his or her parents, relatives or friends;
 - (iii) a child's communications with any of the persons listed in regulation 18(2); or
 - (iv) the child's access to any telephone helpline providing counselling for children;
- (d) any requirement that a child wear distinctive or inappropriate clothes;
- (e) the use or withholding of medication or medical or dental treatment;
- (f) the intentional deprivation of sleep;
- (g) the imposition of any financial penalty, other than a requirement for the payment of a reasonable sum (which may be by instalments) by way of reparation;
- (h) any intimate physical examination of the child;
- (i) the withholding of any aids or equipment needed by a disabled child;
- (j) any measure which involves—
 - (i) any child in the imposition of any measure against any other child; or
 - (ii) the punishment of a group of children for the behaviour of an individual

child.

- (6) This regulation does not prohibit—
 - (a) the taking of any action by, or in accordance with the instructions of, a medical practitioner or a registered dental practitioner which is necessary to protect the health of a child;
 - (b) the taking of any action immediately necessary to prevent injury to any person or serious damage to property; or
 - (c) the imposition of a requirement that a child wear distinctive clothing for sporting purposes, or for purposes connected with his or her education or with any organisation whose members customarily wear uniform in connection with its activities.

(7) Within 24 hours where possible and no later than 48 hours following measures of control, restraint or discipline being used, there must be a meeting between those present and the manager to discuss what occurred. In the event that the manager was involved in the control, restraint or discipline, the Department must convene the aforesaid meeting.

Education, employment and leisure activity

21. (1) The Department must promote the educational attainment of children accommodated in the Children's Residential Home, in particular by ensuring that—

- (a) the children make use of educational facilities appropriate to their age, aptitude, needs, interests and potential;
- (b) the routine of the Children's Residential Home is organised so as to further children's participation in education, including private study; and
- (c) effective links are maintained with any schools attended by children accommodated in the Children's Residential Home.

(2) The Department must ensure that children accommodated in the Children's Residential Home are—

- (a) encouraged to develop and pursue appropriate leisure interests; and
- (b) provided with appropriate leisure facilities and activities.

(3) If any child in the Children's Residential Home has attained the age where he or she is no longer required to receive compulsory full-time education, the Department must assist with the making of, and give effect to, the arrangements made for the child's education, training and employment.

Religious observance

22. The Department must ensure that each child accommodated in the Children's Residential Home is enabled, so far as practicable—

- (a) to attend the services of;
- (b) to receive instruction in; and
- (c) to observe any requirement (whether as to dress, diet or otherwise) of, the religious persuasion to which he or she belongs.

Health needs of children

23. (1) The Department must promote and protect the health of the children accommodated in the Children's Residential Home.

- (2)** In particular the Department must ensure that—
 - (a)* each child has access to any medical, dental, nursing, psychological and psychiatric advice, treatment and other services he or she requires;
 - (b)* each child is provided with any individual support, aids and equipment he or she requires as a result of any particular health needs or disability he or she has;
 - (c)* each child is provided with guidance, support and advice on health and personal care issues appropriate to his or her needs and wishes;
 - (d)* at all times, at least one person on duty at the Children's Residential Home has a suitable first aid qualification;

Medicines

24. (1) The Department must make suitable arrangements for the recording, handling, safekeeping, safe administration and disposal of any medicines received into the Children's Residential Home.

- (2)** In particular the Department must ensure, subject to paragraph (3), that—
 - (a)* any medicine which is kept in the Children's Residential Home is stored in a secure place so as to prevent any child accommodated there having unsupervised access to it;
 - (b)* any medicine which is prescribed for a child is administered as prescribed, to the child for whom it is prescribed, and to no other child; and
 - (c)* a written record is kept of the administration of any medicine to any child.
- (3)** Sub-regulation (2) does not apply to a medicine which—
 - (a)* is stored by the child for whom it is provided in such a way that others are prevented from using it; and
 - (b)* may be safely self-administered by that child.

Use of surveillance

25. Subject to any requirements for electronic monitoring imposed by a court under any enactment, the Department must ensure that electronic or mechanical monitoring devices for the surveillance of children are not used in the Children's Residential Home, except for the purpose of safeguarding and promoting the welfare of the child concerned, or other children accommodated in the Children's Residential Home, and that the following conditions are met:

- (a)* it is provided for in the child's placement plan;
- (b)* so far as practicable in the light of the child's age and understanding, the child in question is informed in advance of the intention to use the measure; and
- (c)* the measure is no more restrictive than necessary, having regard to the child's need for privacy.

Hazards and safety

- 26.** The Department must ensure that—
- (a) all parts of the Children's Residential Home to which children have access are so far as reasonably practicable free from hazards to their safety;
 - (b) any activities in which children participate are so far as reasonably practicable free from avoidable risks;
 - (c) unnecessary risks to the health or safety of children accommodated in the Children's Residential Home are identified and so far as possible eliminated;
 - (d) all persons working at the Children's Residential Home are trained in first aid.

Complaints and representations

27. (1) The Department must establish a written procedure for considering complaints made by or on behalf of children accommodated in the Children's Residential Home.

- (2) The procedure must, in particular but not exclusively, provide—
- (a) for an opportunity for informal resolution of the complaint at an early stage;
 - (b) that no person who is the subject of a complaint takes any part in its consideration other than, if the Department considers it appropriate, at the informal resolution stage only;
 - (c) for dealing with complaints about the Department;
 - (d) for complaints to be made by a person acting on behalf of a child;
 - (e) for arrangements for the procedure to be made known to—
 - (i) children accommodated in the Children's Residential Home;
 - (ii) their parents or guardians; and
 - (iii) persons working in the Children's Residential Home.

(3) A copy of the procedure must be supplied on request to any of the persons mentioned in sub-regulation (2)(e).

(4) The Department must ensure that a written record is made of any complaint, the action taken in response, and the outcome of the investigation.

- (5) The Department must ensure that—
- (a) children accommodated in the Children's Residential Home are enabled to make a complaint or representation; and
 - (b) no child is subject to any reprisal for making a complaint or representation.

Staffing

Staffing of Children's Residential Home

28. (1) The Department must ensure that there is at all times a sufficient number of suitably qualified, competent and experienced persons working at the Children's Residential Home, having regard to—

- (a) the size of the Children's Residential Home, the statement of purpose, and the number and needs (including any needs arising from any disability) of the children accommodated there; and

- (b) the need to safeguard and promote the health and welfare of the children accommodated.

(2) The Department must ensure that the employment of any persons on a temporary basis at the Children's Residential Home will not prevent children from receiving such continuity of care as is reasonable to meet their needs.

Fitness of workers

29. (1) The Department must not—

- (a) employ a person to work at the Children's Residential Home unless that person is fit to work at the Children's Residential Home; or
- (b) allow a person to whom sub-regulation (2) applies to work at the Children's Residential Home unless that person is fit to work at the Children's Residential Home.

(2) This sub-regulation applies to any person who is employed by a person other than the Department to work at the Children's Residential Home in a position in which he or she may in the course of his or her duties have regular contact with children accommodated there.

(3) For the purposes of sub-regulation (1), a person is not fit to work at the Children's Residential Home unless—

- (a) he or she is of integrity and good character;
- (b) he or she has the qualifications, skills and experience necessary for the work he or she is to perform;
- (c) he or she is physically and mentally fit for the purposes of the work he or she is to perform; and
- (d) full and satisfactory information is available in relation to him or her in respect of each of the following matters:
 - (i) proof of identity including a recent photograph;
 - (ii) a full criminal record certificate from every country in which the person has resided for more than 6 months;
 - (iii) 2 written references, including a reference from the person's most recent employer, if any;
 - (iv) if the person has previously worked in a position whose duties involved work with children or vulnerable adults, so far as reasonably practicable verification of the reason why the employment or position ended;
 - (v) documentary evidence of any relevant qualifications;
 - (vi) a full employment history, together with a satisfactory written explanation of any gaps in employment.

(4) The Department must ensure that—

- (a) any offer of employment to a person is subject to sub-regulation (3)(d) being complied with in relation to that person; and
- (b) unless sub-regulation (5) applies, no person starts work at the Children's Residential Home until sub-regulation (3)(d) has been complied with in relation to the person.

(5) If the following conditions apply, the Department may permit a person to start work at the Children's Residential Home regardless of sub-regulation (4)(b)—

- (a) the Department has taken all reasonable steps to obtain full information in respect of each of the matters listed in sub-regulation (3)(d) in respect of that person, but the enquiries in relation to any of the matters listed in sub-regulations (3)(d)(iii) to (vi) are incomplete;
- (b) full and satisfactory information in respect of that person has been obtained in relation to the matters specified in sub-regulations 3(d)(i) and (ii);
- (c) the Department considers that the circumstances are exceptional; and
- (d) pending receipt of, and satisfying itself with regard to any outstanding information, the Department ensures that the person is appropriately supervised while carrying out his or her duties.

(6) The Department must take reasonable steps to ensure that any person working at the Children's Residential Home who is not employed by it and to whom sub-regulation (2) does not apply, is appropriately supervised while carrying out his or her duties.

Employment of staff

30. (1) The Department must—

- (a) ensure that all permanent appointments are subject to the satisfactory completion of a period of probation; and
- (b) provide all employees with a job description outlining their responsibilities.

(2) The Department must operate a disciplinary procedure which, in particular,—

- (a) provides for the suspension of an employee where necessary in the interests of the safety or welfare of children accommodated in the Children's Residential Home; and
- (b) provides that the failure on the part of an employee to report an incident of abuse, or suspected abuse, of a child accommodated in the Children's Residential Home to an appropriate person is a ground on which disciplinary proceedings may be instituted.

(3) For the purposes of sub-regulation (2)(b), an appropriate person is the manager, an officer of the Department or a police officer.

(4) The Department must ensure that all persons employed in the Children's Residential Home—

- (a) receive appropriate training, supervision and appraisal; and
- (b) are enabled from time to time to obtain further qualifications appropriate to the work they perform.

Records

Other records

31. (1) The Department must ensure that the following records are maintained in the Children's Residential Home and are kept up to date—

- (a) a record in the form of a register showing in respect of each child accommodated in the Children's Residential Home —
 - (i) the date of the child's admission;
 - (ii) the date on which he or she ceased to be accommodated there;

- (iii) his or her address prior to being accommodated;
- (iv) his or her address on leaving the Children's Residential Home;
- (b) a record showing in respect of each person working at the Children's Residential Home—
 - (i) his or her full name, date of birth, gender and home address;
 - (ii) his or her qualifications relevant to, and experience of, work involving children;
 - (iii) whether he or she works at the Children's Residential Home full-time or part-time (whether paid or not), and if part-time, the average number of hours worked per week; and
 - (iv) whether he or she resides at the Children's Residential Home;
- (c) a record of any persons who reside or work at any time at the Children's Residential Home, who are not mentioned in the records kept in accordance with sub-regulations (a) or (b);
- (d) a record of all accidents occurring in the Children's Residential Home, or to children whilst accommodated;
- (e) a record of the receipt, disposal and administration of any medicine to any child;
- (f) a record of every fire drill or fire alarm test conducted, with details of any deficiency in either the procedure or the equipment concerned, together with details of the steps taken to remedy that deficiency;
- (g) a record of all money deposited by a child for safekeeping, together with the date on which that money was withdrawn, or the date of its return;
- (h) a record of all valuables deposited by a child and the date of their return;
- (i) records of all accounts kept in the Children's Residential Home;
- (j) a record of menus served;
- (k) a copy of the staff duty roster of persons working at the Children's Residential Home, and a record of the actual rosters worked;
- (l) a daily log of events occurring in the Children's Residential Home;
- (m) a record of all visitors to the Children's Residential Home and to children accommodated in the Children's Residential Home, including the names of visitors and the reasons for the visit.

(2) The records referred to in sub-regulation (1) must be retained for at least 15 years from the date of the last entry, except for records of menus, which need be kept only for one year.

Notifiable events

32. (1) The Department must without delay notify the parent or guardian of any child accommodated in the Children's Residential Home of any significant incident affecting the child's welfare unless to do so is not reasonably practicable or would place the child's welfare at risk.

(2) Any notification made in accordance with this regulation which is given orally must be confirmed in writing.

*Premises***Fitness of premises**

33. (1) The Department must not use premises for the purposes of the Children's Residential Home unless they are in a location, and of a physical design and layout, which are suitable for the purpose of achieving the aims and objectives set out in the Children's Residential Home's statement of purpose.

(2) The Department must ensure that all parts of the Children's Residential Home used by children are—

- (a) adequately lit, heated and ventilated;
- (b) secure from unauthorised access;
- (c) suitably furnished and equipped;
- (d) of sound construction and kept in good structural repair externally and internally;
- (e) kept clean and reasonably decorated and maintained; and
- (f) equipped with what is reasonably necessary, and adapted as necessary, in order to meet the needs arising from the disability of any disabled child accommodated in the Children's Residential Home so as to enable him or her to live as normal a life as possible.

(3) The Department must ensure that the Children's Residential Home is kept free from offensive odours and make suitable arrangements for the disposal of general and clinical waste.

(4) The Department must ensure that there are within the Children's Residential Home for use by children accommodated there in conditions of appropriate privacy for the number and gender of children accommodated—

- (a) a sufficient number of wash basins, baths and showers supplied with hot and cold running water; and
- (b) a sufficient number of lavatories.

(5) The Department must provide for the number and needs of children accommodated in the Children's Residential Home —

- (a) sufficient and suitable kitchen equipment, crockery, cutlery and utensils;
- (b) adequate facilities for the preparation and storage of food; and
- (c) so far as is practicable, adequate facilities for children to prepare their own food if they so wish, and are of an age and ability, to do so.

(6) The Department must ensure that there are within the Children's Residential Home adequate facilities for laundering linen and clothing, and, for children wishing to do so, to wash, dry and iron their own clothes.

(7) The Department must ensure that there is provided within the Children's Residential Home—

- (a) adequate communal space for sitting, recreation and dining; and
- (b) facilities for private study appropriate to the age and educational needs of the children accommodated.

(8) The Department must ensure that each child is provided with sleeping

accommodation which is—

- (a) suitable to his or her needs including his or her need for privacy; and
- (b) equipped with furniture, storage facilities, lighting, bedding and other furnishings including window and floor coverings suitable to his or her needs.

(9) The Department must ensure that no child shares a bedroom with an adult, nor (except in the case of siblings) a child who is of the opposite gender or of a significantly different age to him or her.

(10) The Department must provide for persons working at the Children's Residential Home—

- (a) suitable facilities and accommodation, other than sleeping accommodation, including—
 - (i) facilities for the purpose of changing; and
 - (ii) storage facilities; and
- (b) sleeping accommodation if the provision of such accommodation is needed in connection with their work at the Children's Residential Home.

Fire precautions

- 34.** The Department must after consultation with the fire and rescue service—
- (a) take adequate precautions against the risk of fire, including the provision of suitable fire equipment;
 - (b) provide adequate means of escape;
 - (c) make adequate arrangements—
 - (i) for detecting, containing and extinguishing fires;
 - (ii) for giving warnings of fires;
 - (iii) for evacuation in the event of fire;
 - (iv) for the maintenance of all fire equipment; and
 - (v) for reviewing fire precautions, and testing fire equipment, at suitable intervals;
 - (d) make arrangements for persons working at the Children's Residential Home to receive suitable training in fire prevention; and
 - (e) ensure, by means of fire drills and practices at suitable intervals, that the persons working at the Children's Residential Home and, so far as practicable, children accommodated there, are aware of the procedure to be followed in case of fire.

Department Review of Children's Residential Home

Visits by Department

35. (1) The Children's Residential Home must be visited in accordance with this regulation by an employee of the Department who is not directly concerned with the conduct of the Children's Residential Home or by one or more members of the Children's Safeguarding Board.

(2) Visits under sub-regulations (1) must take place at least once every three months and may be unannounced.

(3) The person carrying out the visit must—

- (a) interview, with their consent and in private, such of the children accommodated there, their parents, relatives and persons working at the Children's Residential Home as appears necessary in order to form an opinion of the standard of care provided in the Children's Residential Home;
- (b) inspect the premises of the Children's Residential Home, its daily log of events and records of any complaints; and
- (c) prepare a written report on the conduct of the Children's Residential Home.

Review of quality of care

36. (1) The Department must establish and maintain a system for—

- (a) monitoring the matters set out in sub-regulation (2) at appropriate intervals; and
- (b) improving the quality of care provided in the Children's Residential Home.

(2) The following matters must be monitored under sub-regulation (1)(a):

- (a) in respect of each child accommodated in the Children's Residential Home, compliance with the Department's plan for the care of the child (where applicable) and the placement plan;
- (b) the deposit and issue of money and other valuables handed in for safekeeping;
- (c) daily menus;
- (d) all accidents and injuries sustained in the Children's Residential Home or by children accommodated there;
- (e) any illnesses of children accommodated in the Children's Residential Home;
- (f) complaints in relation to children accommodated in the Children's Residential Home and their outcomes;
- (g) any allegations or suspicions of abuse in respect of children accommodated in the Children's Residential Home and the outcome of any investigation;
- (h) staff recruitment records and conduct of required checks for new workers in the Children's Residential Home;
- (i) visitors to the Children's Residential Home and to children in the Children's Residential Home;
- (j) any unauthorised absence from the Children's Residential Home of a child accommodated there;
- (k) the use of measures of control, restraint and discipline in respect of children accommodated in the Children's Residential Home;
- (l) risk assessments for health and safety purposes and subsequent action taken;
- (m) medicines, medical treatment and first aid administered to any child accommodated in the Children's Residential Home;
- (n) duty rosters of persons working at the Children's Residential Home, and the rosters actually worked;
- (o) the Children's Residential Home's daily log of events;
- (p) fire drills and tests of alarms and of fire equipment;
- (q) records of appraisals of employees;
- (r) minutes of staff meetings.

(3) The system referred to in sub-regulation (1) must provide for consultation with children accommodated in the Children's Residential Home and their parents or guardian.

Regulations and guidance

37. The Department must ensure that a copy of these Regulations (and of any amendments to them) are kept in the Children's Residential Home and made available on request to—

- (a) any person working in the Children's Residential Home;
- (b) any child accommodated in the Children's Residential Home; and
- (c) the parent or guardian of any child accommodated in the Children's Residential Home.

Financial position

38. (1) The Department must carry on the Children's Residential Home in a manner likely to ensure that the Children's Residential Home will be financially viable for the purpose of achieving the aims and objectives set out in its statement of purpose.

(2) The Department must ensure that adequate accounts are maintained and kept up to date in respect of the Children's Residential Home.

(3) The Department must ensure that the Children's Residential Home and its employees have the appropriate insurance in relation to the Children's Residential Home in respect of death, injury, public liability, damage or other loss.
