

Assented to in her Majesty's name and on Her Majesty's behalf.

Kenneth I Baddon  
Acting Governor



**ASCENSION  
No. 11 of 2011**

Enacted..... 4<sup>th</sup> October 2011  
Date of Commencement..... In accordance with section 1  
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*(Amended by Ordinance: 6/2012 & Ord 8/2014)*  
*(Amended by Legal Notice: 1/2013)*

**AN ORDINANCE**

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

Enacted by the Governor of Ascension after consultation with the Island Council of Ascension.

**PART 1  
PRELIMINARY**

**Citation, commencement and application**

1. This Ordinance may be cited as the Child Welfare Ordinance, 2011, and shall come into force on such date as the Governor may appoint by notice in the *Gazette*.

**Interpretation**

2. (1) In this Ordinance, unless the context shall otherwise require—  
“**actual custody**” in relation to a child means having actual possession of such 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 such child (whether or not such person has parental

responsibility for such child);

“**AISCB**” means the Ascension Island Safeguarding Children’s Board established under section 19;

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

“**child assessment order**” means an order under section 25(1);

“**child of the family**”, in relation to the parties to a marriage, means—

- (a) a child of both those parties; or
- (b) any other child, who has been treated by both of those parties as a child of their family;

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

“**contact order**” means an order under section 17(2)(b);

“**court**” means the St. Helena Supreme Court;

“**development**” means physical, intellectual, emotional, social, moral and behavioural development;

“**disabled**” means blind, deaf, dumb, suffering from mental disorder of any kind, or substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed;

“**emergency protection order**” means an order under section 26(1);

“**family proceedings**” means any proceedings in relation to wardship, maintenance or the upbringing of children;

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

“**Government**” means Her Majesty’s Government in right of Ascension Island;

“**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 health or development, his health or development shall be compared with that which could reasonably be expected of a similar child;

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

“**home**” includes any institution, other than—

- (a) a school; or
- (b) a hospital;

“**ill-treatment**” includes sexual abuse and forms of ill-treatment which are not physical;

“**lump sum order**” means an order under Schedule 1 for the payment of a lump sum;

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

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

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

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

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

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

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

“**prescribed**” means prescribed by regulations under this [Ordinance](#); (*amended by Ord 8/2014*)

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

“**qualified social worker**” means a person qualified to provide social services pertaining to the welfare of children in the United Kingdom, an Overseas Territory or any Commonwealth Country; (*inserted by Ord 6/2012*)

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

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

- “**residence order**” means an order under section 17(2)(a);
- “**school**” means an educational institution for providing pre-school, primary school or secondary school education;
- “**section 17 order**” has the meaning given by section 17(1);
- “**specific issue order**” has the meaning given by section 17(2)(d);
- “**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 20<sup>th</sup> 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;
- “**voluntary organisation**” means a body (other than a public authority) whose activities are not carried on for profit;
- “**young person**” means a person who has attained 16 years of age, but who is under 18 years of age.
- (2) For the purposes of this Ordinance, a child is in need if—
- (a) without the provisions for him of services under this Ordinance, he is unlikely to achieve or maintain a reasonable standard of health or development, or to have the opportunity of achieving or maintaining such standard; or
- (b) his health and development is likely to be significantly impaired, or further impaired, without the provision for him of such services: or
- (c) he is disabled.
- (3) Any register to be kept by the AISCB 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.
- (Amended by Ord 6/2012)*

## **PART II WELFARE AND RIGHTS OF THE CHILD**

### **Welfare of child**

3. (1) Whenever the Government, a court, a competent authority, a voluntary organisation or any other person makes a decision with respect to—
- (a) the custody, care, maintenance, health, education, development or any other matter relating to the upbringing of a particular child or children in general; or
- (b) the administration of a child's property or the application of any income arising from it,

the child's welfare shall be the paramount consideration;

Provided that nothing in this Ordinance shall be construed so as to require the Government to provide for any child any health, welfare or educational facility other than those such facilities (if any) that it provides for children generally.

(2) Subject to the provisions of this Ordinance, the following provisions of this section shall be 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 shall be had to the provisions of the United Nations Convention on the Rights of the Child, with appropriate modifications to suit the circumstances in Ascension.

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

(5) Regard shall be had to the importance of promoting, so far as practicable, the upbringing of the child by his family; and for this purpose “**family**”, in relation to the child,

includes any individual who has parental responsibility for him and any person with whom he has been living.

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

- (a) the ascertainable wishes and feelings of the child, considered in the light of his age and understanding;
- (b) the child's physical, emotional and educational needs;
- (c) the likely effect on the child of any change in his circumstances;
- (d) the child's age, gender, background and any other circumstances relevant in the matter;
- (e) any harm that the child has suffered or is at risk of suffering;
- (f) how capable each of the child's parents or guardians, and any other person involved in the care of the child, is of meeting his 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 shall 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 shall be had to the child's right—

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

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

**(10)** A Court shall not make an order under subsection (9) unless it has received and considered a report by a [qualified social worker](#) as to the suitability of the making of such an order. *(Inserted by Ord 6/2012)*

### **Child's right to stay with parents**

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

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

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

### **Child's right to parental responsibility**

**5.** Every child shall be entitled to parental responsibility as provided in this Ordinance.

### **Child's right to protection**

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

### **PART III**

## **PARENTAL RESPONSIBILITY AND GUARDIANSHIP**

### *Division 1*

#### *Parental responsibility*

#### **Meaning of “parental responsibility”**

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

(a) means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his 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 property, including in particular the right to receive or recover in his 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 shall not affect—

(a) any obligation which he 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, he (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 him to act in any way that would be incompatible with an order made with respect to the child under this Ordinance or any other enactment.

#### **Parental responsibility: general provisions**

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

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

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

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

the child.

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

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

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

(9) A person who fails to comply with subsection (8) is guilty of an offence for which the maximum penalty on conviction is imprisonment for a term not exceeding 6 months, or to a fine not exceeding £5000:00, or both.

### **Parental responsibility of biological parents**

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

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

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

### **Acquisition of parental responsibility by biological father**

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

- (a) the biological father acquires parental responsibility for the child upon marrying the biological mother of the child at any time after his birth;
- (b) the court may, on the application of the biological father, order that he shall 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 shall have effect for the purposes of this Ordinance unless—

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

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

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

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

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

## Acquisition of parental responsibility by step-parent

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

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

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

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

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

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

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

*(Inserted by Ord 6/2012)*

## *Division 2*

### *Guardianship*

#### **Appointment of guardian by court**

**11. (1)** Where an application is made to the Court with respect to a child who has no parent with parental responsibility for him the court may by order appoint any person to be the child's guardian.

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

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

**(4)** No guardian of a child may be appointed otherwise than in accordance with this section or [section 12](#). *(amended by Ord 8/2014)*

**(5)** The Court shall not make an order under subsection (1) unless it has received and considered a report by a [qualified social worker](#) as to the suitability of the making of such an order. *(Inserted by Ord 6/2012)*

## **Appointment of guardian by parent, etc.**

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

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

(3) An appointment under this section shall, as far as is practically possible, be made with the consent of the person being appointed and an appointment shall 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 presence and in the presence of two witnesses who each attest the signature.

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

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

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

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

(a) it is in writing, signed and made within a reasonable time after his first knowing that the appointment has taken effect; and

(b) where rules of court prescribe the manner in which such disclaimers are to be recorded, it is recorded in the prescribed manner.

(8) Nothing in this section prevents an appointment under this section being made by two or more persons acting jointly.

## **Termination of appointment**

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

(a) on the application of any person who has parental responsibility for the child; or

(b) with the leave of the Court, on the application of the child concerned; or

(c) in any family proceedings, if the Court considers that it should be brought to an end even though no application has been made.

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

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

(a) by him; or

(b) at his direction, in his presence and in the presence of two witnesses who each attest the signature.

(4) An appointment under section 12 (including one made in an unrevoked will or

codicil) is revoked if the person appointed is the spouse of the person who made the appointment and either—

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

unless a contrary intention appears by the appointment.

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

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

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

### *Division 3 Supplemental*

#### **Duration of orders**

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

#### **Restriction on further applications**

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

## **PART IV ORDERS WITH RESPECT TO CHILDREN**

#### **Wardship**

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

(2) Where application is made for an order under subsection (1) in respect of a child, the child shall become a ward of court on the making of the application, but shall cease to be a ward of court at the expiration of such period as may be 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 shall cease to be a ward of court.

#### **Orders in relation to wards of court**

17. (1) For the avoidance of doubt, the Court has plenary jurisdiction to make all such orders as are necessary for safeguarding and promoting the welfare of any ward of court.

(2) Without prejudice to the generality of subsection (1), the Court may, in

particular, make orders of all or any of the following kinds, namely:

- (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 parental responsibility for a child, and which is of a kind specified in the order, shall be 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;
  - (e) a “**financial provision order**”, that is an order that a person make such financial provision as the order may specify for or towards the care of the ward;
  - (f) a “**parental rights order**”, that is an order that the parental rights and responsibilities of any person in relation to the ward shall be suspended, either wholly or in part, or an order that a named person shall have parental rights or responsibilities in relation to the child either generally or to such extent as may be specified in the order.
- (3) Schedule 1 shall have effect in relation to financial provision orders.

## Reports

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

- (a) the AISCB to arrange for an officer of the AISCB; or
- (b) the Social Work Manager,

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 AISCB or a [qualified social worker](#) as the case may be, shall comply with the request. *(Inserted by Ord 6/2012)*

## PART V

### ASCENSION ISLAND SAFEGUARDING CHILDREN’S BOARD

#### Establishment of AISCB

19. (1) There shall be a Safeguarding Children’s Board (“the AISCB”) for Ascension, to be known as “the Ascension Island Safeguarding Children’s Board”.

(2) The AISCB shall 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 may by regulations prescribe.

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

#### Functions and procedure of AISCB

20. (1) The objective of the AISCB is—

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

purposes of safeguarding and promoting the welfare of children in Ascension;  
and

(b) to ensure the effectiveness of what is done by each such person or body for those purposes.

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

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

### **Further provisions concerning AISCB**

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

(a) encourage persons exercising functions or engaged in activities affecting children to take account of their views and interests;

(b) advise the Governor on the views and interests of children;

(c) publish a report on any matter considered or researched by it under this section.

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

(a) physical and mental health and emotional well-being;

(b) protection from harm and neglect;

(c) education, training and recreation;

(d) the contribution made by them to society;

(e) social and economic well-being.

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

(a) ensure that children are made aware of its functions and how they may communicate with it; and

(b) consult children, and organisations working with children, on the matters it proposes to consider and research under subsection (1)(c).

### **Functions of AISCB in relation to children in danger or need**

**22.** (1) The AISCB shall, 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 AISCB may provide, or arrange with voluntary organisations or other persons for the provision of advice and guidance for the purpose of—

(a) performing its duty under subsection (1); and

(b) safeguarding and promoting the welfare of children who are in need.

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

(a) without the provision for him of advice and guidance under this Part, he is unlikely to achieve or maintain a reasonable standard of health or development, or to have the opportunity of achieving or maintaining such standard; or

(b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such advice or guidance; or

(c) he is disabled.

## **Funding of AISCB**

- 23.** (1) The AISCB shall be wholly funded by the Government.
- (2) The Government shall be responsible for providing staff, goods, services, accommodation and other resources for the proper functioning of the AISCB.

## **PART VI PROTECTION OF CHILDREN**

### **Child assessment orders**

- 24.** (1) On the application of the Attorney General or the AISCB for an order to be made under this section with respect to a child, the court may make the order if (and only if) it is satisfied that—
- (a) the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm; 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 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 section.
- (2) The court may treat an application under this section as an application for an emergency protection order.
- (3) The court shall not make a child assessment order if it is satisfied—
- (a) that there are grounds for making an emergency protection order with respect to the child; and
  - (b) that it ought to make such an order rather than a child assessment order.
- (4) A child assessment order shall specify the date by which the assessment is to begin, and shall have effect for such period, not exceeding seven days beginning with that date, as may be specified in the order.
- (5) Where a child assessment order is in force with respect to a child it shall be the duty of any person who is in a position to produce the child—
- (a) to produce him to such person as may be named in the order; and
  - (b) to comply with such directions relating to the assessment of the child as 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 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 such period or periods as may be specified in the order.
- (9) Where the child is to be kept away from home, the order shall contain such directions as the court thinks fit with regard to the contact that he shall be allowed to have with other persons while away from home.
- (10) Any person making an application for a child assessment order shall 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;
- (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;
- (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) such other person as may be specified in the rules,

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

### **Emergency protection orders**

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

- (a) there is reasonable cause to believe that the child will suffer, or 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 Attorney General or person authorised by him—
  - (i) enquiries are being made with respect to the child under section 24 and
  - (ii) such enquiries are being frustrated by access to the child being unreasonably refused to a person authorised by the AISCB to seek access in connection with the enquiries; and
  - (iii) the AISCB has reasonable cause to believe that such access is required as a matter of urgency.

**(2)** Where an emergency protection order is in force with respect to a child, any person who is in a position to produce the child shall comply with any request to produce him to the AISCB.

**(3)** An emergency protection order authorises—

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

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

**(5)** Where a court makes an emergency protection order, it may give such directions (if any) as may be 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)** Where a court makes an emergency protection order, it may give such directions (if any) as may be appropriate with respect to the medical examination or other assessment of the child; and a direction under this subsection may be to the effect that there is

to be—

- (a) no 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 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) Where—

- (a) an emergency protection order is in force with respect to a child; and
- (b) the AISCB has exercised the power given by subsection (3)(a) or (b), but
- (c) it appears to the AISCB 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 shall return him or allow him to be removed.

(9) Where the AISCB is required by subsection (8) to return the child it shall—

- (a) return him to the care of the person from whose care he was removed; or
- (b) if that is not reasonably practicable, return him to the care of—
  - (i) a parent of his;
  - (ii) any individual who is not a parent of his but has parental responsibility for him; or
  - (iii) such other person as the AISCB (with the agreement of the court) considers appropriate.

(10) Where the AISCB has been required by subsection (8) to return the child or allow him 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) Where an emergency protection order has been made with respect to a child, the child shall, subject to any directions under subsection (5), be allowed reasonable contact with—

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

(12) Wherever it is reasonably practicable to do so, an emergency protection order shall name the child; and where it does not name him, it shall describe him as clearly as possible.

(13) Any person who intentionally obstructs any person exercising the power under subsection (3) to remove, or prevent the removal of the child, is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

### **Power to include exclusion requirement in emergency protection order**

26. (1) Where 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—

- (a) that 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 25(1), the child will not suffer, or be likely to suffer, significant harm, even though he 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 25(1), the enquiries referred to in that paragraph will cease to be frustrated; and
- (b) 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 him; and
  - (ii) consents to the inclusion of the exclusion requirement.
- (3) Schedule 2 has effect with respect to exclusion requirements under this section and undertakings to the like effect.

### **Duration of emergency protection orders, etc.**

**27. (1)** An emergency protection order shall have effect for such period not exceeding eight days as may be specified in the order.

**(2)** Where—

- (a) the court making an emergency protection order would, but for this subsection, specify a period of eight days as the period for which the order is to have effect; but
- (b) the last of those eight 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)** Where an emergency protection order is made on an application under section 24(6), the period of eight days mentioned in subsection (1) shall begin with the first day on which the child was taken into police protection under section 28.

**(4)** The person in whose favour an emergency protection order is made may, while the order has effect, apply to the court for the period during which the order is to have effect to be extended; and on such an application the court may extend that period for such period, [not exceeding seven days or the date when transport is available to return the child to his place of domicile (whichever is the latest), 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 shall not be extended more than once.

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

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

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

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

- (a) the child concerned;

(b) any parent of his;

(c) any person who is not a parent of his but who has parental responsibility for him; or

(d) any person with whom he was living immediately before the making of the order, but no such application shall 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) where the person who would otherwise be entitled to apply for the order to be revoked was given notice (in accordance with rules of court) of the hearing at which the order was made, and was present at that hearing; or
- (b) in the case of an order the effective period of which has been extended under subsection (4).

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

### **Removal by police**

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

- (a) remove the child to suitable accommodation and keep him there; or
- (b) take such steps as are reasonable to ensure that the child's removal from any hospital, or other place, in which he 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 shall—

- (a) inform the AISCB of the steps that have been, and are proposed to be, taken with respect to the child under this section, the reasons for taking them and the place at which he is being accommodated;
- (b) inform the child (if he appears capable of understanding) of the steps that have been taken with respect to him under this section and the reasons for taking them, and of the further steps that may be taken with respect to him under this section;
- (c) take such steps as 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 officer in charge of the Ascension detachment (a “**designated officer**”).

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

- (a) the parents of the child;
- (b) every individual who is not a parent of his but who has parental responsibility for him; and
- (c) any other person with whom he was living immediately before he 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 him under this section.

- (4) On completing any inquiry under subsection (2)(d), the designated officer

shall release the child from police protection unless he 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 AISCB, apply ~~an~~ for an emergency protection order to be made under section 25 with respect to the child. *(amended by Ord 8/2014)*

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

(a) neither the police officer concerned nor the designated officer shall have parental responsibility for him; but

(b) the designated officer shall 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) Where a child has been taken into police protection, the designated officer shall make arrangements to allow or, where the child is in a place of safety, the AISCB shall allow—

(a) the parents of the child;

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

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

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

(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 that person as the case may be, is both reasonable and in the best interests of the child.

(9) A police station shall not be taken to be suitable accommodation for the purpose of subsection (1)(a).

### **AISCB's duty to investigate**

**29. (1)** Where the AISCB—

(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 AISCB shall make or cause to be made such enquiries as it considers necessary to enable it to decide whether it should take any action to safeguard or promote the welfare of the child.

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

(3) Where enquiries are being made under subsection (1) with respect to a child, the AISCB shall (with a view to enable it to determine what action, if any, to take with respect to him) take such steps as are reasonably practicable—

(a) to obtain access to him; or

(b) to ensure that access to him is obtained, on its behalf, by a person authorised by it for the purpose,

unless the AISCB is satisfied that it already has sufficient information with respect to him.

(4) Where, in the course of enquiries made under this section any member of the AISCB, or any person authorised to act on its behalf in connection with those enquiries, is refused access to the child concerned, or is denied information as to his whereabouts, the AISCB shall apply for an emergency protection order or a child assessment order, unless it is

satisfied that his welfare can be satisfactorily safeguarded without its doing so.

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

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

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

### **Abduction of child**

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

(2) A person who knowingly and without lawful authority or reasonable excuse—  
~~(a) takes a child to whom this section applies away from the responsible person;~~  
*(repealed by Ord 8/2014)*

(a) AISCB; or *(inserted by Ord 8/2014)*

(b) keeps such a child away from the responsible person; or

(c) induces, assists or incites such a child to run away or stay away from the responsible person,

is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000, or both.

### **Recovery of abducted or absconding child**

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

(a) has been unlawfully taken away or is being unlawfully kept away from the responsible person; or

(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**”):

Provided that nothing in this section shall be construed as preventing a police officer who has reasonable cause to suspect that a child who has absconded from apprehending such 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 constable 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 shall name the child and the person who is the responsible person, and shall 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 shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

(6) No person shall be excused from complying with a request under subsection (2)(c) on the ground that complying might incriminate him or his spouse of an offence; but a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.

(7) In this section—

“authorised person” means—

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

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

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

(8) Where a person is authorised as mentioned in paragraph (c) of the definition of 'authorised person' in subsection (7)—

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

## **PART VII PROCEEDINGS INVOLVING CHILDREN AND YOUNG PERSONS**

### **General considerations**

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

### **Age of criminal responsibility**

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

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

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

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

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

(2) Arrangements shall be made for—

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

### **Bail or detention of children and young persons arrested**

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

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

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

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

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

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

(5) Where a person to whom this section applies is not so released as mentioned in subsection (2), the appropriate officer shall cause him to be detained until he 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.

### **Detention of child or young person**

**36.** (1) Where a child or young person is in police detention such steps as are practicable shall be taken to ascertain the identity of a person responsible for his 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 shall be informed, unless it is not practicable to do so—

- (a) that the child or young person has been arrested;
- (b) why he has been arrested;
- (c) where he is being detained; and
- (d) where the intimate search of a juvenile has been authorised under section 58(1) of the Police and Criminal Evidence Ordinance 2003—
  - (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 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) Where information falls to be given under subsection (2), it shall 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 parent or guardian;
- (b) any other person who has for the time being assumed responsibility for his

welfare;

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

### **Children in court during trials**

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

(a) the trial of any other person charged with an offence; or

(b) during any proceedings preliminary thereto,

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

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

(3) Where any child is present in court when he is not to be permitted to be so under subsection (1), he shall be ordered to be removed.

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

### **Clearing court while child or young person is giving evidence**

38. (1) Where 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 and without prejudice to any other powers of the court to hear proceedings in camera.

### **Remand or committal of child or young person**

39. (1) Subject to subsection (3), where 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 to custody for trial or sentence,

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

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

(a) he is charged with murder; or

(b) it is of opinion that only his detention in custody would be adequate to protect members of the public from death or serious personal injury occasioned by offences committed by him.

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

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

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

(4) Where a person is remanded to accommodation provided by the Government, it shall be lawful for any person acting on behalf of the Government to detain him.

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

(6) Where a person is remanded to accommodation provided by the Government, the Magistrates' Court may, on the application of the [Government Department](#), impose on that person any such conditions as could be imposed under subsection (5) if the court were then remanding him to such accommodation. *(amended by Ord 8/2014)*

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

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

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

### **Evidence by children**

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

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

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

(4) A child's evidence shall 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) Where 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 evidence may be heard by the court if, in its opinion,—

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

(7) If a child giving evidence unsworn intentionally gives false evidence in circumstances in which he would, if it had been given on oath, have been guilty of perjury, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,500; and the court by which he is convicted may exercise in relation to him any of the powers referred to in section 224(1) of the Criminal Procedure Ordinance Cap. 23.

### **Admissibility of hearsay evidence**

41. In any of the following proceedings—

- (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 shall be

admissible notwithstanding any rule of law relating to hearsay.

### **Powers in relation to certain offences**

**42.** (1) Where, 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) Where a justice of the peace is satisfied by the evidence of a registered medical practitioner that the attendance before a court of any child or young person in respect of whom a violent or sexual offence is alleged to have been committed would involve serious danger to his 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) shall thereupon sign the deposition and add to it a statement of—
  - (i) his 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) shall transmit the deposition with his statement to the Registrar.

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

- (a) the court is satisfied by the evidence of a registered medical practitioner that the attendance before the court of any child or young person in respect of whom the offence is alleged to have been committed would involve serious danger to his 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 shall be admissible in evidence either for or against the accused person without further proof thereof.

(4) A deposition shall not be 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; and
- (b) that he or his advocate had, or might have had if he 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.

### **Identification of child or young person in media**

**43.** (1) Subject to subsection (3), no report of any proceedings in any court, either in Ascension or in St. Helena, shall be published in Ascension in any manner whatsoever, which—

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

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

(2) Subject to subsection (3), no picture shall be published in any newspaper or

periodical or included in a relevant program as being or including a picture of any child or young person so concerned in any such proceedings.

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

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

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

(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 body corporate 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,

is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

### **Findings of guilt, etc.**

44. (1) The words “**conviction**” and “**sentence**” shall 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 shall, 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 was found guilty while under the age of 14 shall be disregarded for the purposes of any evidence relating to his previous convictions; and

(b) he shall not be asked, and if asked shall not be required to answer, any question relating to such an offence.

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

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

(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 Cap. 23; 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 shall 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.

(2) The court shall 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) Where a child or young person is convicted or found guilty of any offence, the

court by which sentence is imposed on him or any order is made against him in respect of that offence may order his parent or guardian to give security for his good behaviour.

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

(a) he has been required to attend but has failed to do so; or

(b) he has been given an opportunity of being heard.

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

(a) he may appeal against it; and

(b) any sums ordered to be paid by him under subsection (1), or payable by him on forfeiture of any security under subsection (3), may be recovered from him,

as if the order had been made on his 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.

### **Proceedings for offences**

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

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

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

(4) A person committing an offence under this Part is liable on summary conviction to a fine not exceeding £5,000 or imprisonment for a term not exceeding 12 months.

## **PART VIII OFFENCES AGAINST CHILDREN AND YOUNG PERSONS**

### **Cruelty to children and young persons**

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

(a) on conviction on indictment before the Supreme Court, to a fine not exceeding £2,000 or to imprisonment for any term not exceeding two years, or to both such fine and imprisonment;

(b) on conviction before a court of summary jurisdiction, to a fine not exceeding £500 or to imprisonment for any term not exceeding three months, or to both such fine and imprisonment.

(2) For the purposes of this section—

- (a) the parent or other person legally liable to maintain a child or young person shall be deemed to have neglected him in a manner likely to cause injury to his health if, being able to do so, such parent or other person fails to provide adequate food, clothing, rest, medical aid or lodging for him;
- (b) where it is proved that the death of an infant under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) while the infant was in bed with some other person who has attained the age of 17 years and was at the time of going to bed under the influence of drink or any drug, then that other person shall be 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 ten 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, shall be 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 seven years, who allows that child to be in any room or yard containing a stove, coal-stove or open fire-place, not sufficiently protected to guard against the risk of that child being burnt or scalded, without taking reasonable precautions against the risk, and by reason thereof that child is killed or suffers serious injury, shall be deemed to have neglected that child in a manner likely to cause injury to that child's health:

Provided that neither this paragraph, nor any proceedings taken thereunder, shall affect the liability of any person to be indicted for manslaughter or for any offence against the Offences against the Person Act, 1861.

(3) A person may be convicted for an offence under this section—

- (a) notwithstanding that 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) notwithstanding 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 has the custody, charge or care, it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section to find him guilty of that offence.

(5) Nothing in this section shall be construed as affecting the right of any parent to administer reasonable punishment to him.

### **Begging and soliciting for prostitution**

48. (1) Every person who—

- (a) causes or procures any child or young person; or
- (b) having the custody, charge or care of a child or young person, allows him, to be in any street, premises or place for the purpose of begging or receiving alms, soliciting for prostitution or of inducing the giving of alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise) shall be guilty of an offence against this Ordinance.

(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—

- (a) that the child or young person was in any street, premises or place for any

purpose as is mentioned in subsection (1); and  
(b) that the person charged allowed the child or young person to be in the street, premises or place,  
he shall be presumed to have allowed him to be in the street, premises or place for that purpose unless the contrary is proved.

### **Allowing children to be in brothels**

**49.** (1) If any person having the custody, charge or care of a child who has attained the age of four years, allows that child to reside in or frequent a brothel, he shall be guilty of an offence against this Ordinance.

(2) Nothing in this section shall affect the liability of a person to be indicted under the Sexual Offences Act, 2003, but upon the trial of a person under that Act it shall be lawful for the jury, if they are satisfied he is guilty of an offence under this section, to find him guilty of that offence.

### **Causing or encouraging prostitution**

**50.** (1) Any 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, shall be guilty of an offence and shall be liable on conviction to imprisonment for any term not exceeding two years.

(2) For the purposes of this section a person shall be 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 he has knowingly allowed such child to consort with, or enter or continue in the employment of, any prostitute or person of known immoral character.

## **PART IX MISCELLANEOUS AND SUPPLEMENTAL**

### **Employment of children**

**51.** (1) No child shall be employed or engaged in any activity that may be detrimental to his health, education or development and a child shall be entitled to be protected from such activity.

(2) Children under the age of 15 years shall 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 sixteen years employed on board his 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 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 health, education or development, is

guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000, or both.

### **Representation of child in family proceedings**

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

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

- (a) the child, if not a party, shall be treated as a party to the proceedings; and
- (b) the advocate shall represent the child in the proceedings to ensure that the Court is aware of the child's wishes, in so far as such child is capable of expressing such wishes, and, subject to any directions of the Court, shall take such steps in connection with the proceedings as appear to him to be necessary in the interests of the child.

(3) Nothing in this section affects any powers exercisable by the Attorney General apart from this section.

### **Search warrants**

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

(2) Every warrant under this section shall be addressed to, and executed by, a constable, who shall 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 constable so desires, a registered medical practitioner.

(3) Where an application for a warrant under this section relates to a particular child, the application and any warrant granted on the application shall name the child, if it is reasonably practicable to do so, and if they do not do so they shall describe him 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 AISCB if person with parental responsibility is about to leave Ascension without child**

**54.** (1) If the AISCB is satisfied that—

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

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

(2) A person must not—

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

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

(3) A person who fails to comply with subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

## **Regulations**

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

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

- (a) the provision of information to the AISCB/Government;
- (b) the impositions of penalties for contravening or failing to comply with any regulation;
- (c) the keeping of a register of sex offenders on Ascension; and
- (d) such other matters as may be necessary or expedient for the effective administration of this Ordinance.

## **St. Helena law**

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

## **Transitional provisions**

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

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

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## **Schedule 1**

### **Financial Provision for Children**

#### **Orders for financial relief against parents**

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

- (a) an order requiring either or both parents of a child to make to the applicant for the benefit of the child, or to the child himself, 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, 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, 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, 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) Where one parent of a child lives in Ascension and the child lives outside Ascension with another parent or a guardian of his, or with a person in whose favour a residence order is in force with respect to him, the court may, on any application by that other parent, guardian or person, make an order under this paragraph (except an order under sub-paragraph (1)(c) to (e)) against the parent living in Ascension).

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

(5) Where 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 has not reached the age of 18, but it shall 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 as follows—

(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—

(a) that 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) that there are special circumstances which justify the making of such an order.

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

(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) Where 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 shall 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 shall in addition have regard to—

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

**(3)** Where the court makes an order under paragraph 1 against a man who is not the father of the child, it shall 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 shall 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 shall not in any event extend beyond the child's 18th birthday unless it appears to the court—

- (a) that 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) that 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) shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

**(5)** Where 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 shall cease to have effect if the parents of the child live together for a continuous period of more than six months.

### **Lump sums**

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

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

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

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

### **Variation etc. of periodical payments orders**

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

- (a)* any person by or to whom the payments were required to be made under the previous order;
- (b)* if he has attained the age of 16, the child himself;
- (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 shall 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)** Where, 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 shall be made from such date as the court may specify, not being earlier than the making of the application.

**(5)** Where a periodical payments order under paragraph 1 ceases to have effect on the date on which the child attains the age of 16 or at any time after that date but before or on the date on which he 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—

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

the court may by order revive the order from such date as the court may specify, 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) Where 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. Where 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) Where 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, where no such application is made, the commencement of the family proceedings in question.

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

(2) If the court is satisfied 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 may appear to the court to be just having regard to all the circumstances.

(3) If the agreement is altered under this paragraph, it shall have effect thereafter

as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

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

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

(2) If a maintenance agreement is altered by the court on an application under this paragraph, the like consequences shall 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) for the alteration of a maintenance agreement by virtue of paragraph 10,

shall not, except with the permission of the court, be made after the end of a period of six 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 shall not be 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 prejudice 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 shall be left out of account, and a grant limited to real estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

### **Enforcement**

**12. (1)** Where the Supreme Court makes a periodical payments order, it shall order that the payments shall be made to the Registrar unless, upon representations expressly made in that behalf by the person to whom payments under the order fall to be made, it is satisfied that it is undesirable to do so.

**(2)** Any person for the time being under an obligation to make payments in pursuance of a periodical payments order shall give notice of any change of address to such person (if any) as may be specified in the order; and any person who without reasonable excuse fails to give such a notice shall be guilty of an offence for which the maximum penalty on conviction is a fine not exceeding £1,000.

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

### **Interpretation**

**13.** In this Schedule—

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

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

**“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.

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## **Schedule 2**

[Section 26(3)]

### **Exclusion Requirements**

#### **Power to include exclusion requirements in emergency protection orders**

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

*(a)* a provision requiring the relevant person to leave a dwelling-house in which he is living with the child;

*(b)* a provision prohibiting the relevant person from entering a dwelling-house in which the child lives; and

*(c)* a provision excluding the relevant person from a defined area in which the dwelling-house in which the child lives is situated.

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

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

(4) Where 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) Where 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 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 shall cease 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) shall be enforceable as if it were an order of the court; and

(b) shall cease 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 prejudice to the powers of the Court apart from this Schedule.

(5) In this Schedule—

(a) “**relevant order**” means an interim care order or an emergency protection order; and

(b) “**relevant person**” has the same meaning as in section 26, as the case may require.

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## Legal Notice No. 1 of 2013

### ASCENSION



### CHILD WELFARE ORDINANCE 2011

### ASCENSION ISLAND SAFEGUARDING CHILDREN'S BOARD REGULATIONS, 2013

In exercise of the powers conferred by section 19(2) and 20(2) of the Child Welfare Ordinance, 2011, the Governor makes the following Regulations:

#### Citation

1. These Regulations may be cited as the Ascension Island Safeguarding Children's Board Regulations, 2013 and shall come into force with immediate effect.

#### Constitution of the Board

2. The Ascension Island Safeguarding Children's Board established by section 19(1) of the Ordinance shall include the following persons or their representatives-

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

#### Functions of the Board

3. For the purposes of achieving its objective as prescribed by section 20 of the Child Welfare Ordinance 2011, the functions of the Board shall be-

- (a) to 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;

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

Made by the Governor this 20<sup>th</sup> day of February 2013.

Owen O'Sullivan  
Chief Secretary

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**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

*The purpose of these Regulations is to make provision for the constitution of the Ascension Island Safeguarding Children's Board and to set out the functions of the Board.*

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