CAYMAN ISLANDS

CHILDREN (AMENDMENT) ACT, 2024

(Act 28 of 2024)

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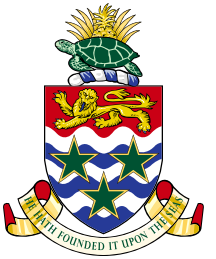

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CAYMAN ISLANDS

(Act 28 of 2024)
I Assent,

Jane Owen
Governor

Date: 9th January, 2025

CHILDREN (AMENDMENT) ACT, 2024

(Act 28 of 2024)

AN ACT TO AMEND THE CHILDREN ACT (2012 REVISION) TO PROVIDE FOR THE ACQUISITION OF PARENTAL RESPONSIBILITY BY PERSONS IN CIVIL PARTNERSHIPS; TO CLARIFY THE PROCESS FOR TRANSFERRING A CHILD TO SECURE ACCOMMODATION; TO INTRODUCE CARE PLANS; TO INTRODUCE NEW PROVISIONS REGARDING CHILDREN'S HOMES; TO AMEND THE DISCLOSURE AND INFORMATION SHARING PROVISIONS RELATING TO THE DEPARTMENT; TO ESTABLISH THE OFFICE OF THE COMMISSIONER FOR CHILDREN AND YOUNG PERSONS; TO REPEAL CERTAIN PARTS OF AND REGULATIONS UNDER THE ACT; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title and commencement

1. (1) This Act may be cited as the Children (Amendment) Act, 2024.

(2) This Act shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Act and in relation to different matters.

General amendments to the Children Act (2012 Revision) - deletion of the words "Governor in Cabinet"; references to Parts; references to the word "authorise"; deletion of the words "police protection"

2. The *Children Act* (*2012 Revision*), in this Act referred to as the "principal Act", is amended as follows —

(a) by deleting the words "Governor in Cabinet" wherever they appear, except in section 80, and substituting the word "Cabinet";

(b) by deleting the words "Part I" wherever they appear and substituting the words "Part 1";

(c) by deleting the words "Part II" wherever they appear and substituting the words "Part 2";

(d) by deleting the words "Part III" wherever they appear and substituting the words "Part 3";

(e) by deleting the words "Part IIIA" wherever they appear and substituting the words "Part 3A";

(f) by deleting the words "Part IV" wherever they appear and substituting the words "Part 4";

(g) by deleting the words "Part V" wherever they appear and substituting the words "Part 5";

(h) by deleting the words "Part XII" wherever they appear and substituting the words "Part 12";

(i) by deleting the words "authorise", "authorises", "authorised" and "authorisation", wherever they appear, and substituting respectively the words "authorize", "authorizes", "authorized" and "authorization"; and

(j) by deleting the words "police protection" and substituting the words "interim emergency protection".

Repeal and substitution of Part heading - PART I - Introductory

3. The principal Act is amended by repealing the Part heading of Part 1 and substituting the following Part heading —

"**PART 1 - PRELIMINARY**".

Amendment of section 2 - interpretation

4. The principal Act is amended in section 2 as follows —

(a) by deleting the definition of the words "**abuse**" or "**neglect**" and substituting the following definition —

" "**abuse**", in relation to a child, means —

(a) sexual abuse of the child;

(b) physical abuse of the child;

(c) emotional or psychological abuse of the child

(d) causing or allowing the child to see or hear, or placing the child or allowing the child to be placed at a real risk of seeing or

hearing, an act of domestic violence as defined by section 3 of the *Protection from Domestic Violence Act (2021 Revision)*;

(e) failing to secure school attendance of a child in accordance with section 12 of the *Education Act (2024 Revision)*; or

(f) building a relationship, trust or emotional connection with the child for the purpose of sexually abusing the child;";

(b) in the definition of the words "**child of the family**", by inserting after the word "marriage" where it twice appears the words "or a civil partnership";

(c) in the definition of the words "**children's home**", by deleting the words "section 64" and substituting the words "section 54A";

(d) by deleting the definition of the word "**constable**" and substituting the following definition —

" "**constable**" has the meaning assigned by section 2 of the *Police Act (2021 Revision)*;";

(e) by deleting the definition of the word "**parent**" and substituting the following definition —

" "**parent**" includes an adopter and a person who acquired parental responsibility under section 4A;";

(f) by deleting the definition of the word "**relative**" and substituting the following definition —

" "**relative**" in relation to a child —

(a) means a grandparent, brother, sister, aunt or uncle, whether of the full blood or half blood or by affinity, by marriage or civil partnership; and

(b) includes, further to section 3(2) of the *Status of Children Act, 2003*, a person referred to in paragraph (a) in relation to the child by virtue of an adoption order;";

(g) by deleting the definition of the word "**school**" and substituting the following definition —

" "**school**" has the meaning assigned by section 2(1) of the *Education Act (2024 Revision)*;";

(h) in the definition of the words "**sexual abuse**" as follows —

(i) in paragraph (a), by deleting the words "for the purpose of producing a visual depiction of such conduct"; and

(ii) in paragraph (b), by inserting after the words "prostitution," the words "solicitation,";

(i) by deleting the definition of the words "**special educational needs**" and substituting the following definition —

" "**special educational needs**", in relation to a child, means that the child has additional learning support needs which calls for special educational provision to be made for the child;";

(j) by deleting the definitions of the words "**child minder**", "**community home**", "**day care**", "**disabled**", "**Governor in Cabinet**", "**hospital**", "**learning difficulty**", "**nanny**", "**pupil**", "**registered children's home**"; "**voluntary home**", "**voluntary organisation**";

(k) by inserting in the appropriate alphabetical sequence, the following definitions —

" "**additional learning support needs**", in relation to a child, means —

(a) the child requires additional support in learning than the majority of children of the child's age, due to cognitive, behavioural, or other reasons;

(b) the child has a disability which either prevents or hinders the child from making use of educational facilities of a kind generally provided for children of the child's age in schools in the Islands; or

(c) the child is under the age of five and is, or would be if special educational provision were not made for the child, likely to fall within paragraph (a) or (b) when over that age,

but a child shall not be taken as requiring additional support in learning solely because the language (or form of the language) in which the child is, or will be, taught is different from a language (or form of language) which has at any time been spoken in the child's home;

"**adopter**" has the meaning assigned by section 2(1) of the *Adoption Act, 2024*;

"**advisory panel**" means the panel referred to in section 83K;

"**care plan**" has the meaning assigned by section 35A;

"**civil partner**" has the meaning assigned by section 2 of the *Civil Partnership Act, 2020*;

"**civil partnership**" has the meaning assigned by section 2 of the *Civil Partnership Act, 2020*;

"**Commissioner for Children and Young Persons**" means the person appointed by the Governor under section 83A;

"**Commissioner of Police**" means the person appointed to that position under the *Police Act (2021 Revision)*;

"**counselor**" means a person qualified to practise as such and registered and licensed to practise under the *Health Practice Act (2021 Revision)*;

"**Department of Financial Assistance**" means the department of Government continued under section 3 of the *Financial Assistance Act, 2022*;

"**designated officer**" means the police officer designated by the Commissioner of Police under section 49;

"**disability**" means any short-term or long-term physical, mental, intellectual or sensory impairment which significantly hinders a person's full and effective participation in society, on an equal basis with other persons and shall be construed with reference to the classification or diagnostic system accepted by the National Council for Persons with Disabilities;

"**educational institution**" has the meaning assigned by section 2 of the *Education Act (2024 Revision)*;

"**emotional or psychological abuse**", in relation to a child, includes any verbal and non-verbal act that undermines the child's sense of dignity or self-worth and threatens the child's emotional or psychological wellbeing;

"**entity**" means any body and includes a ministry, portfolio, statutory authority, government company, the Office of the Ombudsman and the Audit Office;

"**family mediation information and assessment meeting**" has the meaning assigned by rule 1 of Schedule 1 to the *Mediation Information and Assessment Rules (2023 Consolidation);*

"**father**", in relation to a child, means the natural father of the child;

"**health care facility**" has the meaning assigned by section 2 of the *Health Practice Act (2021 Revision)*;

"**health services**" has the meaning assigned by section 2 of the *Health Practice Act (2021 Revision)*;

"**medical officer**" has the meaning assigned by section 2(1) of the *Mental Health Act (2023 Revision)*;

"**Minister**" means the member of Cabinet charged with responsibility for social development;

"**Ministry**" means the Ministry with responsibility for social development;

"**mother**", in relation to a child, means the natural mother of the child;

"**National Council for Persons with Disabilities**" means the National Council for Persons with Disabilities established by section 3 of the *Disabilities (Solomon Webster) Act, 2016*;

"**neglect**", in relation to a child, means the lack of provision to the child of essential care, including food, clothing, medical care, lodging and other necessities of life, to the extent of causing, or being reasonably likely to cause, personal injury or physical pain to, or injury to the mental or physical health of, the child;

"**non-profit organisation**" has the meaning assigned by section 2 of the *Non-Profit Organisations Act (2020 Revision)*;

"**physical abuse**" means any act or omission which causes or threatens physical injury;

"**police officer**" has the meaning assigned by section 2 of the *Police Act (2021 Revision)*;

"**political party**" has the meaning assigned by section 2 of the *Ombudsman Act (2021 Revision)*;

"**private entity**" means a natural or legal person that is not a public authority and includes a non-profit organisation;

"**private law proceedings**" has the meaning assigned by rule 1 of Schedule 1 to the *Mediation Information and Assessment Rules (2023 Consolidation)*;

"**public authority**" has the meaning assigned by section 2 of the *Data Protection Act (2021 Revision)*;

"**registered practitioner**" has the meaning assigned by section 2 of the *Health Practice Act (2021 Revision)*;

"**relevant authority**" means a public authority or a private entity, and includes any body (whether incorporated or unincorporated) that provides any service under a contract made with the public authority or the private entity, the provision of the service being a function of that public authority or private entity;

"**safeguard**", in relation to a child or young person, as the context requires, means —

(a) to protect the child or young person from harm, abuse, neglect or maltreatment; and

(b) to prevent harm to the health or development of the child or young person;

"**statutory authority**" has the meaning assigned by section 2 of the *Public Authorities Act (2020 Revision)*;

"**therapist**" means a person qualified to practise as such and registered and licensed to practise under the *Health Practice Act (2021 Revision)*;

"**wellbeing**", in relation to a child, means the child's quality of life, including the following in relation to the child —

(a) personal dignity;

(b) physical, mental and emotional health;

(c) protection from abuse and neglect;

(d) social wellness;

(e) domestic, family and personal relationships; and

(f) suitability of living accommodation and environment;

"**working day**" means a day of the week, excluding Saturdays, Sundays and public general holidays;

"**young person**" means a person who has attained the age of eighteen years but who has not yet attained the age of twenty-five years;"; and

(l) by inserting after subsection (4), the following subsection —

"(5) References in this Act to consent means any freely given, specific, informed and unambiguous indication of the person's wishes by which the relevant person, by a statement or by a clear affirmative action, signifies agreement to the relevant matter, except that where the Act requires the consent to be in writing, the consent shall be in written form".

Amendment of section 3 - welfare of the child

5. The principal Act is amended in section 3 as follows —

(a) by inserting after subsection (3) the following subsection —

"(3A) In the circumstances mentioned in subsection (4)(a) or section 6(1)(a) or (3), a court is to presume that the involvement of the parent in the life of the child concerned will further the child's welfare, unless there is evidence before the court in the relevant proceedings to suggest that involvement of that parent in the life of the child would put the child at risk of suffering harm."; and

(b) by inserting after subsection (5) the following subsection —

"(6) For the purposes of subsection (3A), "**involvement**" means involvement of some kind, either direct or indirect, but not any particular division of a child's time.".

Insertion of section 3A - voice of the child

6. The principal Act is amended by inserting after section 3 the following sections —

"**Voice of the child**

3A. Where the wishes and feelings of a child are to be ascertained or had regard to under this Act or any other law, the relevant person shall ensure that the child is provided with —

(a) adequate information, in a manner that the child can understand with respect to a decision concerning the child;

(b) the opportunity to express views freely, according to the child's understanding and abilities;

(c) information about the outcome of a decision concerning the child and an explanation of the reasons for the decision;

(d) any assistance that is necessary for the child to understand the information referred to in paragraph (c) and to express views in relation to it; and

(e) appropriate counselling,

to ensure that the child is able to participate in any decision made under this Act or any other law that has an impact on the child's life.".

Amendment of section 4 - parental responsibility for children

7. The principal Act is amended in section 4 as follows —

(a) in subsection (1) as follows —

(i) by inserting after the words "married to" the words "or in a civil partnership with"; and

(ii) by deleting the words "his birth" and substituting the words "the birth of the child";

(b) in subsection (2) as follows —

(i) by inserting after the words "married to" the words "or in a civil partnership with"; and

(ii) by deleting the words "his birth" and substituting the words "the birth of the child";

(c) by inserting after subsection (3) the following subsections —

"(3A) Where a woman gives birth to a child ("the mother"), and at the time of the birth the mother is in a civil partnership with another woman, the child's mother and the woman with whom the mother is in a civil partnership at the time of the birth of the child shall each have parental responsibility for the child.

(3B) Where an adoption order has been made under the *Adoption Act, 2024* or the law of any other jurisdiction, each person named in the adoption order shall have parental responsibility for the child who is the subject of the adoption.";

(d) in subsection (7), by deleting the word "him" and substituting the words "the person";

(e) in subsection (8) as follows —

(i) by deleting the word "his" and substituting the words "the person's"; and

(ii) by deleting the word "himself"; and

(f) in subsection (9), by deleting the word "his" and substituting the words "the person's".

Amendment of section 4A - acquisition of parental responsibility by a step-parent

8. The principal Act is amended in section 4A(1) by inserting after the words "married to" the words "or in a civil partnership with".

Amendment of section 6 - acquisition of parental responsibility by father

9. The principal Act is amended in section 6 as follows —

(a) in subsection (1) as follows —

(i) by inserting after the words "married to" the words "or in a civil partnership with"; and

(ii) by deleting the words "his birth" and substituting the words "the birth of the child"; and

(b) in subsection (3)(b), by deleting the words "or the child himself" and substituting the words "of the child".

Amendment of section 9 - welfare reports

10. The principal Act is amended in section 9 as follows —

(a) by repealing subsection (1) and substituting the following subsection —

"(1) A court considering a question with respect to a child under this Act may ask —

(a) a guardian *ad litem*;

(b) a social worker; or

(c) the Department to arrange for an officer of the Department or any other person as the Department considers appropriate,

to provide a report to the court on matters relating to the welfare of the child as are required to be dealt with in the report."; and

(b) by repealing subsection (4) and substituting the following subsection —

"(4) A guardian *ad litem*, a social worker or the Department, as applicable, shall comply with a request for a report under this section.".

Insertion of sections 9A and 9B - disclosure of interest by an officer of the Department; confidentiality of information held by the Department

11. The principal Act is amended by inserting after section 9 the following sections —

"**Disclosure of interest by an officer of the Department**

9A. (1) If an officer of the Department has any personal or pecuniary interest, direct or indirect, in relation to the exercise of any of the officer's functions under this Act, the officer —

(a) shall disclose the fact as soon as possible after the relevant circumstances have come to that officer's knowledge; and

(b) at the discretion of the Director, may not be permitted to take part in the consideration or discussion of any relevant matter.

(2) Where an officer of the Department contravenes subsection (1), the person commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

Confidentiality of information held by the Department

9B. (1) Where the Department holds information obtained pursuant to this Act, the Department shall not disclose the information to another person unless —

(a) the disclosure is for the purposes of an enquiry, investigation or other function of the Department under this Act;

(b) the disclosure relates to a serious threat to the life, health or safety of a person and the disclosure is made to a constable; or

(c) the disclosure is authorized or required by law or by the order of a court.

(2) Where an officer of the Department knowingly discloses information in contravention of subsection (1) or discloses information, being reckless as to whether the disclosure is in contravention of subsection (1), the person commits an offence and is liable —

(a) on summary conviction, to a fine of ten thousand dollars; or

(b) on conviction on indictment, to a fine of twenty thousand dollars.".

Amendment of section 10 - residence, contact and other orders with respect to children

12. The principal Act is amended in section 10 as follows —

(a) in subsection (1), in the definition of the words "a prohibited steps order", by deleting the definition of the word "consent" and substituting the word "authorization"; and

(b) in subsection (4), by repealing paragraphs (c), (d) and (e) and substituting the following paragraphs —

"(c) the *Adoption Act, 2024*; and

(d) section 5 of *the Age of Majority Act (1999 Revision)*.".

Amendment of section 11 - restrictions on making section 10 orders

13. The principal Act is amended in section 11 as follows —

(a) by repealing subsection (2) and substituting the following subsection —

"(2) A person who is, or was at any time within the last six months, a departmental foster parent of a child may not apply for leave to apply for a section 10 order with respect to the child unless —

(a) the person has the agreement of the Department to apply;

(b) the person is a relative of the child; or

(c) the child has lived with the person for at least three years preceding the application."; and

(b) by inserting after subsection (5) the following subsection —

"(6) Where an application is made in private law proceedings under this Act, a court shall —

(a) consider at every stage of the proceedings whether non-court dispute resolution is appropriate; and

(b) unless an exemption under rule 8 of Schedule 1 to the *Mediation Information and Assessment Rules (2023 Consolidation)* applies, require the applicant to attend a family mediation information and assessment meeting in accordance with the *Mediation Information and Assessment Rules (2023 Consolidation)*.".

Amendment of section 12 - power of court to make section 10 orders

14. The principal Act is amended in section 12(5) as follows —

(a) in paragraph (a), by inserting after the word "marriage" the words "or a civil partnership"; and

(b) in paragraph (c), by repealing subparagraph (ii) and substituting the following paragraph —

"(ii) in any case where the child is in the care of the Department, has the agreement of the Department to apply for the relevant order;".

Amendment of section 13 - general principles and supplementary provisions

15. The principal Act is amended in section 13(7) by inserting after paragraph (c) the following paragraph —

"(ca) contain a warning of the consequences of failing to comply with the order; and".

Insertion of sections 16A and 16B - duty of parents to maintain children; order for payments for maintenance and upbringing of child in cases of death of parent due to prescribed criminal acts ("Shemaiah Grant Order")

16. The principal Act is amended by inserting after the heading "**Financial Relief**" the following sections —

"**Duty of parents to maintain children**

16A. A parent of a child is liable to maintain the child, failing which an order for financial relief in accordance with Schedule 1 may be made against the parent.

Order for payments for maintenance and upbringing of child in cases of death of parent due to prescribed criminal acts ("Shemaiah Grant Order")

16B. Where a court finds a person liable for the death of a parent of a child as a result of the commission of a criminal act specified in Schedule 1, the court may grant an order against the person or the person's estate for payments to be made for the maintenance and upbringing of the child ("Shemaiah Grant Order") —

(a) on application made by a parent or guardian of the child, or by any person in whose favour a residence order is in force with respect to the child or on the court's own motion; and

(b) having regard to any matters which the court considers relevant in the interests of justice, subject to any conditions as the court considers appropriate,

and the payments may be enforced in the same manner, subject to any necessary modifications, as an order for financial relief under this Act.".

Amendment of section 18 - family assistance orders

17. The principal Act is amended in section 18 as follows —

(a) in subsection (1), by deleting the words "a social worker or other officer" and substituting the words "an officer"; and

(b) in subsection (2)(c), by deleting the word "himself".

Repeal and substitution of section 19 - provision of services for children in need, their families and others

18. The principal Act is amended by repealing section 19 and substituting the following section —

"**Provision of services for children in need, their families and others**

19. (1) It is the duty of the Department (in addition to the other duties imposed on the Department by this Part) —

(a) to safeguard and promote the welfare of children who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of children by their families,

by providing, or facilitating the provision of, a range and level of services appropriate to the needs of those children.

(2) For the purpose of facilitating the discharge of its duty under this section, the Department has the duties and powers set out in Part 1 of Schedule 2.

(3) Any service provided by the Department in the exercise of functions conferred on it by this section, or any service the provision of which is facilitated by the Department, may be provided for the family of a particular child in need or for any member of the child's family, if it is provided with a view to safeguarding or promoting the child's welfare.

(4) The Cabinet may by Order amend Part 1 of Schedule 2, and an amendment may include adding another duty or power to those set out in Part 1 of Schedule 2.

(5) Before determining what, if any, services to provide, or facilitate the provision of, for a particular child in need pursuant to the functions conferred on it by this section, the Department shall, so far as is practicable and consistent with the child's welfare —

(a) ascertain the wishes and feelings of the child regarding the provision of those services; and

(b) give due consideration, having regard to the age and understanding of the child, to the wishes and feelings of the child as the Department is able to ascertain.

(6) The services provided by the Department in the exercise of functions conferred on it by this section may include giving assistance in kind or, in exceptional circumstances, in cash, where financial assistance is not being provided by any other entity or where additional financial assistance is needed.

(7) Assistance may be unconditional or subject to conditions, and may include the repayment of the assistance or of its value (in whole or in part), except where subsection (9) applies.

(8) Where the Department provides, or facilitates the provision of, any assistance, or imposes any conditions on any assistance provided, the Department shall have regard to —

(a) the means of —

(i) the child concerned; and

(ii) the parents of the child or any person having parental responsibility for the child; and

(b) where the Department facilitates the provision of assistance by another entity, any other conditions imposed by that other entity.

(9) Where a person receives financial assistance from the Department of Financial Assistance, the person is not liable to make any repayment of the financial assistance, except where required in accordance with the *Financial Assistance Act, 2022*.

(10) For the purposes of this Part —

(a) a child shall be taken to be in need if —

(i) the child is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision of services by the Department under this Part;

(ii) the child's health or development is likely to be significantly impaired, or further impaired, without the provision of those services; or

(iii) the child has a disability;

(b) "**development**" means physical, intellectual, emotional, social or behavioural development;

(c) "**family**", in relation to a child in need, includes a person who has parental responsibility for the child and any other person with whom the child has been living; and

(d) "**health**" means physical or mental health.".

Repeal of sections 20 and 21 - day care for pre-school and other children; review of provision for day care, child minding, etc.

19. The principal Act is amended by repealing sections 20 and 21.

Amendment of section 22 - provision of accommodation for children: general

20. The principal Act is amended in section 22 as follows —

(a) by repealing subsection (2) and substituting the following subsection —

"(2) The Department may provide accommodation for any child in need whose welfare the Department considers is likely to be seriously prejudiced if it does not provide the child with accommodation."; and

(b) by repealing subsection (4) and substituting the following subsection —

"(4) The Department may provide accommodation for any person who has reached the age of sixteen but who is under twenty-four years of age in a children's home or other accommodation which takes children who have reached the age of sixteen, if the Department considers that to do so would safeguard or promote the welfare of the person.".

Amendment of section 25 - provision of accommodation and maintenance by the Department for children whom it is looking after

21. The principal Act is amended in section 25 as follows —

(a) in subsection (2) as follows —

(i) in paragraph (a) —

(A) by deleting the word "him" and substituting the words "the child"; and

(B) in subparagraph (ii), by deleting the word "his" and substituting the words "the child";

(ii) by repealing paragraphs (b) and (c); and

(iii) in paragraph (d) as follows —

(A) by deleting the word "him" and substituting the words "the child"; and

(B) by deleting the word "registered";

(b) by inserting after subsection (4) the following subsections —

"(4A) A person is not eligible to be a departmental foster parent unless the person is at least twenty-five years of age.

(4B) Notwithstanding subsection (4A), the Department may place a child with a person who has not attained the age of twenty-five years but who is at least eighteen years of age, if after having regard to any relevant regulations made with respect to placement of children under subsection (2)(a), the Department determines that the placement would not prejudice the welfare of the child and would be in the best interests of the child.

(4C) The Department shall not place more than three children ("the usual fostering limit") with a person unless —

(a) the children concerned are all siblings of each other; or

(b) the Department exempts the person from the usual fostering limit.

(4D) In considering whether to exempt a person from the usual fostering limit, the Department shall have regard to —

(a) the number of children the person proposes to foster;

(b) the arrangements which the person proposes for the care and accommodation of the children who are to be fostered;

(c) the intended and likely relationship between the person and the children who are to be fostered;

(d) the period of time for which the person proposes to foster the children;

(e) whether the welfare of the children who are to be fostered (and of any other children who are or will be living in the accommodation) will be safeguarded and promoted; and

(f) whether the child who is to be fostered requires emergency or immediate placement.

(4E) Where the Department exempts a person under subsection (4D), it shall inform the person by notice in writing —

(a) that the person is so exempted;

(b) of the children, described by name, whom the person may foster; and

(c) of any condition to which the exemption is subject.

(4F) The Department may at any time by notice in writing —

(a) vary or cancel an exemption; or

(b) impose, vary or cancel a condition to which the exemption is subject,

and, in considering whether to do so, the Department shall have regard in particular to the considerations mentioned in subsection (4D).

(4G) The procedure established under section 29 shall apply in relation to the consideration of any representations (including any complaint) made to the Department about the discharge of its functions under —

(a) subsection (4B); or

(b) subsections (4D), (4E) and (4F) by a person exempted or seeking to be exempted under the applicable subsection.

(4H) In carrying out any consideration of representations under subsection (4G), the Department shall comply with any regulations made by the Cabinet under section 29(3) and (4).

(4I) A person shall not foster a child unless the person is a departmental foster parent.

(4J) A person who is a departmental foster parent shall not foster a child otherwise than in accordance with this section or any regulations made under the Act in relation to departmental foster parents.";

(c) by repealing subsections (8) and (9) and substituting the following subsections —

"(8) Where the Department provides accommodation for a child whom it is looking after, subject to the provisions of this Part and so far as is reasonably practicable and consistent with the welfare of the child, the Department shall ensure that —

(a) the accommodation is near the child's home; and

(b) where the Department is also providing accommodation for a sibling of the child, the child and the sibling of the child are accommodated together.

(9) Where the Department provides accommodation for a child whom it is looking after and the child has a disability, the Department shall, so far as is reasonably practicable, ensure that the accommodation is suitable to the particular needs of the child."; and

(d) by inserting after subsection (10) the following subsection —

"(11) A person who contravenes subsection (4I) or (4J) commits an offence and is liable on summary conviction to a fine of five thousand dollars.".

Amendment of section 26 - advice and assistance for certain children

22. The principal Act is amended in section 26 by repealing subsection (2) and substituting the following subsection —

"(2) In this Part, "**a person qualifying for advice and assistance**" means a person within the Islands who is under twenty-four years of age and who was, at any time after reaching the age of sixteen years but while still a child —

(a) looked after by the Department;

(b) accommodated in a children's home; or

(c) accommodated in any residential care home,

for a consecutive period of at least three months but who is no longer so looked after or accommodated.".

Repeal and substitution of section 27 - use of accommodation for restricting liberty

23. The principal Act is amended by repealing section 27 and substituting the following section —

"**Use of accommodation for restricting liberty**

27. (1) Subject to the following provisions of this section, a child who is being looked after by the Department may not be placed, and, if placed, may not be kept, in accommodation provided for the purpose of restricting liberty ("secure accommodation") unless —

(a) it appears that the child has a history of absconding or is likely to abscond from any other description of accommodation, and, if the child absconds, the child is likely to suffer significant harm;

(b) if the child is kept in any other description of accommodation, the child is likely to injure himself or herself, or other persons;

(c) the child is charged with, or convicted of an offence involving violence;

(d) the child has been remanded or detained and committed to the care of the Department under section 14 or 15 of the *Youth Justice Act (2021 Revision)*;

(e) the child is the subject of a youth rehabilitation order which imposes a detention residence requirement under section 27 of the *Youth Justice Act (2021 Revision)*; or

(f) the child is accommodated at —

(i) a facility where the liberty of persons is restricted on the order or recommendation of a medical officer; or

(ii) a facility outside the Islands where the liberty of persons is restricted if considered necessary by mental health professionals.

(2) Where a child who is being looked after by the Department is to be placed and kept in secure accommodation, the Department shall not, of its own volition, use any of the following facilities or places as secure accommodation —

(a) a detention facility, as defined by section 2 of the *Youth Justice Act (2021 Revision)*;

(b) a prison, as defined by section 2 of the *Prisons Act (2021 Revision)*; or

(c) any other place or facility as may be prescribed.

(3) The maximum period beyond which a child may not be kept in secure accommodation without the authority of the court is seventy-two hours, whether consecutively or seventy-two hours in aggregate, in any period of twenty-eight consecutive days.

(4) An application to the court under this section shall be made by the Department.

(5) An application under subsection (4) may be made *ex parte* where —

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

(b) there is some genuine and exceptional urgency and there is no time to give notice.

(6) Where an application under subsection (4) is made *ex parte*, it shall be supported by a written statement of the Department's reasons for making the application *ex parte*.

(7) A court hearing an application under this section shall determine whether the relevant criteria for keeping a child in secure accommodation are satisfied.

(8) If a court determines that the relevant criteria are satisfied, it shall make an order authorizing the child to be kept in secure accommodation and specifying the maximum period for which the child may be so kept.

(9) On an adjournment of the hearing of an application under this section, a court may make an interim order permitting the child to be kept in secure accommodation during the period of the adjournment.

(10) Subject to subsection (11), where an order or interim order is made under subsection (8) or (9) respectively, the order shall provide that the matter is to be reviewed by the court in the presence of all relevant parties at the end of the period specified in the order during which the child may be kept in secure accommodation.

(11) Where an order or interim order made under subsection (8) or (9) respectively is based on an *ex parte* application —

(a) the order shall provide that the matter is to be reviewed by the court in the presence of all relevant parties within the period specified in the order; and

(b) the Department shall serve on the relevant person, as soon as is reasonably practicable after the making of the order —

(i) notice of the order and of its terms; and

(ii) a copy of the statement of the Department's reasons which supported its application for the order.

(12) Where authority of the court to keep a child in secure accommodation is given, any period during which the child is kept in secure accommodation before the giving of that authority shall be disregarded for the purpose of any further placement in secure accommodation after the period authorized by the court has expired.

(13) Where —

(a) a child was placed in secure accommodation at any time between 12 noon on the day before and 12 noon on the day after a public general holiday or a Sunday; and

(b) during that period the maximum period specified in subsection (3) expires,

the maximum period shall be treated as if it did not expire until 12 noon on the first day after the public general holiday or Sunday which is not such a day.

(14) The maximum period for which a court may authorize a child to be kept in secure accommodation is six months or —

(a) if the child has been remanded as referred to in subsection (1)(d), the period of that remand;

(b) if the child is the subject of a youth rehabilitation order which imposes a detention residence requirement as referred to in subsection (1)(e), the duration of the youth rehabilitation order; or

(c) if the child is accommodated at a facility referred to in subsection (1)(f), the period ordered by the court on the recommendation of a medical officer or a mental health professional.

(15) No court shall exercise the powers conferred by this section in respect of a child who is not legally represented in that court unless, having been informed of his or her right to apply for legal aid in accordance with the *Legal Aid Act, 2015* and having had the opportunity to do so, the child refused or failed to apply.

(16) The Cabinet may by regulations provide that —

(a) this section shall not apply to a description of children specified in the regulations;

(b) this section shall have effect in relation to children of a description specified in the regulations subject to modifications as may be so specified;

(c) any other provisions shall have effect for the purpose of calculating the maximum period referred to in subsection (3), including determining the expiration of that period; and

(d) any other provisions as may be so specified shall have effect for the purpose of determining whether a child of a description specified in the regulations may be placed or kept in secure accommodation.".

Amendment of section 30 - co-operation between Departments

24. The principal Act is amended in section 30 as follows —

(a) by repealing the section heading and substituting the following section heading —

"**Co-operation with Department**";

(b) by repealing subsections (1) and (2) and substituting the following subsections —

"(1) Where it appears to the Department that any public authority or private entity for the purpose of this section could, by taking any specified action, assist in the exercise of any of the Department's functions under this Part, the Department may request the assistance of the public authority or private entity, specifying the action in question and, if the Department sees fit, the manner and time in which the action should be taken.

(2) Where the assistance requested under subsection (1) involves the disclosure of information, information is exempt from disclosure under this section if —

(a) the disclosure involves information that would be privileged from production in legal proceedings on the ground of legal professional privilege; or

(b) the disclosure would be in contempt of court."; and

(c) in subsection (3)(b), by deleting the word "him" and substituting the words "the child".

Amendment of section 31 - recoupment of cost of providing services, etc.

25. The principal Act is amended in section 31(1) by deleting the words "or 20".

Amendment of section 32A - notification of abuse or neglect

26. The principal Act is amended in section 32A as follows —

(a) by repealing the section heading and substituting the following section heading —

"**Notification of abuse or neglect where suspicion formed in the course of work**";

(b) in subsection (1)(b), by deleting the words "after he forms the suspicion" and substituting the words ", but no later than twenty-four hours after the person forms the suspicion";

(c) by repealing subsection (2) and substituting the following subsection —

"(2) This section applies to the following persons —

(a) a registered practitioner;

(b) a police officer;

(c) an officer of the Fire Brigade established under section 3 of the *Fire Brigade Act (2006 Revision)*, including any volunteer officers recruited in accordance with that Act;

(d) a probation officer;

(e) a social worker;

(f) an officer of the Department;

(g) a minister of religion;

(h) a person who is an employee of, or volunteer with, an organisation formed for religious or spiritual purposes;

(i) a teacher, principal, counselor or other employee in, or volunteer with, an institution established for the care and education of children;

(j) a person who provides child care services;

(k) any person who is an employee of an entity and being a person who —

(i) is engaged in the actual delivery of services to children; or

(ii) holds a management position in the relevant entity, the duties of which include direct responsibility for, or direct supervision of, the provision of services to children;

(l) a member of Parliament; or

(m) any other person who, by virtue of —

(i) volunteering;

(ii) engaging in community service; or

(iii) the person's employment or occupation, paid or unpaid,

has a responsibility to discharge a duty of care towards a child.";

(d) by repealing subsection (5) and substituting the following subsection —

"(5) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of three years, or to both."; and

(e) by inserting after subsection (6) the following subsection —

"(7) For the purposes of this section, "**duty of care**" means the duty which rests upon a person to ensure that all reasonable steps are taken to ensure the safety of a child involved in any activity or interaction for which that person is responsible.".

Amendment of section 32C - confidentiality of notification of abuse or neglect

27. The principal Act is amended in section 32C(2) by deleting the words "or who otherwise" and substituting the words "a person with whom the Department shares updates or the notification and statement under sections 32E and 32F, or a person who otherwise".

Amendment of section 32D - Department not obliged to take action

28. The principal Act is amended in section 32D(a) by deleting the words "after consultation with the Director of Public Prosecutions".

Repeal and substitution of section 32E - assessment and investigation of report by Department

29. The principal Act is amended by repealing section 32E and substituting the following sections —

"**Assessment and investigation of notification and statement**

32E. Within three days after receiving a notification accompanied by a statement about a child under section 32A, the Department shall assess the information in the notification and statement and after the assessment, may —

(a) refer the notification and the statement to the Commissioner of Police for further investigation so that the child may be brought before a court as the case may require; and

(b) inform the person having custody, care or control of the child, of the notification and the statement, unless in the opinion of the Department, the information would cause physical or emotional harm to any person, endanger the safety of the child or prejudice an investigation under paragraph (a).

Sharing of updates and the notification and statement

32F. Whether or not the Department refers the notification and the statement to the Commissioner of Police under section 32E(a), the Department may —

(a) where the notifier of abuse or neglect is a person under section 32A(2)(a), inform the person of any developments or updates which may assist with the treatment of, or the provision of health services to, the child, unless in the opinion of the Department, the information would cause physical or emotional harm to any person, endanger the safety of the child or, if applicable, prejudice an investigation under section 32E(a);

(b) where the notifier of abuse or neglect is a person under section 32A(2)(i) or (k), inform the person of any developments or updates which may assist with the delivery of services to the child, or the supervision of the delivery of services to the child, unless in the opinion of the Department, the information would cause physical or emotional harm to any person, endanger the safety of the child or, if applicable, prejudice an investigation under section 32E(a); and

(c) share the notification and statement with —

(i) an attorney-at-law who requires it in connection with a legal matter relating to the child; and

(ii) a guardian *ad litem* of the child.

Policies and training regarding safeguarding procedures

32G.(1) A public authority or a private entity in which persons in positions under section 32A(2) are appointed, are employed or otherwise assume such positions, paid or unpaid, shall ensure that those persons undergo training in relation to safeguarding —

(a) within twelve months of the date of commencement of the *Children (Amendment) Act, 2024*; or

(b) within six months following the person being appointed to, employed in or otherwise assuming the position,

whichever is sooner.

(2) A public authority or a private entity in which persons in positions under section 32A(2) are appointed, are employed or otherwise assume such positions shall —

(a) have a written policy that complies with this Act regarding its safeguarding procedures and its procedures for reporting abuse and neglect of children; and

(b) provide the written policy referred to in paragraph (a) to such persons.

Restriction on employment in position under section 32A(2)

32H.(1) Before a person is appointed to, is employed in or otherwise assumes a position under section 32A(2), paid or unpaid, the person shall be subjected to a screening process in accordance with regulations made by the Cabinet.

(2) After the screening process referred to in subsection (1), where it is discovered that a person has been convicted of, or served a sentence for, a prescribed offence, the person shall not be appointed to, employed in or otherwise assume a position under section 32A(2).

(3) Where the circumstances of a person change following the screening process referred to in subsection (1) and those circumstances would, or are likely to, result in the person not being or remaining appointed to, employed in or otherwise in a position under section 32A(2), the person shall notify the employer or any other person prescribed by regulations of the relevant change in circumstances.

(4) Where an employer or any other relevant person does not conduct the screening process in accordance with the regulations, any person may make a complaint to the Commissioner for Children and Young Persons.

(5) Where a person is required to make a declaration or provide information under the Act and the person makes a false declaration or provides false or misleading information, the person commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for a term of six months, or to both.".

Amendment of section 33 - care and supervision orders

30. The principal Act is amended in section 33(3) by inserting after the word "married" the words "or in a civil partnership".

Insertion of section 35A - care plan

31. The principal Act is amended by inserting after section 35 the following section —

"**Care plan**

35A.(1) Where the Department makes an application to the court for a care order under section 33, the Department, within a period of time as the court may direct, shall prepare a care plan for the future care of the child, which may include expectations of parents of, and persons with parental responsibility for, the child.

(2) Where an application for a care order is pending, the Department shall keep any care plan prepared by the Department under review

and, where the Department is of the opinion that a change to the care plan is required, the Department shall revise the care plan, or make a new care plan accordingly.

(3) A care plan shall contain the prescribed information, in the prescribed manner.

(4) In this section, a reference to a care order does not include an interim care order made under section 40.".

Amendment of section 36 - parental contact, etc., with children in care

32. The principal Act is amended in section 36 as follows —

(a) in subsection (2), by deleting the words "responsible for the welfare of children"; and

(b) in subsection (4), by inserting after the words "authorising the Department" the words "to refuse".

Insertion of sections 38A and 38B - power of court to order participation in treatment programme; power of court to order drug testing

33. The principal Act is amended by inserting after the Division heading "**Powers of court**" the following sections —

"**Power of court to order participation in treatment programme**

38A.(1) The court, in connection with any family proceedings, may order that a party to the proceedings participate in an appropriate treatment programme as the court may specify that would, in the court's opinion, help to establish, maintain or improve the involvement of the relevant party in the life of the child concerned.

(2) Where the court makes an order under subsection (1) —

(a) the order shall specify —

(i) that the counselor or therapist provide the court with written notification of sessions missed by any relevant party; and

(ii) the date by which the counselor or therapist shall submit a report to the court in respect of the treatment; and

(b) the court shall inform the subject of the order of the consequences of any failure to comply with the order.

(3) For the purposes of this section, "**treatment programme**" includes a programme designed to counsel the parties or rehabilitate behavioural issues.

Power of court to order drug testing

38B.(1) The court may make an order requiring a party to family proceedings to undergo a drug test where the court is satisfied that —

(a) there is sufficient evidence before it to warrant the making of such an order; and

(b) it in the best interests of the child to make such an order.

(2) Where the court makes an order under subsection (1), it shall inform the subject of the order of the consequences of any failure to comply with the order.

(3) For the purpose of this section, "**drug**" includes alcohol and any controlled drug specified in Schedule 1 to the *Misuse of Drugs Act (2017 Revision)*.".

Insertion of section 40A - power to include exclusion requirement in interim care order

34. The principal Act is amended by inserting after section 40 the following section —

"**Power to include exclusion requirement in interim care order**

40A.(1) The court may include an exclusion requirement in an interim care order where the following conditions are satisfied —

(a) that there is reasonable cause to believe that, if a person ("the relevant person") is excluded from a place in which the child lives, the child will cease to suffer, or cease to be likely to suffer, significant harm; and

(b) that another person living in the same place where the child lives (whether a parent of the child or some other person) —

(i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give the child; and

(ii) consents to the inclusion of the exclusion requirement.

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

(3) Where the court makes an interim care 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 an interim care 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 subsection (2) or (4) may be extended by the court (on one or more occasions) on an application to vary or discharge the interim care order.

(6) Where a power of arrest is attached to an exclusion requirement of an interim care order in accordance with subsection (3), a constable may arrest without warrant any person whom the constable has reasonable cause to believe to be in breach of the requirement.

(7) If, while an interim care order containing an exclusion requirement is in force, the Department has removed the child from the place where the relevant person is excluded to other accommodation for a continuous period of twenty-four hours, the interim care order shall cease to have effect in so far as it imposes the exclusion requirement.

(8) For the purposes of this section, an exclusion requirement is any one or more of the following —

(a) a provision requiring the relevant person to leave a place in which the relevant person is living with the child;

(b) a provision prohibiting the relevant person from entering a place in which the child lives; and

(c) a provision excluding the relevant person from a defined area in which a place in which the child lives is situated.".

Amendment of section 43 - representation of child and of his interests in certain proceedings

35. The principal Act is amended in section 43 as follows —

(a) in the section heading, by deleting the words "of his" and substituting the word "child's";

(b) in subsection (1), by deleting the word "his" and substituting the words "the child's";

(c) in subsection (3), by deleting the word "him" and substituting the words "the child";

(d) in subsection 4(c), by deleting the word "him" and substituting the words "the child"; and

(e) by repealing subsection (6) and substituting the following subsection —

"(6) In this section, "**specified proceedings**" means —

(a) any proceedings on an application for a care order or supervision order;

(b) any proceedings in which the court has given a direction under section 39(1) and has made, or is considering whether to make, an interim care order;

(c) any proceedings on an application for the discharge of a care order or the variation or discharge of a supervision order;

(d) any proceedings on an application under section 41(4);

(e) any proceedings in which the court is considering whether to make a residence order with respect to a child who is the subject of a care order;

(f) any proceedings with respect to contact between a child who is the subject of a care order and any other person;

(g) private law proceedings;

(h) any proceedings under Part 5;

(i) any proceedings on an appeal against —

(i) the making of, or refusal to make, a care order, supervision order or any order under section 36;

(ii) the making of, or refusal to make, a residence order with respect to a child who is the subject of a care order;

(iii) the variation or discharge, or refusal of an application to vary or discharge, an order of a kind mentioned in subparagraph (i) or (ii);

(iv) the refusal of an application under section 41(4); or

(v) the making of, or refusal to make, an order under Part 5; or

(j) any proceedings which are specified for the time being, for the purposes of this section, by rules of court.".

Insertion of Part 4A - freeing a child for adoption

36. The principal Act is amended by inserting after section 44 the following Part —

"PART 4A - Freeing a child for adoption

Order freeing a child for adoption

44A.(1) Where the Department is satisfied that a parent of a child or any person who is not a parent of a child but who has parental responsibility for a child has not achieved the objectives set out in a care plan within the timeframe specified in the care plan, the Department may apply to the court for an order which provides that the child is free to be adopted ("order freeing a child for adoption").

(2) The court may grant an order freeing a child for adoption if the court is satisfied that granting the order is in the best interests of the child.

(3) Where the court grants an order freeing a child for adoption, the court may include in the order any directions as it considers fit.

(4) Where an order freeing a child for adoption is granted, the consent of the parent of the child or the person who was not a parent but who had parental responsibility for the child is not required for an adoption.

Revocation of order freeing a child for adoption

44B.(1) At any time after the expiration of twenty-four months after the making of an order freeing a child for adoption ("section 44A order") or such other time as the Court may determine, the former parent may apply to the court which made the order for a further order revoking the section 44A order on the ground that the former parent wishes to resume parental responsibility if —

(a) no adoption order has been made in respect of the child; and

(b) the child does not have a home with a person with whom the child has been placed for adoption.

(2) While an application for an order under subsection (1) ("an order revoking a section 44A order") is pending, the child shall not be placed for adoption without the leave of the court.

(3) An order revoking a section 44A order operates —

(a) to extinguish the parental responsibility given to the Department under a section 44A order;

(b) to give parental responsibility for the child to the former parent of the child who applies for the order revoking a section 44 order; and

(c) to revive any of the following which would have been extinguished by the making of a section 44A order —

(i) any parental responsibility agreement;

(ii) any order under section 6;

(iii) any care order; and

(iv) any appointment of a guardian in respect of the child, whether made by a court or otherwise.

(4) Subject to subsection (3)(c), an order revoking a section 44A order does not —

(a) operate to revive any of the following which would have been extinguished by the making of a section 44A order —

(i) any order under the Act; or

(ii) any duty arising by virtue of an agreement or the order of a court to make payments, so far as the payments are in respect of the child's maintenance or upbringing for any period after the making of the order, unless —

(A) the duty arises by virtue of an agreement which constitutes a trust; or

(B) the duty arises by virtue of an agreement which expressly provides that the duty is not to be extinguished by the making of an adoption order; or

(b) affect any person's parental responsibility so far as it relates to the period between the making of the section 44 order and the date of revocation of that order.

(5) Subject to subsection (6), if the application is dismissed on the ground that to allow it would not be in the best interests of the child, the former parent who made the application shall not be entitled to make any further application under subsection (1) in respect of the child.

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

Amendment of section 46 - orders for emergency protection of children

37. The principal Act is amended in section 46 as follows —

(a) in subsection (1) as follows —

(i) by deleting the word "he" wherever it appears and substituting the words "the child"; and

(ii) in paragraph (a)(ii), by inserting the word "or" at the end of that subparagraph;

(b) in subsection (2), by deleting the words "that he is such a person" and substituting the words "that the person is an officer of the Department so authorized";

(c) in subsection (3), by repealing paragraph (b) and substituting the following paragraph —

"(b) authorizes —

(i) the removal of the child at any time to accommodation provided by or on behalf of the Department and the child being kept there; or

(ii) the prevention of the child's removal from a health care facility, or other place, in which the child was being accommodated immediately before the making of the order; and";

(d) in subsection 5 as follows —

(i) in paragraph (a), by deleting the word "him" and substituting the words "the Department"; and

(ii) by deleting the words "allow him" and substituting the words "allow the child";

(e) in subsections (6), (7) and (8), by deleting the words "him", "he" and "his", wherever they occur and substituting the words "the child";

(f) in subsection (9) as follows —

(i) by deleting the word "he" and substituting the words "the person"; and

(ii) by deleting the words "any person" and substituting the words "any other person"; and

(g) by repealing subsection (10) and substituting the following subsection —

"(10) A person who commits an offence under subsection (9) is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months, or to both.".

Insertion of section 46A - power to include exclusion requirement in emergency protection order

38. The principal Act is amended by inserting after section 46 the following section —

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

46A.(1) The court may include an exclusion requirement in an emergency protection order where the following conditions are satisfied —

(a) that there is reasonable cause to believe that, if a person ("the relevant person") is excluded from a place in which the child lives —

(i) in the case of an order made on the ground referred to in section 46(1)(a), the child will not be likely to suffer significant harm, even though the child is not removed as mentioned in section 46(1)(a)(i) or the child does not remain as mentioned in section 46(1)(a)(ii); or

(ii) in the case of an order made on the ground referred to in section 46(1)(b), the enquiries referred to in that paragraph will cease to be frustrated; and

(b) that another person living in the same place where the child lives (whether a parent of the child or some other person) —

(i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give the child; and

(ii) consents to the inclusion of the exclusion requirement.

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

(3) Where the court makes an emergency protection 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 an emergency protection 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 subsection (2) or (4) may be extended by the court (on one or more occasions) on an application to vary or discharge the emergency protection order.

(6) Where a power of arrest is attached to an exclusion requirement of an emergency protection order in accordance with subsection (3), a constable may arrest without warrant any person whom the constable has reasonable cause to believe to be in breach of the requirement.

(7) If, while an emergency protection order containing an exclusion requirement is in force, the Department has removed the child from the place where the relevant person is excluded to other accommodation for a continuous period of twenty-four hours, the emergency protection order shall cease to have effect in so far as it imposes the exclusion requirement.

(8) For the purposes of this section, an exclusion requirement is any one or more of the following —

(a) a provision requiring the relevant person to leave a place in which the relevant person is living with the child;

(b) a provision prohibiting the relevant person from entering a place in which the child lives; and

(c) a provision excluding the relevant person from a defined area in which a place in which the child lives is situated.".

Repeal and substitution of section 49 - removal and accommodation of children by police in cases of emergency

39. The principal Act is amended by repealing section 49 and substituting the following section —

"**Removal and accommodation of children in cases of emergency**

49. (1) Where a constable or an officer of the Department has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, the constable or the officer of the Department may —

(a) remove the child to suitable accommodation; or

(b) take steps as are reasonable to ensure that the child's removal from a health care facility or other place in which the child is then being accommodated is prevented.

(2) For the purposes of this Act, a child with respect to whom a constable or an officer of the Department has exercised powers under this section is referred to as having been taken into interim emergency protection.

(3) As soon as is reasonably practicable after taking a child into interim emergency protection, the constable or the officer of the Department concerned shall —

(a) inform the Department of the steps that have been, and are proposed to be, taken with respect to the child under this section and the reasons for taking them;

(b) give details to the Department of the place at which the child is being temporarily held;

(c) inform the child (if the child appears capable of understanding) —

(i) of the steps that have been taken with respect to the child under this section and of the reasons for taking them; and

(ii) of the further steps that may be taken with respect to the child under this section;

(d) take steps as are reasonably practicable to discover the wishes and feelings of the child;

(e) inform the Commissioner of Police who shall ensure that the case is inquired into by a police officer designated by the Commissioner of Police for the purposes of this section;

(f) provide the designated officer with the details of the case; and

(g) where the child was taken into interim emergency protection by being removed to accommodation which is not provided by or on behalf of the Department, ensure that the child is moved to accommodation which is provided by the Department.

(4) As soon as is reasonably practicable after taking a child into interim emergency protection, the constable or the officer of the Department shall take steps as are reasonably practicable to inform —

(a) the child's parents;

(b) every person who is not a parent of the child but who has parental responsibility for the child; and

(c) any other person with whom the child was living immediately before being taken into interim emergency protection,

of the steps that the constable or the officer of the Department has taken under this section with respect to the child, the reasons for taking them and the further steps that may be taken with respect to the child under this section.

(5) On completing an inquiry under subsection (3)(e), the designated officer shall order the release of the child from interim emergency protection unless the designated officer has reasonable cause to believe that the child would be likely to suffer significant harm if released.

(6) A child shall not be kept in interim emergency protection for more than seventy-two hours.

(7) Where a child is being temporarily held in interim emergency protection, the designated officer shall refer the matter to the Department and upon consideration of the matter, the Department may apply for an emergency protection order.

(8) While a child is being kept in interim emergency protection the constable, the officer of the Department or the designated officer, as applicable, does not have parental responsibility for the child.

(9) Notwithstanding subsection (8), the constable, the officer of the Department or 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).

(10) Where a child is taken into interim emergency protection, the designated officer shall allow —

(a) the child's parents;

(b) a person who is not a parent of the child but who has parental responsibility for the child;

(c) a person with whom the child was living immediately before the child was taken into interim emergency protection;

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

(e) a person who is allowed to have contact with the child by virtue of an order under section 36; and

(f) a person acting on behalf of any of the persons referred to in paragraphs (a) to (e),

to have contact with the child as, in the opinion of the designated officer, is both reasonable and in the best interests of the child.

(11) Where a child who has been taken into interim emergency protection is in accommodation provided by, or on behalf of, the Department, subsection (10) shall have effect as if it referred to the Department rather than to the designated officer.".

Amendment of section 50 - duty of the Department to investigate

40. The principal Act is amended in section 50 by repealing subsections (9) and (10) and substituting the following subsections —

"(9) Where the Department makes, or causes to be made, any enquiries under subsection (1), unless the information is exempt from disclosure under subsection (11), a body or person under subsection (10), when requested to do so by the Department, shall disclose relevant information for the purposes of the enquiries.

(10) For the purposes of subsection (9), a body or person in respect of whom the Department may request information includes —

(a) the Royal Cayman Islands Police Service;

(b) a public authority;

(c) an educational institution;

(d) a health care facility;

(e) a person under section 32A(2);

(f) a non-profit organisation;

(g) an organisation engaged in the delivery of services to children;

(h) a youth organisation;

(i) a sports organisation; and

(j) a body or person that provides services in the field of —

(i) child protection and child care services;

(ii) education; or

(iii) health.

(11) Information is exempt from disclosure under this section if —

(a) the disclosure involves information that would be privileged from production in legal proceedings on the ground of legal professional privilege; or

(b) the disclosure would be in contempt of court.

(12) Where a provider is unable to disclose the information requested by the Department pursuant to subsection (11), the provider shall, within the prescribed period, notify the Department of this in writing.

(13) The Department, in making a request under subsection (9), shall provide sufficient evidence of the purpose of the disclosure of information requested under this section.".

Amendment of section 51 - powers to assist in discovery of children who may be in need of emergency protection

41. The principal Act is amended in section 51 as follows —

(a) in subsection (2), by deleting the words "him or his spouse" and substituting the words "the person or the person's spouse or civil partner"; and

(b) by repealing subsection (8) and substituting the following subsection —

"(8) A person who commits an offence under subsection (7) is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months, or to both.".

Amendment of section 52 - abduction of children in care, etc.

42. The principal Act is amended in section 52 as follows —

(a) in subsection (2), by repealing paragraph (c); and

(b) by repealing subsection (3) and substituting the following subsection —

"(3) A person who commits an offence under this section is liable on summary conviction to a fine of thirty thousand dollars or to imprisonment for a term of five years, or to both.".

Amendment of section 53 - recovery of abducted children, etc.

43. The principal Act is amended in section 53 as follows —

(a) in subsection (1)(a), by inserting after the word "person" the words "in accordance with section 52";

(b) by repealing subsections (4) and (5) and substituting the following subsections —

"(4) The court may make a recovery order on the application of —

(a) a person who has parental responsibility for the child by virtue of a care order or an emergency protection order; or

(b) the designated officer, where the child is in interim emergency protection.

(5) A recovery order shall name the child and —

(a) a person who has parental responsibility for the child by virtue of a care order or an emergency protection order; or

(b) the designated officer, where the child is in interim emergency protection.";

(c) by repealing subsection (10) and substituting the following subsection —

"(10) A person who commits an offence under this section is liable on summary conviction to a fine of thirty thousand dollars or to imprisonment for a term of five years, or to both."; and

(d) in subsection (11), by deleting the words "him or his spouse" and substituting the words "the person or the person's spouse or civil partner".

Repeal and substitution of section 54 - refuges for children at risk

44. The principal Act is amended by repealing section 54 and substituting the following —

"**Abduction of child by parent, person with parental responsibility or guardian**

54. (1) Subject to subsection (2), where a parent, a person with parental responsibility for a child or a guardian of a child takes or sends the child out of the Islands without the appropriate consent, the parent, person with parental responsibility, or guardian commits an offence and is liable on summary conviction to a fine of thirty thousand dollars or to imprisonment for a term of five years, or to both.

(2) A person does not commit an offence under subsection (1) if —

(a) the person does it in the belief that the person whose consent is required —

(i) has consented; or

(ii) would consent if that person was aware of all the relevant circumstances;

(b) the person has taken all reasonable steps to communicate with the other person but has been unable to communicate with the other person; or

(c) the other person has unreasonably refused to consent.

(3) Subsection (2)(c) does not apply if —

(a) the person who refused to consent is —

(i) a person named in a residence order with whom the child is to live;

(ii) a guardian of the child; or

(iii) a person who has custody of the child; or

(b) the person taking or sending the child out of the Islands is, by so acting, in breach of an order made by a court in the Islands.

(4) Where, in proceedings for an offence under this section, there is sufficient evidence to raise an issue as to the application of subsection (2), it shall be for the prosecution to prove that that subsection does not apply.

(5) Where a parent, person with parental responsibility or guardian takes or sends the child out of the Islands with the appropriate consent but then keeps the child, or ensures that the child is kept, out of the lawful control of any person entitled to lawful control of the child, the person commits an offence and is liable on summary conviction to a fine of thirty thousand dollars or to imprisonment for a term of five years, or to both.

(6) For the purposes of this section, "**appropriate consent**" means —

(a) the consent of each of the following —

(i) a parent of the child;

(ii) a person with parental responsibility for the child;

(iii) a guardian of the child;

(iv) a person named in a residence order with whom the child is to live; and

(v) a person who has custody of the child; and

(b) where custody of the child is awarded by an order of the court, the leave of the court that awarded custody.

PART 5A - CHILDREN'S HOMES

Meaning of "children's home"

54A.(1) For the purposes of this Act, "**children's home**" —

(a) means a home which provides (or usually provides or is intended to provide) care and accommodation wholly or mainly

for more than three children at any one time and which is registered under this Part; and

(b) does not include a home which is exempted by or under this section or by regulations made for the purposes of this subsection by the Cabinet.

(2) A child is not cared for and accommodated in a children's home when the child is cared for and accommodated by —

(a) a parent of the child;

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

(c) any relative of the child.

(3) A home is not a children's home if it is —

(a) a residential care home;

(b) a nursing home; or

(c) a school.

(4) A child shall not be treated as cared for and accommodated in a children's home when —

(a) any person mentioned in subsection (2)(a) or (b) is living at the home; or

(b) the person caring for the child is doing so in the person's personal capacity and not in the course of carrying out the person's duties in relation to the home.

Registration of children's homes

54B. (1) A person shall not carry on a children's home unless it is registered in accordance with this Part, in a register to be kept for the purposes of this section by the Commissioner for Children and Young Persons.

(2) A person who, without reasonable excuse, carries on a children's home in contravention of —

(a) subsection (1); or

(b) a condition to which the registration of the children's home is subject,

commits an offence.

(3) A person who commits an offence under subsection (2)(a) is liable on summary conviction —

(a) to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both; and

(b) to a further fine of one hundred dollars per day for each day on which non-compliance occurs after conviction.

(4) A person who commits an offence under subsection (2)(b) is liable on summary conviction to a fine of ten thousand dollars.

Application for registration of children's home

54C.(1) An application for registration of a children's home shall —

(a) be made to the Commissioner for Children and Young Persons by the person ("the applicant") who wishes to carry on the children's home to which the application relates; and

(b) be made in the form and manner approved by the Commissioner for Children and Young Persons, and be accompanied by the following —

(i) a copy of a licence granted under section 21 of the *Trade and Business Licensing Act (2021 Revision)* relating to child-care or, where the applicant is a non-profit organisation, a copy of the relevant licence or registration of the non-profit organisation;

(ii) proof that the structure which is the subject of the application complies with fire and safety standards applicable to the Islands; and

(iii) written policies regarding the safeguarding procedures which are to be implemented in respect of the children to be accommodated in the intended children's home.

(2) On an application made under subsection (1), the Commissioner for Children and Young Persons may —

(a) grant or refuse the application, as the Commissioner for Children and Young Persons thinks fit; or

(b) grant the application subject to any conditions as the Commissioner for Children and Young Persons considers appropriate.

Grant or refusal of application

54D.(1) Where the Commissioner for Children and Young Persons proposes to grant an application under section 54C, the Commissioner for Children and Young Persons shall give the applicant written notice of the proposal and any conditions subject to which the Commissioner for Children and Young Persons proposes to grant the application.

(2) The requirement under subsection (1) for the Commissioner for Children and Young Persons to give written notice does not apply if the Commissioner for Children and Young Persons proposes to grant the application subject only to conditions which —

(a) the applicant specified in the application; or

(b) the Commissioner for Children and Young Persons and the applicant have subsequently agreed.

(3) Where the Commissioner for Children and Young Persons proposes to refuse an application under section 54C, the Commissioner for Children and Young Persons shall give written notice of the proposal to the applicant.

(4) The Commissioner for Children and Young Persons shall provide reasons for the proposal in a written notice under this section.

(5) Where the Commissioner for Children and Young Persons grants an application under section 54C and registers a children's home, the Commissioner for Children and Young Persons shall notify the Department.

Variation or imposition of conditions

54E. (1) The Commissioner for Children and Young Persons, on his or her own volition or on the application of a person carrying on a children's home, may —

(a) vary any condition in force with respect to the children's home; or

(b) impose an additional condition.

(2) Where the Commissioner for Children and Young Persons proposes to vary a condition or impose an additional condition, the Commissioner for Children and Young Persons shall give the person carrying on the children's home written notice of the proposal to do so.

(3) The Commissioner for Children and Young Persons shall provide reasons for the proposal in a written notice under this section.

Cancellation of registration

54F. (1) Where it appears to the Commissioner for Children and Young Persons that —

(a) the conduct of a children's home is not in accordance with regulations made under section 54O;

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

(c) the conduct of a children's home is otherwise unsatisfactory,

the Commissioner for Children and Young Persons shall give written notice of the proposal to cancel the registration of the children's home to the person carrying on the children's home.

(2) The Commissioner for Children and Young Persons shall provide reasons for its proposal in a written notice under this section.

(3) Without prejudice to subsections (1) and (2), a person who carries on a children's home may provide ninety days' notice to the Commissioner for Children and Young Persons of the person's intention to cease carrying on a children's home and comply with the prescribed requirements.

(4) Where the Commissioner for Children and Young Persons cancels the registration of a children's home, the Commissioner for Children and Young Persons shall remove it from the register and notify the Department.

Right to make representation

54G.(1) A notice given by the Commissioner for Children and Young Persons under section 54D, 54E or 54F shall state that within fourteen days after service of the notice, a person on whom it is served may, in writing, require the Commissioner for Children and Young Persons to give the person an opportunity to make representations to the Commissioner for Children and Young Persons concerning the matter.

(2) Where a notice referred to in subsection (1) is served, the Commissioner for Children and Young Persons shall not determine the matter until —

(a) any person on whom the notice was served has made representations to the Commissioner for Children and Young Persons concerning the matter;

(b) the period under subsection (1) has elapsed without the Commissioner for Children and Young Persons being required to give the person an opportunity to make representations; or

(c) the conditions specified in subsection (3) are satisfied.

(3) For the purposes of subsection (2), the conditions are that —

(a) a person on whom the notice was served has required the Commissioner for Children and Young Persons to give the person an opportunity to make representations to the Commissioner for Children and Young Persons;

(b) the Commissioner for Children and Young Persons has allowed the person a reasonable period to make representations to the Commissioner for Children and Young Persons; and

(c) the person has failed to make representations within that period.

(4) The representations may be made, at the option of the person making them, in writing or orally.

(5) Where the person making representations informs the Commissioner for Children and Young Persons that the person desires to make oral representations, the Commissioner for Children and Young Persons shall give the person an opportunity to appear before and to be heard by the Commissioner for Children and Young Persons, whether in person or by way of videoconference or any other form of communication technology.

(6) For the purposes of subsection (5), "**communication technology**" means any electronic device or process that facilitates communication of visual images and audio in real time.

Decision of the Commissioner for Children and Young Persons

54H. (1) Where the Commissioner for Children and Young Persons decides to adopt a proposal under this Part, the Commissioner for Children and Young Persons shall serve notice in writing of its decision on any person on whom it was required to serve notice of its proposal.

(2) A notice under this section shall be accompanied by a notice explaining the right to apply for a reconsideration of the decision conferred by section 54I and the right of appeal conferred by section 54J.

(3) A decision of the Commissioner for Children and Young Persons, other than a decision to grant an application for registration subject only to conditions mentioned in section 54D(2) or to refuse an application for registration, shall not take effect —

(a) if an application for a reconsideration is not made, until the end of the period of twenty-one days referred to in section 54I(1);

(b) subject to paragraph (d), if an application for a reconsideration is made, until the application is determined;

(c) if an appeal is not brought, until the end of the period of twenty-eight days referred to in section 54J(2); and

(d) if an appeal is brought, until the appeal is determined or abandoned.

Reconsideration of decision

54I. (1) A person who is aggrieved by a decision of the Commissioner for Children and Young Persons may apply in the prescribed manner to the Commissioner for Children and Young Persons for a reconsideration of the decision within twenty-one days after the date on which notice of the relevant decision is given to the person.

(2) The Commissioner for Children and Young Persons may refuse to reconsider a decision where the Commissioner for Children and Young Persons has already reconsidered that decision or a decision relating to substantially the same issue.

(3) Within twenty-one days after receiving an application for a reconsideration of a decision, the Commissioner for Children and Young Persons shall provide to the aggrieved person —

(a) the decision of the Commissioner for Children and Young Persons, in writing, based on the reconsideration; or

(b) a notice, in writing, of the refusal of the Commissioner for Children and Young Persons to reconsider the decision.

(4) A person who is aggrieved by a decision of the Commissioner for Children and Young Persons shall not appeal to the Grand Court against the decision unless the person has first sought a reconsideration of that decision under this section and —

(a) obtained, in writing, a decision based on the reconsideration of that decision; or

(b) has been notified, in writing, by the Commissioner for Children and Young Persons of the refusal of the Commissioner for Children and Young Persons to reconsider that decision.

Appeals

54J. (1) An appeal against a decision of the Commissioner for Children and Young Persons regarding the application for a reconsideration of the decision of the Commissioner for Children and Young Persons under this Part shall lie to the Grand Court.

(2) An appeal shall not be brought by a person more than twenty-eight days after service on the person of notice of the decision regarding the application for a reconsideration of the decision of the Commissioner for Children and Young Persons.

(3) On an appeal the Grand Court may in particular —

(a) confirm the decision of the Commissioner for Children and Young Persons or direct that it shall not have effect;

(b) vary any condition in force by virtue of this Part with respect to the children's home to which the appeal relates;

(c) direct that any condition in force by virtue of this Part shall cease to have effect; or

(d) direct that any condition as it thinks fit shall have effect with respect to the children's home.

Welfare of children in children's home

54K.(1) Where a child is accommodated in a children's home, the person carrying on the home shall —

(a) safeguard and promote the welfare of the child; and

(b) advise, assist and befriend the child with a view to promoting the welfare of the child when the child ceases to be so accommodated.

(2) Before making any decision with respect to a child referred to in subsection (1), the person carrying on the home shall, so far as is reasonably practicable, ascertain the wishes and feelings of —

(a) the child;

(b) the parents of the child;

(c) any other person who is not a parent of the child but who has parental responsibility for the child; and

(d) any person whose wishes and feelings the person carrying on the home considers to be relevant,

regarding the matter to be decided.

(3) In making any decision with respect to a child referred to in subsection (1), the person concerned shall give due consideration —

(a) having regard to the age and understanding of the child, to the wishes and feelings of the child as the person has been able to ascertain;

(b) to any other wishes and feelings mentioned in subsection (2) as the person has been able to ascertain; and

(c) to the child's religious persuasion, racial origin and cultural and linguistic background.

Persons disqualified from carrying on, or being employed in, children's homes

54L. (1) A person shall not carry on, or be otherwise concerned in the management of, or have any financial interest in, a children's home if the person is disqualified from doing so by regulations made by the Cabinet under section 54O.

(2) A person shall not employ another person who is disqualified as specified under subsection (1) in a children's home unless the person has —

(a) disclosed to the Commissioner for Children and Young Persons the fact that that person is so disqualified; and

(b) obtained the written authorization of the Commissioner for Children and Young Persons.

(3) Where the Commissioner for Children and Young Persons refuses to give authorization under this section, the Commissioner for Children and Young Persons shall inform the person by a written notice which states —

(a) the reason for the refusal; and

(b) the person's right to appeal against the refusal within fourteen days after the date on which the person appealing is notified of the refusal.

(4) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months, or to both.

(5) A person ("person A") does not commit an offence under subsection (2) if person A proves that person A did not know, and had no reasonable grounds for believing, that the person whom person A was employing was disqualified under this section.

Placement of children in children's home

54M.(1) The Department may place a child in a children's home where, based on an inspection report by the Office of the Commissioner for Children and Young Persons, the Department is satisfied that the children's home is satisfactorily safeguarding and promoting the welfare of the children so provided with accommodation.

(2) Where the Department is not satisfied that the welfare of a child who is accommodated by a children's home is being satisfactorily safeguarded or promoted, the Department shall —

(a) unless the Department considers that it would not be in the best interests of the child, take steps as are reasonably practicable to

ensure that the care and accommodation of the child is undertaken by —

(i) a parent of the child;

(ii) any person who is not a parent of the child but who has parental responsibility for the child;

(iii) a relative of the child who is at least eighteen years old;

(iv) a departmental foster parent; or

(v) a residential care home; and

(b) consider the extent to which (if at all) it should exercise any of its functions with respect to the child.

Functions of the Commissioner for Children and Young Persons in relation to children's homes

54N.(1) The Commissioner for Children and Young Persons shall arrange for children who are accommodated by children's homes to be visited —

(a) at least once annually; and

(b) at any other intervals specified by the Commissioner for Children and Young Persons, in the interests of their welfare.

(2) A person authorized by the Commissioner for Children and Young Persons, for the purpose of enabling the Office of the Commissioner for Children and Young Persons to discharge its duties under this section, may —

(a) enter, at any reasonable time, and inspect any premises in which children are being accommodated as mentioned in subsection (1);

(b) visit any children there; and

(c) require any other person to furnish the person authorized by the Commissioner for Children and Young Persons with records of a kind required to be kept by regulations made under section 54O (in whatever form they are held), or allow the person authorized by the Commissioner for Children and Young Persons to inspect those records, as the person may at any time direct.

(3) A person exercising the power conferred by subsection (2) shall, if asked to do so, produce the relevant duly authenticated document showing the person's authority to exercise that power.

(4) A person authorized to exercise the power to inspect records conferred by subsection (2) —

(a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question; and

(b) may require —

(i) the person by whom or on whose behalf the computer is or has been so used; or

(ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,

to afford the person authorized any assistance as the person may reasonably require.

(5) A person who intentionally obstructs another person in the exercise of any power conferred by subsection (2) or (4) commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months, or to both.

Regulations as to children's homes

54O. (1) The Cabinet may make regulations providing for —

(a) the disqualification of persons from carrying on, or being otherwise concerned in the management of, or having any financial interest in, children's homes;

(b) the placing of children in children's homes;

(c) requiring every child who is accommodated by a children's home to be visited by an officer of the Office of the Commissioner for Children and Young Persons —

(i) in prescribed circumstances; and

(ii) on specified occasions or within specified periods;

(d) imposing requirements on the Office of the Commissioner for Children and Young Persons or officers of the Office of the Commissioner for Children and Young Persons, in the carrying out of functions under section 54N;

(e) the conduct of children's homes; and

(f) ensuring the welfare of children in children's homes.

(2) The regulations referred to in subsection (1) may, in particular —

(a) prescribe standards to which the premises used for children's homes are to conform;

(b) impose requirements as to the accommodation, staff and equipment to be provided in children's homes, and as to the

arrangements to be made for protecting the health of children in children's homes;

(c) provide for the control and discipline of children in children's homes;

(d) require the furnishing to the Commissioner for Children and Young Persons as to the facilities provided for the visitation of, and communication with, the children by —

(i) the parents of children in the homes;

(ii) persons who are not parents of the children in the homes but who have parental responsibility for them; and

(iii) other persons connected with the children in the homes.

(e) authorize the Commissioner for Children and Young Persons to limit the number of children who may be accommodated in any particular children's home;

(f) provide for a person to be disqualified from carrying on, or being otherwise concerned in the management of, or having any financial interest in, children's homes where —

(i) an order of a kind specified in the regulations has been made at any time with respect to the person;

(ii) an order of a kind so specified has been made at any time with respect to any child who has been in the person's care;

(iii) a requirement of a kind so specified has been imposed at any time with respect to any such child, under or by virtue of any enactment;

(iv) the person has been convicted of an offence of a kind specified, or has been placed on probation or discharged absolutely or conditionally for any such offence;

(v) a prohibition has been imposed on the person at any time under any other specified enactment; or

(vi) the person's rights and powers with respect to a child have at any time been vested in a specified authority under a specified enactment;

(g) impose requirements as to the keeping of the records and giving of notices with respect to children in children's homes;

(h) impose requirements as to the facilities which are to be provided for giving religious instruction to children in children's homes;

(i) require notice to be given to the Commissioner for Children and Young Persons of any change of the person carrying on or in charge of a children's home or of the premises used by a children's home.

(3) The regulations may provide that a contravention of, or failure to comply with, any specified provision of the regulations without reasonable excuse shall be an offence against the regulations.

(4) Where regulations made under this section provide that the contravention of a provision constitutes an offence, the regulations may prescribe penalties for the offence which shall not exceed four thousand dollars.".

Repeal of Parts VI, VII, VIII, IX and X - community homes; voluntary homes and voluntary organisations; registered children's homes; private arrangements for fostering children; child minding and day care for young children

45. The principal Act is amended by repealing Parts VI, VII, VIII, IX and X.

Repeal and substitution of Part heading of Part XI - Governor in Cabinet's and Governor's supervisory functions and responsibilities

46. The principal Act is amended by repealing the Part heading of Part XI and substituting the following Part heading —

"**PART 11 - SUPERVISORY FUNCTIONS AND RESPONSIBILITIES OF THE COMMISSIONER FOR CHILDREN AND YOUNG PERSONS, THE CABINET AND THE GOVERNOR**".

Amendment of section 80 - inspection of children's homes, etc. by persons authorised by the Governor in Cabinet

47. The principal Act is amended in section 80 as follows —

(a) by repealing the section heading and substituting the following section heading —

"**Inspection of certain premises by persons authorized by the Commissioner for Children and Young Persons**";

(b) in subsection (1), as follows —

(i) by deleting the words "Governor in Cabinet" and substituting the words "Commissioner for Children and Young Persons"; and

(ii) by repealing paragraphs (a), (b), (f), (g) and (h);

(c) in subsection (2), by deleting the words "Governor in Cabinet" and substituting the words "Commissioner for Children and Young Persons";

(d) in subsection (3), by deleting the word "consent" and substituting the word "approval";

(e) by repealing subsection (4) and substituting the following subsection —

"(4) The Commissioner for Children and Young Persons may require any person of a kind mentioned in subsection (5) to furnish the Commissioner for Children and Young Persons with such information, or allow the Commissioner for Children and Young Persons to inspect, at any time as the Commissioner for Children and Young Persons may direct, records (in whatever form they are held), relating to —

(a) any premises to which subsection (1) applies;

(b) any child who is living in any such premises;

(c) the discharge by the Commissioner for Children and Young Persons of any functions under this Act; or

(d) the discharge by the Department of any of its functions under this Act.";

(f) in subsection (5) as follows —

(i) by repealing paragraph (b);

(ii) in paragraph (d), by deleting the words "fostering any privately fostered child or"; and

(iii) by repealing paragraph (f);

(g) in subsection (7), by deleting the words "Governor in Cabinet" and substituting the words "Commissioner for Children and Young Persons";

(h) in subsection (10), by deleting the words "not exceeding $5,000" and substituting the words "of five thousand dollars"; and

(i) in subsection (11), as follows —

(i) by deleting the words "Governor in Cabinet" and substituting the word "Cabinet"; and

(ii) by deleting the word "order" and substituting the word "Order".

Amendment of section 81 - inquiries

48. The principal Act is amended in section 81(1) as follows —

(a) by repealing paragraph (c); and

(b) by repealing paragraph (d) and substituting the following paragraph —

"(d) a children's home.".

Amendment of section 82 - research and returns of information

49. The principal Act is amended in section 82 as follows —

(a) in subsection (3), by deleting the word "Governor" and substituting the word "Cabinet"; and

(b) by repealing subsections (4) and (5).

Insertion of Part 11A - Commissioner for Children and Young Persons

50. The principal Act is amended by inserting after section 83, the following Part —

"PART 11A - Commissioner for Children and Young Persons

Establishment and appointment of Commissioner for Children and Young Persons

83A.(1) There is established the Office of the Commissioner for Children and Young Persons.

(2) The Commissioner for Children and Young Persons shall be appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition.

(3) The Commissioner for Children and Young Persons shall be appointed for a period of seven years and shall not be eligible for re-appointment.

(4) No person shall be qualified to be appointed as Commissioner for Children and Young Persons if the person is or has been within the preceding three years —

(a) an elected member of the Parliament; or

(b) the holder of any office in any political party.

(5) The appointment of a person as Commissioner for Children and Young Persons is not valid if the person is disqualified under subsection (4).

(6) Notwithstanding subsection (5), the validity of anything done by a person appointed as the Commissioner for Children and Young Persons is not affected by the fact that the person is or becomes disqualified under subsection (4).

(7) The Commissioner for Children and Young Persons may at any time resign office by instrument in writing addressed to the Governor and the resignation shall take effect as from the date of receipt by the Governor.

(8) The Commissioner for Children and Young Persons may —

(a) have the appointment of the Commissioner for Children and Young Persons revoked by the Governor if the Commissioner for Children and Young Persons —

(i) becomes of unsound mind or becomes permanently unable to perform the functions of Commissioner for Children and Young Persons by reason of ill health;

(ii) becomes bankrupt;

(iii) fails to carry out the functions conferred on the Commissioner for Children and Young Persons by this Act or any other Act; or

(iv) brings the Office of the Commissioner for Children and Young Persons into disrepute; or

(b) be dismissed on the same basis and in accordance with the same procedure as a chief officer under the *Public Service Management Act (2018 Revision)*.

(9) If the Commissioner for Children and Young Persons is temporarily unable to perform the functions of Commissioner for Children and Young Persons, by reason of illness, temporary absence from the Islands, leave or any other reason the Governor considers appropriate, the Governor may appoint by instrument in writing a suitably qualified officer in the Office of the Commissioner for Children and Young Persons to act as Commissioner for Children and Young Persons.

Functions of the Commissioner for Children and Young Persons

83B.(1) The Commissioner for Children and Young Persons shall perform the following functions —

(a) keeping under review the adequacy and effectiveness of services provided for children and young persons by relevant authorities;

(b) promoting awareness and understanding of the rights of children and young persons;

(c) providing human rights education for relevant authorities or other persons that work with, or on behalf of children and young persons;

(d) promoting harmonisation of legislation and policy with the United Nations Convention on the Rights of the Child, and any other European or international treaties or conventions, protecting the rights of children and young persons, which extend or apply to the Islands;

(e) providing advice and recommendations on the rights of children and young persons;

(f) bringing any matter relating to the rights of children and young persons to the attention of the Government or any relevant authority;

(g) looking into, or formally investigating any matter relating to the rights of children and young persons;

(h) bringing, intervening in, or assisting in relation to, legal proceedings or complaints against relevant authorities;

(i) monitoring the implementation in the Islands of the United Nations Convention on the Rights of the Child and any other European or international treaties or conventions, protecting the rights of children or young persons, which extend or apply to the Islands;

(j) encouraging the ratification of, and implementation by the Islands of any European or international treaties or conventions, protecting the rights of children and young persons, which have not been extended, or do not apply to the Islands;

(k) reporting on the Government's implementation and monitoring of the rights of children and young persons; and

(l) publishing a report on any matter looked into, or formally investigated, by the Commissioner for Children and Young Persons.

(2) The Commissioner for Children and Young Persons may delegate to a suitably qualified officer in the Office of the Commissioner for Children and Young Persons by instrument in writing any function of the Commissioner for Children and Young Persons under this Act or any other law, other than the power to delegate under this section.

(3) The instrument referred to in subsection (2) may provide for the extent of the delegation and the delegation may be revoked by instrument in writing at any time.

General powers of the Commissioner for Children and Young Persons

83C. The Commissioner for Children and Young Persons, in performing the functions of the office under section 83B, may —

(a) enter into an agreement;

(b) acquire, hold and dispose of movable or immoveable property;

(c) sue and be sued in any civil proceedings;

(d) if charged with an offence, defend criminal proceedings;

(e) determine and charge reasonable sums for anything done or provided by the Commissioner for Children and Young Persons in the discharge of, or in connection with, the functions of the Commissioner for Children and Young Persons; and

(f) generally, do anything reasonably necessary or expedient for or incidental to any of the functions of the Commissioner for Children and Young Persons.

Powers of investigation

83D.(1) The Commissioner for Children and Young Persons may conduct a formal investigation if the Commissioner for Children and Young Persons, having considered the available evidence on, and any information received about, a matter, is satisfied on reasonable grounds that the matter to be investigated raises an issue of particular significance to —

(a) children and young persons generally;

(b) particular groups of children and young persons; or

(c) the rights of children and young persons.

(2) The purpose of an investigation by the Commissioner for Children and Young Persons is to ascertain whether injustice has been caused by improper, unreasonable or inadequate administrative conduct on the part of a relevant authority subject to this Act.

(3) In investigating any matter leading to, resulting from or connected with a decision of a Minister, the Commissioner for Children and Young Persons shall not inquire into or question the policy of the Minister in accordance with which the decision was made.

(4) The Commissioner for Children and Young Persons may investigate any course of conduct or anything done or omitted by any person in the exercise of administrative functions respecting any business of the Government not being functions concerned with any action or matter set out in Schedule 3A.

(5) An investigation by the Commissioner for Children and Young Persons shall not be prevented by any enactment other than the Constitution to the effect, howsoever expressed, that any matter or thing shall be final and conclusive or shall not be disputed, reviewed or called in question.

(6) The Commissioner for Children and Young Persons may require a person —

(a) to give evidence on any matter within the terms of reference of a formal investigation; or

(b) to produce documents in the custody or control of that person which have a bearing on any such matter,

and the person may choose to be supported by a representative.

(7) Where the Commissioner for Children and Young Persons requires a person to give evidence, or produce a document under subsection (6), the Commissioner for Children and Young Persons shall give the person notice in writing specifying —

(a) the time and place at which the person is to attend before the Commissioner for Children and Young Persons and the particular subjects concerning which that person is required to give evidence; or

(b) the documents, or types of documents, which that person is to produce, the date by which that person is to produce them, and the particular subjects concerning which they are required.

(8) The notice under subsection (8) shall be given —

(a) by sending it by post addressed to that person at the person's usual or last known address, or the person's registered or principal office;

(b) by delivery to that person's address (including delivery by a courier or messenger service);

(c) by electronic communication; or

(d) in the case of an individual, by being handed personally to the individual in question, or to the individual's representative, if any.

(9) The power in subsection (6)(b) to require a person to produce documents includes, in relation to documents kept by means of a computer or other electronic device for the storage of information, power to require the person to produce documents in a legible form.

(10) A person complies with a requirement to produce a document if that person produces a copy of, or an extract of the relevant part of, the document.

(11) Any document required to be produced by a relevant authority under subsection (6)(b) may be redacted if any of the following apply in relation to any information contained in that document —

(a) the information would be privileged from production in legal proceedings on the ground of legal professional privilege; or

(b) the information is legal advice given by or on behalf of the Attorney General or the Director of Public Prosecutions.

(12) Notwithstanding the generality of this section, the powers of investigation under this section do not apply to assessments and investigations of reports of abuse or neglect of a child under section 32A, which are to be dealt with by the Department.

(13) If the Commissioner for Children and Young Persons finds, during the conduct of investigations or on conclusion of such investigations, that there is evidence of a breach of duty, misconduct or a criminal offence on the part of an officer of any relevant authority, the Commissioner for Children and Young Persons shall refer the matter to the person or body of persons competent to take such disciplinary or other proceeding as may be appropriate against that officer and in all such cases shall lay a special report before the Parliament.

United Nations Convention on the Rights of the Child

83E. (1) In discharging functions under this Act, the Commissioner for Children and Young Persons shall —

(a) in relation to children, have regard to the United Nations Convention on the Rights of the Child and its Optional Protocols as extended to the Islands (as may be amended from time to time and as extended to the Islands); and

(b) in relation to children and young persons —

(i) have regard to the best interests of children and young persons as a primary consideration;

(ii) encourage others to put forward the best interests of children and young persons as a primary consideration whenever decisions are made in respect of, or have a bearing on children or young persons;

(iii) have regard to, and encourage others to have regard to, the views of children and young persons on all matters affecting them, considered in the light of the age and maturity of the child or young person, as applicable; and

(iv) have regard to any other European or international treaties or conventions, protecting the rights of children and young persons, which extend or apply to the Islands.

(2) The Optional Protocols referred to in subsection (1)(a) are —

(a) the Optional Protocol on the sale of children, child prostitution and child pornography, adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25th May 2000 and entered into force on 18th January 2002; and

(b) the Optional Protocol on the involvement of children in armed conflict, adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25th May 2000 and entered into force on 12th February 2002.

(3) The Cabinet may by regulations amend this section.

Involving children and young persons

83F. (1) The Commissioner for Children and Young Persons shall take reasonable steps to involve children and young persons in the work of the Commissioner for Children and Young Persons.

(2) The Commissioner for Children and Young Persons shall, in particular, take reasonable steps to —

(a) ensure that children and young persons are made aware of —

(i) the functions of the Commissioner for Children and Young Persons;

(ii) the ways in which they may communicate with the Commissioner for Children and Young Persons; and

(iii) the ways in which the Commissioner for Children and Young Persons may respond to any issues which they raise; and

(b) consult children and young persons, relevant authorities and persons working with, and on behalf of children and young persons on —

(i) the discharge of the functions of the Commissioner for Children and Young Persons; and

(ii) the work to be undertaken by the Commissioner for Children and Young Persons.

Salary and emoluments

83G.(1) There shall be paid to the Commissioner for Children and Young Persons an annual salary, emoluments and benefits as are established under the *Public Service Management Act (2018 Revision)*.

(2) The salary, emoluments and benefits of the Commissioner for Children and Young Persons shall not be altered to the disadvantage of the Commissioner for Children and Young Persons during the period of the appointment of the Commissioner for Children and Young Persons, except by mutual agreement.

Independence

83H. (1) Subject to the provisions of the Constitution relating to the powers of the Director of Public Prosecutions and except as provided for in this Act, in the exercise of the functions of Commissioner for Children and Young Persons, the Commissioner for Children and Young Persons shall not be subject to the direction or control of any other person or authority.

(2) Except as otherwise provided in this Act, the Commissioner for Children and Young Persons —

(a) shall be subject to the *Public Service Management Act (2018 Revision)*, including as it relates to personnel arrangements of the Office of the Commissioner for Children and Young Persons; and

(b) may adopt policies and directions by the Deputy Governor as the Commissioner for Children and Young Persons sees fit to the extent that these do not compromise the independence of the Commissioner for Children and Young Persons.

(3) For the purpose of establishing the budget of the Office of the Commissioner for Children and Young Persons, the Commissioner for Children and Young Persons shall report and be accountable for expenditure to the Oversight Committee of the Parliament.

Staff

83I. (1) The Commissioner for Children and Young Persons shall appoint officers in accordance with the *Public Service Management Act (2018 Revision)* as are necessary to enable the Commissioner for Children and Young Persons to carry out the functions of the Commissioner for Children and Young Persons.

(2) The officers appointed under subsection (1) shall be public officers and matters relating to the personnel arrangements of the officers, including discipline and dismissal, shall be governed by the *Public Service Management Act (2018 Revision)*.

Advisers

83J. (1) The Commissioner for Children and Young Persons may obtain advice from any person who, in the opinion of the Commissioner for Children and Young Persons, is qualified to give it, in order to assist in the discharge of the functions of the Commissioner for Children and Young Persons.

(2) The Commissioner for Children and Young Persons may pay to any person from whom advice under subsection (1) is obtained,

reasonable fees or allowances as the Commissioner for Children and Young Persons may determine.

(3) Any fees or allowances paid under subsection (2) shall be paid out of the funds appropriated to the Office of the Commissioner for Children and Young Persons.

Advisory panel

83K. (1) The Cabinet shall appoint an advisory panel which shall consist of the persons referred to in Schedule 3B.

(2) The advisory panel —

(a) shall provide the Commissioner for Children and Young Persons with advice and assistance relating to the discharge of the functions of the Commissioner for Children and Young Persons generally;

(b) shall assist the Commissioner for Children and Young Persons in the preparation of the strategic plan and the annual report referred to in this Part, and the extent of the assistance to be provided shall be determined by the Commissioner for Children and Young Persons; and

(c) may give its views to the Governor as to the suitability of a person for appointment to the Office of the Commissioner for Children and Young Persons.

(3) The Cabinet may make regulations prescribing —

(a) the criteria and process for appointment to the advisory panel;

(b) the terms and conditions that apply to an appointment; and

(c) the procedures of the advisory panel.

Provision of reports and other documents

83L. Subject to the anonymity requirements in section 83O(2) and (3), if the Commissioner for Children and Young Persons considers it necessary or appropriate, the Commissioner for Children and Young Persons may —

(a) produce in a form or manner as the Commissioner for Children and Young Persons determines, reports, documents or other information about, or in connection with the discharge of the functions of the Commissioner for Children and Young Persons;

(b) publish the reports, documents or other information referred to in paragraph (a); and

(c) in the case of a report, cause a copy of each report prepared under this section, to be laid before the Parliament.

Strategic plans

83M.(1) The Commissioner for Children and Young Persons, in respect of each four-year period, shall prepare a plan (referred to in this section as a "strategic plan") setting out how the Commissioner for Children and Young Persons proposes to perform the functions of the office during the four-year period.

(2) Subject to subsection (5), the Commissioner for Children and Young Persons shall cause a copy of the strategic plan to be laid before the Parliament no later than the beginning of the four-year period to which the plan relates.

(3) At any time during a four-year period the Commissioner for Children and Young Persons may review the strategic plan for the period and cause a copy of the revised strategic plan to be laid before the Parliament as soon as practicable after being revised.

(4) In preparing or reviewing a strategic plan, the Commissioner for Children and Young Persons shall consult with any relevant authority insofar as it is reasonably practicable to do so.

(5) Where the Commissioner for Children and Young Persons is appointed within, or as at the expiry of the four-year period, the Commissioner for Children and Young Persons shall cause a copy of the strategic plan to be laid before the Parliament no later than six months after the date of the appointment of the Commissioner for Children and Young Persons, and the four-year period is to begin as at the date of appointment.

(6) Subsection (3) applies in the case of a strategic plan referred to in subsection (5).

(7) In this section, "**four-year period**" means the period of four years beginning on the date the *Children (Amendment) Act, 2024* comes into force, and, subject to subsection (5), each subsequent period of four years.

Annual reports

83N.(1) The Commissioner for Children and Young Persons shall prepare annually a report (the "annual report") on the discharge of the functions of the Commissioner for Children and Young Persons during the financial year.

(2) The annual report shall include —

(a) a review of issues identified by the Commissioner for Children and Young Persons in the financial year as being relevant to children and young persons;

(b) a review of the functions discharged by the Commissioner for Children and Young Persons in the financial year;

(c) any recommendations made by the Commissioner for Children and Young Persons arising out of the functions discharged;

(d) an overview of work to be undertaken by the Commissioner for Children and Young Persons in the next financial year, including the strategy for involving children and young persons in the work of the Commissioner; and

(e) the accounts of the Office of the Commissioner for Children and Young Persons for the financial year.

(3) The Commissioner for Children and Young Persons shall cause a copy of the annual report to be laid before the Parliament no later than six months after the end of the financial year to which the plan relates.

(4) For the purposes of this section, "**financial year**" means a year ending on 31st December.

Publication and anonymity requirements

83O.(1) The Commissioner for Children and Young Persons shall publish a report, strategic plan and annual report laid before the Parliament under section 83D(13), 83L, 83M and 83N, respectively.

(2) The Commissioner for Children and Young Persons shall ensure, so far as is reasonable and practicable having regard to the subject matter, that any report, document, statement, or other information which may, or is required to be produced, provided, published or otherwise publicised under any provision of this Act, does not name or identify (whether by reference to any particular characteristics, or otherwise) any child or young person, or group of children or young persons, referred to in it.

(3) Apart from identifying any public authority or any legal person other than a public authority, unless the Commissioner for Children and Young Persons determines that it is necessary to do so, a report, strategic plan or annual report referred to in subsection (1) —

(a) shall not name any individual person; and

(b) may omit any particulars which are likely to identify the person concerned and which, in the opinion of the Commissioner for Children and Young Persons, may be omitted without impairing the effectiveness of the report, strategic plan or annual report in question.

(4) The Commissioner for Children and Young Persons shall take reasonable steps to ensure that the content of any report, document or other information, whether or not published, takes account, so far as practicable, of the age, understanding and usual language of any children or young persons by whom it is intended that the report or other document will be read, and of the effect of any disabilities they may have.

Immunity

83P. The Commissioner for Children and Young Persons and any person employed, engaged or appointed by the Commissioner for Children and Young Persons under this Act, shall not be liable in damages for anything done or omitted in the discharge of the respective functions of those persons under this Act or any other Act, unless it is shown that the act or omission was negligent or in bad faith.

Indemnity

83Q. The Government shall indemnify the Commissioner for Children and Young Persons and any person employed, engaged or appointed by the Commissioner for Children and Young Persons under this Act against all claims, damages, costs, charges or expenses incurred by those respective persons in the discharge or purported discharge of their functions under this Act or any other Act, except claims, damages, costs, charges or expenses caused by the negligence or bad faith of those persons.

Regulations

83R. Notwithstanding section 95(1) and (2), the Cabinet may make regulations subject to affirmative resolution for giving effect to the provisions of this Part.".

Repeal and substitution of section 88A - attendance in court by parent

51. The principal Act is amended by repealing section 88A and substituting the following section —

"**Attendance in court by parent, guardian, and any person with parental responsibility**

88A.(1) Where under this Act a child is brought before a court, subject to subsection (2), the parents, the guardian and any person with parental responsibility for the child shall attend —

(a) the court at all stages of the proceedings; and

(b) any parenting programme ordered by the court.

(2) Subsection (1) does not apply where the court is satisfied that —

(a) it would be unreasonable to require the attendance of the parents, the guardian or a person with parental responsibility for the child; or

(b) the attendance of the parents, the guardian or a person with parental responsibility for the child would not be in the best interests of the child.

(3) Pursuant to subsection (1), the court may, in whatever manner it sees fit, enforce the attendance of the parents, the guardian or any person with parental responsibility for the child.".

Amendment of section 90 - privacy for children involved in certain proceedings

52. The principal Act is amended in section 90 as follows —

(a) in subsection (5), by deleting the definition of the word "**publish**" and substituting the following definition —

" "**publish**" includes —

(a) broadcast by —

(i) print media;

(ii) broadcast media, including radio, television, cable television, satellite television;

(iii) internet media; or

(iv) any other media; and

(b) cause to be broadcast by any media referred to in paragraph (a); and"; and

(b) by repealing subsection (6) and substituting the following subsection —

"(6) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of twelve months, or to both.".

Amendment of section 91 - self-incrimination

53. The principal Act is amended in section 91 as follows —

(a) in subsection (1) as follows —

(i) by repealing paragraph (b) and substituting the following paragraph —

"(b) answering a question put to the person in the course of the person giving evidence," and

(ii) by deleting the words "him or his spouse" and substituting the words "the person or the person's spouse or civil partner"; and

(b) in subsection (2), by deleting the words "his spouse" and substituting the words "the person's spouse or civil partner".

Amendment of section 93 - power of constable to assist in exercise of certain powers to search for children or inspect premises

54. The principal Act is amended in section 93 by repealing subsection (6) and substituting the following subsection —

"(6) The provisions referred to under subsection (1) are —

(a) sections 54K, 54N, 77 and 80; and

(b) paragraph 7(1)(b) and (2)(b) of Schedule 3.".

Insertion of sections 93A and 93B - incompatibility of other legislation; protection from liability for disclosures made pursuant to this Act

55. The principal Act is amended in Part 12, by inserting after the Division heading "General", the following sections —

"**Incompatibility of other legislation**

93A. Except as provided in this Act, no enactment or law prohibiting or restricting the disclosure of information shall preclude a person from furnishing the Department with any information required for the discharge of the duties of the Department under this Act.

Protection from liability for disclosures made pursuant to this Act

93B. A person who discloses information pursuant to a requirement of this Act, insofar as the person has acted in good faith, shall not incur any civil or criminal liability or be liable in disciplinary proceedings for the disclosure.".

Amendment of section 95 - regulations and orders

56. The principal Act is amended in section 95 as follows —

(a) in subsection (1), by deleting the words "59(3), 83 or 90(4) or paragraph 1(1) of Schedule 4" and substituting the words "or 59(3)"; and

(b) by inserting after subsection (4) the following subsection —

"(5) Subject to subsection (3), this section does not apply to an Order made under section 95A to amend any of the Schedules.".

Insertion of section 95A - amendment of Schedules

57. The principal Act is amended by inserting after section 95 the following section —

"**Amendment of Schedules**

95A.(1) Subject to section 95(3) and subsections (2), (3) and (4), the Cabinet may amend the Schedules by Order.

(2) The Cabinet may only amend Schedule 3A by Order so as to delete from that Schedule any actions and matters as may be described in the Order.

(3) Where the Cabinet proposes to amend Schedule 3A so as to add any other actions or matters or alter the content of any actions or matters (other than by deleting them), the Cabinet may do so by Order subject to affirmative resolution.

(4) The Cabinet may amend Schedule 10 by Order subject to affirmative resolution.".

Amendment of section 96 - financial provisions

58. The principal Act is amended in section 96(2) by deleting the words ", paragraph 3 of Schedule 4 or paragraph 6 of Schedule 5".

Amendment of Schedule 1 - financial provision for children

59. The principal Act is amended in Schedule 1 as follows —

(a) in paragraph 4, by inserting after subparagraph (4) the following subparagraph —

"(5) In the case of a child who has a parent by virtue of section 4(3A), any reference in subparagraph (2), (3) or (4) to the child's father is a reference to the woman who is a parent of the child by virtue of that section.";

(b) in paragraph 5, by repealing subparagraphs (2) and (4);

(c) in paragraph 10, by inserting after subparagraph (7) the following subparagraph —

"(8) In the case of a child who has a parent by virtue of section 4(3A), the reference in subparagraph (1)(a) to the child's father is a reference to the woman who is a parent of the child by virtue of that section.";

(d) in paragraph 12 as follows —

(i) by repealing subparagraph (2) and substituting the following subparagraph —

"(2) A person who fails without reasonable excuse to give the notice referred to in subparagraph (1) commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for a term of six months, or to both."; and

(ii) by inserting after subparagraph (5), the following subparagraphs —

"(6) Where there is in place an existing order under this Act for the payment of money or the making of periodical payments for the benefit of a child and that child enters the care of the Department, the following applies —

(a) regardless of the name of the person specified in the order, the Department shall be responsible for ensuring that the payments are received in respect of the child in accordance with the existing order; and

(b) the court may direct that the payments shall be made to the Department for the benefit of the child.

(7) A person shall not be entitled to enforce through the court any order for the payment of money under this Act without the leave of the court if arrears became due more than twelve months before proceedings to enforce the payment of them are begun.

(8) On an application for the grant of leave to enforce the payment of money under this Act, the court may —

(a) refuse leave;

(b) grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as that court thinks proper; or

(c) remit the payment of the arrears or of any part of the arrears.";

(e) in paragraph 15(2), by deleting the words "the husband or wife" and substituting the words "the husband or wife or the civil partner";

(f) by inserting after paragraph 15, the following paragraphs —

"**Offence of failing to comply with an order regarding the making of payments**

15A. Where a person who is under an obligation to make payments in pursuance of any order made by a court under this Act fails to comply with the order, the person commits an offence and is liable on summary conviction to a fine of five thousand dollars or to a term of imprisonment for two years, or to both.

Criminal acts for which court may grant Shemaiah Grant Order

15B. For the purposes of section 16B, a court may grant a Shemaiah Grant Order in respect of any of the following criminal acts —

(a) causing death by dangerous or reckless driving, under section 75 of the *Traffic Act (2023 Revision)*;

(b) causing death by careless driving or inconsiderate driving, under section 79 of the *Traffic Act (2023 Revision)*;

(c) causing death by driving, where the driver is unlicensed, disqualified or uninsured, under section 80 of the *Traffic Act (2023 Revision)*; or

(d) causing death by driving or being in charge of a vehicle while under the influence of alcohol or drugs, under section 83 of the *Traffic Act (2023 Revision)*."; and

(g) in paragraph 16(2), by inserting after the word "marriage" the words "or a civil partnership".

Amendment of Schedule 2 - Department's support for children and families

60. The principal Act is amended in Schedule 2 as follows —

(a) in paragraph 1 as follows —

(i) in subparagraph (2)(a)(i), by deleting the words ", 20"; and

(ii) in subparagraph (2)(a)(ii), by deleting the words "(including, in particular, voluntary organisations)";

(b) by repealing paragraph 2;

(c) by repealing paragraph 6 and substituting the following paragraph —

"**Provision for children with disabilities**

6. The Department shall provide services to children with disabilities which are designed —

(a) to minimise the effect of the disabilities on those children; and

(b) to give those children the opportunity to lead their lives on an equal basis as persons without disabilities.";

(d) in paragraph 10, in the paragraph heading, by deleting the word "Maintenance" and substituting the word "Maintaining";

(e) in paragraph 13 as follows —

(i) in subparagraph (2), by deleting the word "secure" where it twice appears and substituting the word "ensure"; and

(ii) in subparagraph (4), by deleting the words "not exceeding $2,000" and substituting the words "of five thousand dollars or to imprisonment for a term of six months, or to both"; and

(f) by repealing paragraph 15.

Amendment of Schedule 3 - supervision orders

61. The principal Act is amended in Schedule 3 as follows —

(a) in paragraph 5 —

(i) in subparagraph (1), by deleting the words "physical and" and substituting the words "physical or";

(ii) in subparagraph (2)(c), by deleting the word "hospital" and substituting the words "health care facility"; and

(iii) by repealing subparagraphs (3) and (4);

(b) in paragraph 10(1) as follows —

(i) by deleting the word "Governor" and substituting the word "Cabinet"; and

(ii) by deleting the word "their" and substituting the word "its";

(c) in paragraph 11(1), by deleting the word "secure" and substituting the word "ensure";

(d) in paragraph 16(2), by deleting the words "the Education Department" and substituting the words "the Department"; and

(e) in paragraph 17, by repealing subparagraph (3) and substituting the following subparagraph —

"(3) A person who commits an offence under this paragraph is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months, or to both.".

Insertion of Schedules 3A and 3B - matters not subject to investigation by the Commissioner for Children and Young Persons; advisory panel

62. The principal Act is amended by inserting after Schedule 3 the following Schedule —

"Schedule 3A

(section 83D(4))

Matters not subject to investigation by the Commissioner for Children and Young Persons

1. Action taken in matters certified by the Governor to affect relations or dealings between the Government and any other government or any international organisation of States or Governments.

2. Action taken in matters certified by the Governor to affect defence, external affairs or internal security.

3. Action taken by or with the authority of the Director of Public Prosecutions, the Commissioner of Police, the Director of the Workforce Opportunities and Residency Cayman Department or the Director of Customs and Border Control for the purposes of investigating crime or of protecting the security of the Islands, including action so taken with respect to passports.

4. Action taken in connection with the Governor's power of pardon under section 39 of the Constitution.

5. The commencement or conduct of civil or criminal proceedings before any court of law in the Islands.

6. Action taken in respect of appointments or removals, pay, discipline, or other personal matters in relation to —

    (a) service in any office or employment under the Government; or

    (b) service in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in such matters as are vested in the Government.

7. Action taken by the Director of Public Prosecutions in connection with the exercise or possible exercise of the power of the Director of Public Prosecutions under the Constitution to institute, undertake, take over, continue or discontinue criminal proceedings before any court of law in the Islands.

8. Legal advice given by or on behalf of the Attorney General or the Director of Public Prosecutions to the Government or to any public body.

9. Action taken by the Auditor General in connection with the exercise or possible exercise of the power of the Auditor General under the Constitution or otherwise.

10. Action taken by the appropriate authority in connection with the exercise or possible exercise of the authority's power under any Mutual Legal Assistance arrangement, including extradition.

11. Action taken in matters relating to contractual or other commercial transactions, being transactions of a Ministry, department or statutory authority not being transactions relating to —

    (a) the acquisition of land compulsorily or in circumstances in which it can be acquired compulsorily; or

    (b) the disposal of surplus land acquired compulsorily or in circumstances in which it could be acquired compulsorily.

12. Any action which, by virtue of the Constitution, may not be enquired into by any court.

13. Any judicial function not specifically excluded by paragraphs 1 to 12.

Schedule 3B

(section 83K(1))

Advisory panel

1. The advisory panel shall consist of six persons, who, taken together, represent a broad range of interests which are relevant to the functions of the Office of the Commissioner for Children and Young Persons, namely —
    (a) one person from the district of Bodden Town in Grand Cayman;
    (b) one person from the district of East End in Grand Cayman;
    (c) one person from the district of George Town in Grand Cayman;
    (d) one person from the district of North Side in Grand Cayman;
    (e) one person from the district of West Bay in Grand Cayman; and
    (f) one person from Cayman Brac or Little Cayman.
2. A person shall not be eligible for appointment to the advisory panel if the person is less than thirteen years of age or has attained the age of twenty-four years.
3. A member of the advisory panel shall be appointed for a period of one year and, subject to paragraph 2, is eligible for re-appointment.".

Repeal of Schedules 4, 5, 6, 7, 8 and 9 - management and conduct of community homes; voluntary homes and voluntary organisations; registered children's homes; foster parents: limits on number of foster children; privately fostered children; child minding and day care for young children

63. The principal Act is amended by repealing Schedules 4, 5, 6, 7, 8 and 9.

Amendment of Schedule 10 - amendments, transitional provisions, savings and repeals

64. The principal Act is amended in Schedule 10 as follows —

(a) in paragraph 7 as follows —

(i) in subparagraph (1), by repealing sub-subparagraph (a) and substituting the following sub-subparagraph —

"(a) a child's father and mother were married to or in a civil partnership with each other at the time of the child's birth; and"; and

(ii) in subparagraph (2), by repealing sub-subparagraph (a) and substituting the following sub-subparagraph —

"(a) a child's father and mother were not married to or in a civil partnership with each other at the time of the child's birth; and";

(b) by repealing paragraph 17 and substituting the following paragraphs —

"**Commissioner for Children and Young Persons**

17. The Governor may make any transitional arrangements for the appointment of the first Commissioner for Children and Young Persons as may be appropriate for the establishment of the Office of the Commissioner for Children and Young Persons.

Privately fostered children

17A.(1) Where, on the commencement of the *Children (Amendment) Act, 2024*, a person is fostering a child privately —

(a) the person shall notify the Department within one month after the date of commencement of that Act; and

(b) no later than twelve months after the date of commencement of that Act, the person shall cease fostering of the child privately, and the relevant arrangements shall be made by the Department to ensure the welfare of the child.

(2) A person within the Islands who is under twenty-one years of age and who was, at any time after reaching the age of sixteen years but while still a child, privately fostered prior to the commencement of the *Children (Amendment) Act, 2024* shall be considered a person qualifying for advice and assistance under section 26(2), for the purposes of the Act.

Children's homes

17B. On the commencement of sections 44 and 50 of the *Children (Amendment) Act, 2024*, if a person who is caring for a child and providing a child with accommodation in a children's home registered under the *Children Act (2012 Revision)* prior to being amended by the *Children (Amendment) Act, 2024* wishes to continue doing so, the person shall apply to be registered in accordance with Part 5A within one month after the date of commencement of sections 44 and 50 of the *Children (Amendment) Act, 2024*."; and

(c) by inserting after paragraph 20 the following paragraph —

"21. The *Affiliation Act (1995 Revision)* is repealed.".

Repeal of Regulations

65. The following Regulations are repealed —

(a) the *Children (Private Foster Care) Regulations, 2012*;

(b) the *Community Homes Regulations, 2012*;

(c) the *Disqualification from Providing Private Foster Care Regulations, 2012*;

(d) the *Emergency Protection Order (Transfer of Responsibilities) Regulations, 2012*;

(e) the *Refuges (Children's Homes and Foster Placements) Regulations, 2012*; and

(f) the *Voluntary Homes Regulations, 2012*.

Passed by the Parliament the 16th day of December, 2024.

Hon. Sir Alden McLaughlin
Speaker

Zena Merren-Chin
Clerk of the Parliament