



# **Saint Lucia** **GOVERNMENT GAZETTE**

## **EXTRAORDINARY**

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GOVERNMENT NOTICE

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The following documents are published with and form part of this *Extraordinary Gazette*:

## Assented Acts

Act #6 of 2018 — Agreement on Extradition (Saint Lucia and the French Republic) Act.

Act #7 of 2018 — Automatic Exchange of Financial Account Information (Amendment) Act.

Act #8 of 2018 — Child (Care, Protection and Adoption) Act.

Act #9 of 2018 — Child Justice Act.

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Act #11 of 2018 — Free Zone (Amendment) Act.

Act #12 of 2018 — Income Tax (Amendment) Act.

Act #13 of 2018 — International Business Companies (Amendment) Act.

Act #14 of 2018 — International Partnership (Amendment) Act.

Act #15 of 2018 — International Trust (Amendment) Act.

*Agreement on Extradition (Saint Lucia and the French Republic) Act*

**SAINT LUCIA**

**No. 6 of 2018**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title
2. Interpretation
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**SCHEDULE**



*Agreement on Extradition (Saint Lucia and the French Republic) Act*

I ASSENT

[L.S.]

NEVILLE CENAC,  
*Governor-General.*

*December 11, 2018.*

## SAINT LUCIA

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### No. 6 of 2018

**AN ACT** to give legal effect to and provide for the implementation of the Agreement on Extradition between the Government of Saint Lucia and the Government of the French Republic and for related matters.

[ 12th December, 2018 ]

**BE IT ENACTED** by the Queen's Most Excellent Majesty by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same as follows:

*Agreement on Extradition (Saint Lucia and the French Republic) Act*

**Short title**

1. This Act may be cited as the Agreement on Extradition (Saint Lucia and the French Republic) Act, 2018.

**Interpretation**

2. In this Act, “Agreement” means the Agreement on Extradition between the Government of Saint Lucia and the Government of the French Republic, signed in Castries, Saint Lucia on the 30<sup>th</sup> day of September, 2016, the text of which is set out in the Schedule.

**Force of law**

3. The Agreement has the force of law in Saint Lucia.

**Regulations**

4. The Minister responsible for foreign affairs may make Regulations for giving effect to this Act.

*Agreement on Extradition (Saint Lucia and the French Republic) Act*

**SCHEDULE**

(Sections 2 and 3)

**AGREEMENT ON EXTRADITION**

**BETWEEN**

**THE GOVERNMENT OF SAINT LUCIA**

**AND**

**THE GOVERNMENT OF THE FRENCH REPUBLIC**

The Government of Saint Lucia and the Government of the French Republic, hereinafter referred to as the “Parties”,

Desiring to provide for effective cooperation between the two States in the suppression of crime and in order to facilitate their relations in the field of extradition by concluding an Agreement on extradition.

Wishing to that end to settle by mutual agreement their relations in the field of extradition, in compliance with their respective constitutional principles,

Have agreed as follows:

**Article 1**

**Obligation to extradite**

The Parties undertake to surrender to each other, subject to the provisions of this Agreement, any person in the territory of one of the Parties who is the subject of prosecution for a criminal offence or who is sought for the enforcement of a sentence of deprivation of liberty awarded by the judicial authorities of the other Party as the result of a criminal offence.

## **Article 2**

### **Communication channels**

For the purpose of this Agreement, except where otherwise provided in this Agreement, the Parties shall communicate with each other through diplomatic channels.

## **Article 3**

### **Extraditable offences**

1. Extradition shall be granted in respect of offences punishable under the laws of both Parties by deprivation of liberty for a maximum period of at least two years or by a more severe penalty.

2. In addition, where extradition is requested for the enforcement of a sentence awarded by the competent judicial authority of the requesting Party, the duration of the penalty remaining to be served must amount to at least six months.

3. If the request for extradition includes several separate offences, each of which is punishable under the laws of both parties but some of which do not fulfil the conditions provided for in paragraphs 1 and 2, the Requested Party may also grant extradition for those offences.

## **Article 4**

### **Mandatory grounds for refusing extradition**

1. Extradition shall not be granted:
  - a) for offences the Requested Party considers a political offence or an offence connected with a political offence;
  - b) if the Requested Party has substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons;
  - c) if the person sought would be tried in the Requesting Party by a tribunal which does not provide fundamental



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procedural guarantees and protection for the rights of the defence, or if extradition is requested for the enforcement of a sentence ordered by such a tribunal;

- d) if a final judgment of conviction, acquittal or discharge has been rendered or an amnesty or pardon has been granted in the requested Party in respect of the person sought for the offence or offences for which extradition is requested;
- e) if the prosecution or sentence is time-barred under the law of the Requested Party. To the extent permitted under its law, the Requested Party shall take account of acts in the Requesting Party that would interrupt or suspend the lapse of time;
- f) if the Requested Party considers the offence for which extradition is requested to be an exclusively military offence.

2. For the application of this Agreement the following shall not be considered as political offences:

- a) the taking or attempted taking of the life of the Head of State of a Party or a member of his family;
- b) offences for which both parties are obliged pursuant to a multilateral agreement to extradite the requested person or to submit the case to the competent authorities for decision as to prosecution.

**Article 5**  
**Extradition of nationals**

1. Extradition may be refused if the person sought is a national of the Requested Party. Nationality is determined at the date of commission of the offence for which extradition is requested.

2. If the extradition request is refused on the sole ground of the nationality of the person sought, the Requesting Party may request that the case be submitted to the authorities of the Requested Party in order that proceedings may be taken if they are considered appropriate. To that end, the files, reports and evidence relating to the offence shall be transmitted in accordance with Article 2. The Requested Party shall promptly inform the Requesting Party of the result of its request.

**Article 6**  
**Optional grounds for refusing extradition**

Extradition may be refused:

- a) if the person is sought for an offence which is regarded by the law of the Requested Party as having been committed in whole or in part in its territory or in a place treated as its territory;
- b) where the offence for which extradition is requested has been committed outside the territory of the Requesting Party and the law of the Requested Party does not allow prosecution for the same offence committed outside its territory;
- c) if the person sought is being prosecuted by the Requested Party for the offence or offences for which extradition is requested, or if the judicial authorities of the Requested Party have decided not to prosecute the same offence or offences or to discontinue criminal proceedings in respect thereof;
- d) if a final judgment of conviction or acquittal has been rendered in respect of the person sought in a third State for the offence or offences for which extradition is requested;
- e) if, under the law of the Requested Party, the judicial authorities of that Party have jurisdiction to try the offence for which extradition has been requested;
- f) on humanitarian grounds, if surrender is likely to have exceptionally serious consequences for the person sought, in particular on account of his age or state of health.

**Article 7**  
**Capital punishment**

If the punishment of the law of the Requesting Party for the acts for which extradition is requested is the capital punishment, that punishment is automatically replaced, under the present Agreement, by the punishment provided for the same facts in the law of the Requested Party.

*Agreement on Extradition (Saint Lucia and the French Republic) Act***Article 8  
Procedure**

Except where otherwise provided in this Agreement, the law of the Requested Party shall be applicable to proceedings relating to provisional arrest, extradition and transit.

**Article 9  
Extradition requests and supporting documents**

**1.** The extradition request shall be made in writing and accompanied:

- a) in all cases by:
  - (i) a statement of offences for which extradition is requested, stating the date and place of commission, their legal description and the applicable legal provisions, including those pertaining to the statutes of limitation, together with the text of the legal provisions applicable to the offence or offences for which extradition is requested, the corresponding penalties, the time limits for immunity from prosecution and, where the offence has been committed outside the territory of the Requesting Party, the text of the legal or treaty provisions giving jurisdiction to that Party;
  - (ii) as accurate a description as possible of the person sought, together with all other information that may help to establish his identity, his nationality and, if possible, his location;
- b) in the case of an extradition request for prosecution purposes, by the original or a certified copy of the arrest warrant or by any other instrument having the same effect under the law of the Requesting Party;
- c) in the case of an extradition request for the enforcement of a sentence:
  - (i) by the original or a certified copy of the enforceable judgment of conviction;

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- (ii) by a duly authenticated statement relating to the length of the sentence ordered and the remainder of the term to be served.

2. Extradition requests and supporting documents must bear the signature and stamp of the requesting authority. Where relevant, documents accompanying the extradition request shall be legalized, authenticated or verified according to the law of the Requesting Party.

**Article 10**  
**Supplementary information**

If the information communicated by the Requesting Party is found to be insufficient to allow the Requested Party to make a decision under this Agreement, or if it contains infringements, the Requested Party shall request the necessary supplementary information or bring the omissions or irregularities to be rectified to the Requesting Party's attention. The Requested Party may fix a time limit for the receipt of supplementary information or the rectification of infringements.

**Article 11**  
**Language to be used**

Extradition requests and supporting documents shall be in an official language of the Requesting Party and accompanied by a certified translation into an official language of the Requested Party.

**Article 12**  
**Rule of specialty**

1. A person who has been extradited under this Agreement shall not be prosecuted, sentenced or detained in the Requesting Party with a view to the enforcement of a sentence or detention order or restricted in his personal freedom for any offence committed prior to his surrender other than that for which he was extradited, except in the following cases:

- a) where the Party which surrendered him consents. A request for consent shall be submitted, accompanied by the documents specified in Article 9 and a legal record of any statement made by the extradited person, in particular

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if he agrees to extension of the extradition or opposes it. Consent shall be given only when the offence for which it is requested is itself subject to extradition under the terms of this Agreement.

- b) when that person, having had an opportunity to leave the territory of the Party to which he has surrendered, has not done so within thirty (30) days of his final discharge, or has returned voluntarily to that territory after leaving it.

2. The Requesting Party may, however, take any measures necessary to remove the person from its territory, or any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time.

3. When the description of the offence for which a person has been extradited is altered in the course of proceedings, the extradited person shall be prosecuted or sentenced only insofar as the offence under its new description:

- a) is extraditable under the terms of this Agreement;
- b) concerns the same acts as the offence for which extradition was granted; and
- c) is punished by a maximum sentence identical to or less than the sentence for the offence for which extradition was granted.

**Article 13**

**Re-extradition to a third State**

Except as provided for in Article 12, paragraph 1.b), re-extradition to a third State may not be granted without the consent of the Party that granted extradition. That Party may request the documents specified in Article 9 and a record of the hearing at which the person sought states whether he agrees to re-extradition or opposes it.

**Article 14**

**Provisional arrest**

1. In case of urgency the competent authorities of the Requesting Party may request the provisional arrest of the person sought. The

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request for provisional arrest shall be made in writing. It shall mention the existence of one of the documents specified in Article 9 and the intention to send a request for extradition. It shall also state the offence for which extradition is requested, the time, place and circumstances of its commission and all available information to help establish the identity, nationality and location of the person sought.

2. A request for provisional arrest shall be sent to the competent authorities of the Requested Party either through diplomatic channels or through the International Criminal Police Organization (Interpol) or by any other means affording evidence in writing. The Parties may, through an exchange of notes, modify the procedure for provisional arrest, in the compliance with their law, in order to improve speed and efficiency.

3. Upon receiving the request referred to in paragraph 1, the competent authorities of the Requested Party shall deal with the request in accordance with its law. The Requesting Party shall be informed of the results of its request.

4. Provisional arrest shall terminate if the Requested Party has not received the request for extradition and the documents specified in Article 9 within sixty (60) days of the person's arrest. However, the person sought may be provisionally released at any time, but the Requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.

5. Release pursuant to paragraph 4 shall not prejudice re-arrest and extradition of the person sought in the official extradition request and the documents specified in Article 9 are received subsequently.

**Article 15**  
**Concurrent requests**

If extradition is requested concurrently by one of the Parties or other States, either for the same offence or for different offences, the Requested Party shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person sought and the possibility and subsequent extradition to another State.

*Agreement on Extradition (Saint Lucia and the French Republic) Act***Article 16**  
**Decision and surrender**

1. The Requested Party shall promptly communicate to the Requesting Party through diplomatic channels its decision with regard to the extradition.

2. Reasons shall be given for any complete or partial rejection.

3. If the request is agreed to, the Parties shall agree on the date and place of surrender of the person sought. The Requested Party shall inform the Requesting Party of the length of time for which the person sought was detained with a view to extradition.

4. If the person sought has not been taken over within forty-five (45) days of the date set for his surrender, he shall be released and the Requested Party may subsequently refuse to extradite him for the same offence.

5. If circumstances beyond its control prevent a Party from surrendering or taking over the person to be extradited, it shall notify the other Party; the Parties shall agree a new date for surrender and the provisions of paragraph 4 of this Article shall apply.

**Article 17**  
**Postponed or conditional surrender**

1. The Requested Party may, after agreeing to the request for extradition, postpone the surrender of the person, where proceedings are already pending against him or where he is serving a sentence for another offence in the territory of the Requested Party, until the proceedings have concluded or until the sentence has been served.

2. Instead of postponing surrender, the Requested Party may, where particular circumstances so require, temporarily surrender the person whose extradition has been granted to the Requesting Party in accordance with conditions to be determined by mutual agreement between the Parties and, in all cases, under the express condition that he shall be kept in custody and returned.

3. Surrender may also be postponed where the health of the person sought is such that transfer might endanger his life or aggravate his condition.

*Agreement on Extradition (Saint Lucia and the French Republic) Act*

4. If the Requested Party decides to postpone surrender, it shall notify the Requesting Party and take all necessary steps to ensure that postponement does not prevent surrender of the person sought to the Requesting Party.

**Article 18****Notification of the outcomes of criminal proceedings**

At the request of the Requested Party, the Requesting Party shall notify it of the outcomes of criminal proceedings against the extradited person and shall send it a copy of the final judgment.

**Article 19****Seizure and handing over of property**

1. The Requested Party may, in so far as its law permits and at the request of the Requesting Party, seize and hand over objects, valuables or documents:

- a) which may serve as evidence; or
- b) which have been acquired as a result of the offence and which, at the time of the arrest, are found in the possession of the person sought or are discovered subsequently.

2. The property mentioned in paragraph 1 may be handed over even if extradition, having been agreed to, cannot be carried out owing to the death, disappearance or escape of the person sought.

3. When the said property may be subject to seizure or confiscation in the territory of the Requested Party, the latter may, in connection with pending criminal proceedings, temporarily retain them or hand them over on condition that they are returned.

4. The provisions of this Article shall not prejudice the rights of the Requested Party or third parties to that property. Where these rights exist, the Requesting Party shall promptly return that property free of charge to the Requested Party after the completion of proceedings.



*Agreement on Extradition (Saint Lucia and the French Republic) Act***Article 20**  
**Transit**

1. Transit through the territory of one of the Parties of a person who is not a national of that Party, surrendered to the other Party by a third State, shall be granted on presentation through diplomatic channels of any one of the documents specified in Article 9 of this Agreement, provided that there is no objection on the grounds of public order or that the offence in question is not one for which extradition is not granted pursuant to Article 4.

2. Transit may be refused in all other cases in which extradition may be refused as well.

3. The authorities of the Party of transit shall be responsible for custody of the person concerned for as long as he remains in its territory.

4. Where air transport is used, the following provisions shall apply:

- a) where no landing is scheduled, the Requesting Party shall advise the Party whose territory is to be overflown and shall certify the existence of one of the documents specified in Article 9. In the event of an unscheduled landing, such notification shall have the effect of a request for provisional arrest pursuant to Article 14 and the Requesting Party shall send a formal transit request;
- b) where a landing is scheduled, the Requesting Party shall send a formal transit request

**Article 21**  
**Expenses**

1. Any expenses incurred by the extradition in the territory of the Requested Party shall be borne by that Party until the surrender, and any expenses for the transportation of the extradited person after such surrender shall be borne by the Requesting Party.

2. Expenses incurred by transit in the territory of the Party requested to grant transit shall be borne by the Requesting Party.

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3. If, during execution of an extradition request, it becomes apparent that extraordinary expenses are required to fulfil the request, the Parties shall consult each other to decide the terms and conditions on which execution of the request can proceed.

**Article 22****Relations with other agreements**

This Agreement shall not prejudice any rights and obligations arising from multilateral agreements to which either or both Parties are party.

**Article 23****Dispute settlement**

Any dispute arising from the implementation or interpretation of this Agreement shall be settled by consultations through diplomatic channels.

**Article 24****Application in time**

This Agreement shall apply to any extradition request presented after its entry into force, even if the offences to which it relates were committed beforehand.

**Article 25****Ratification and entry into force**

1. Each Party shall notify the other Party of the completion of the procedures it requires under its domestic law for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the second month following the date of receipt of the latter of these notifications.

2. Upon entry into force, this Agreement shall replace and repeal in relations between the Parties, the provisions of the Extradition Treaty between France and the United Kingdom, signed at Paris, August 14, 1876, as amended by the conventions of February 13, 1896 and October 17, 1908 and by the exchange of letters between

*Agreement on Extradition (Saint Lucia and the French Republic) Act*

France and the United Kingdom of February 16, 1978. Extradition requests received before the entry into force of this Agreement shall nevertheless be processed in accordance with the terms of the above mentioned Treaty.

3. Either Party may terminate this Agreement at any time by sending the other Party written notice through diplomatic channels. In such case, termination shall take effect on the first day of the third month following the date of receipt of such notice. Extradition requests received before the effective date of termination of this Agreement shall nevertheless be processed in accordance with the terms of this Agreement.

**IN WITNESS WHEREOF**, the undersigned, duly authorized by their respective Governments, have signed this Agreement.

**DONE** at Castries on the 30<sup>th</sup> day of September, 2016, in duplicate, in the English and French languages, all texts being equally authentic.

For the Government  
of Saint Lucia

For the Government  
of the French Republic

Passed in the House of Assembly this 20th day of November, 2018.

ANDY G. DANIEL,  
*Speaker of the House of Assembly.*

Passed in the Senate this 22nd day of November, 2018.

JEANNINE GIRAUDY-MCINTYRE,  
*President of the Senate.*



*Automatic Exchange of Financial Account Information  
(Amendment) Act*

**SAINT LUCIA**

**No. 7 of 2018**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title
2. Interpretation
3. Amendment of section 14
4. Amendment of section 16



*Automatic Exchange of Financial Account Information  
(Amendment) Act*

I ASSENT

[L.S.]

NEVILLE CENAC,  
*Governor-General.*

*December 11, 2018.*

## SAINT LUCIA

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### **No. 7 of 2018**

**AN ACT** to amend the Automatic Exchange of Financial Account Information Act, No. 22 of 2016.

[ 12th December, 2018 ]

**BE IT ENACTED** by the Queen's Most Excellent Majesty by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same as follows:

*Automatic Exchange of Financial Account Information  
(Amendment) Act*

**Short title**

**1.** This Act may be cited as the Automatic Exchange of Financial Account Information (Amendment) Act, 2018.

**Interpretation**

**2.** In this Act, “principal Act” means the Automatic Exchange of Financial Account Information (Amendment) Act, No. 22 of 2016.

**Amendment of section 14**

**3.** Section 14 of the principal Act is amended, under subsection (4), by deleting paragraph (a) and by replacing the following —

“(a) in the case of self-certification, the last day on which a related financial account is closed; and”.

**Amendment of section 16**

**4.** Section 16 of the principal Act is amended by deleting subsection (1) and by replacing the following —

“(1) A Reporting Financial Institution or a person who fails to comply with a duty or obligation imposed under this Act or Regulations is liable to a penalty of five thousand dollars for such failure and a penalty of two thousand dollars for each month or part of the month that the failure continues.”.

Passed in the House of Assembly this 20th day of November, 2018.

ANDY G. DANIEL,  
*Speaker of the House of Assembly.*

Passed in the Senate this 22nd day of November, 2018.

JEANNINE GIRAUDY-MCINTYRE,  
*President of the Senate.*



*Child (Care, Protection and Adoption) Act*

**SAINT LUCIA**

**No. 8 of 2018**

**ARRANGEMENT OF SECTIONS**

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*Child (Care, Protection and Adoption) Act*

I ASSENT

[L.S.]

NEVILLE CENAC,  
*Governor-General.*

*December 11, 2018.*

## SAINT LUCIA

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### No. 8 of 2018

**AN ACT** to provide for the care, protection and adoption of a child and for related matters.

[ 12th December, 2018 ]

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the Authority of the same, as follows:

*Child (Care, Protection and Adoption) Act***PRELIMINARY****Short title**

**1.** This Act may be cited as the Child (Care, Protection and Adoption) Act, 2018.

**Interpretation**

**2.—(1)** In this Act —

“abuse” includes —

- (a) physical abuse;
- (b) sexual abuse;
- (c) verbal abuse;
- (d) emotional abuse;
- (e) psychological abuse; and
- (f) financial abuse;

“adopted child” means a child with respect to whom an adoption order under section 107 is made;

“Adoption Committee” means the Adoption Committee established under section 73;

“Adoption List” means the list prepared and maintained under section 87;

“adoptive parent” means a person who has adopted a child;

“alternative action plan” means an arrangement —

- (a) that sets out the way in which the needs of the child are proposed to be met, having regard to the breakdown in the relationship between the child and his or her parents; and
- (b) that includes a proposal concerning —
  - (i) allocation of parental responsibility or specific aspects of parental responsibility,
  - (ii) a residential arrangement,



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- (iii) supervision,
- (iv) a contact arrangement,
- (v) education and training,
- (vi) medical care, or
- (vii) provision of a service;

“assessment order” means an order made under section 40;

“attorney-at-law” means a person who is admitted to practise law under the Legal Profession Act, Cap. 2.04;

“authorized person” means —

- (a) a health practitioner registered under the Health Practitioners Act, Cap. 11.06;
- (b) a nurse registered under the Registration of Nurses and Midwives Act, Cap. 11.08;
- (c) an administrator of a health, medical or hospital facility;
- (d) a school principal, teacher, guidance counsellor or other teaching professional;
- (e) an owner, operator or employee of a child care service;
- (f) a psychologist or physiologist;
- (g) a minister of religion;
- (h) a parent or guardian;
- (i) a person who by virtue of his or her employment or occupation has a responsibility to discharge a duty of care towards a child;
- (j) a person who holds a management position in an organization, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare services, social services, education, child care services, law

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enforcement, legal, transportation or other services wholly or partly to children; and

- (k) a person who provides health care, welfare services, social services, education, child care services, law enforcement, legal or other services wholly or partly to children;

“biological father” means a man who is the father of a child by blood;

“biological mother” means a woman who is the mother of a child —

- (a) by blood; or

- (b) as a result of an artificial conception procedure;

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

“care application” means an application for a care order under section 24;

“care and protection order” means an order made under section 30;

“care order” means —

- (a) a care and protection order;
- (b) an emergency protection order;
- (c) an assessment order;
- (d) a supervision order; or
- (e) a contact order;

“care plan” means a plan made by the Director for —

- (a) the consideration of the Court under section 26; or
- (b) the consideration of a child’s parent, relative, friend or other person connected with the child under section 119;

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“care responsibility” means the authority of a person to exercise the functions specified under section 36 in relation to a child;

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

“child care service” means a child care service designated by the Minister under section 5(1);

“consent” means the permission given unconditionally and with full understanding of what is involved;

“contact order” means an order made under section 49;

“couple” means a man and a woman —

- (a) who are married to each other; or
- (b) who are not married to each other, but are cohabiting;

“Court” means a District Court;

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

“Director” means a person appointed by the Public Service Commission as Director of Human Services within the Division;

“Division” means the Division responsible for human services;

“domestic violence” means an act of violence whether physical, emotional or verbal abuse perpetrated by a member of a household on a member of the same household which causes or is likely to cause physical, mental or emotional injury or harm to the abused party or another member of the household;

“emergency protection order” means an order made under section 34;

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“emotional abuse”, in relation to a child, means the child —

- (a) has suffered, is suffering or is likely to suffer in a way that has caused, is causing or is likely to cause harm to his or her well-being or development; or
- (b) is being or is likely to be exposed to domestic violence and the exposure is causing or is likely to cause harm to the psychological, emotional well-being or development of the child;

“financial abuse”, in relation to a child, includes a pattern of behaviour, the purpose of which is to exercise coercive control over, or exploit or limit a child’s access to financial resources so as to ensure financial dependence or defrauding a child of goods or property;

“foster care” means the temporary care provided by a foster parent, to a child who has been removed from his or her home by the Division, to ensure the safety and well-being of that child;

“foster child” means a child to whom foster care is provided;

“foster parent” means a person approved by the Director under section 66 to provide foster care to a child;

“guardian” in relation to a child, means a person who has been appointed by deed or will, or by order of a court of competent jurisdiction, with guardianship, to care for the personal or property interests of a child and includes a tutor appointed under the Civil Code, Cap. 4.01;

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

“home study assessment” means an assessment conducted by the Division and approved by the Adoption Committee on a person who makes an application under section 82;

“Minister” means the Minister responsible for human services;

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“neglect” means the failure of a parent or guardian to provide a child with adequate care and guidance or an act or omission by the parent or guardian with respect to that child that is not in the best interest of the child or likely to be harmful to the child;

“parent” includes —

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

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

“permanency”, in relation to a child, means the discharge of a child from a child care service to be reunified or adopted;

“physical abuse” means the intentional non-accidental use of bodily force by a person aimed at hurting, causing bodily harm or injuring a child;

“placement” means removing a child from his or her home and putting him or her in the care of a prospective adoptive parent or in the care of a child care service;

“police officer” means a member of the Royal Saint Lucia Police Force;

“prescribed” means prescribed by Regulations made under section 124;

“prospective adoptive parent” means a person approved by the Adoption Committee under section 84;

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“Register of Adoptions” means a Register of Civil Status referred to under section 6(1) of the Civil Status Act, Cap. 4.02;

“Register of Births” means a Register of Civil Status referred to under section 6(1) of the Civil Status Act, Cap. 4.02;

“Registrar” means the Registrar of Civil Status appointed under section 4 of the Civil Status Act, Cap. 4.02;

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

“removal” means taking of a child and placing the child in the care and protection of the Director under this Act or taking a child from previously approved placement;

“repealed Act” means the Adoption Act, Cap. 4.07;

“request for assistance” means a request for assistance under section 10;

“resident” means a person who is domiciled in Saint Lucia;

“reunification” means the return of a child to his or her family home;

“sexual abuse”, in relation to a child, includes the sexual exploitation of a child, molestation of a child, or the involvement of a child in unlawful sexual activity, prostitution or pornography;

“supervision order” means an order made under section 44;

“supervisor” includes the Director and a person appointed by the Director under section 24;

“verbal abuse”, in relation to a child, includes a negative defining statement of a child to him or her, or a statement of disapproval which is likely to cause emotional harm to the child.

(2) In this Act, a reference to the best interest of a child includes a reference to —

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- (a) the safety of the child;
- (b) the capacity of the parent of the child to properly discharge his or her parental responsibilities with respect to the child;
- (c) the physical, mental and emotional needs of the child, and the appropriate care or treatment required to meet those needs;
- (d) the physical, mental, emotional or psychological development of the child;
- (e) where appropriate, the views of the child;
- (f) the need to provide a secure place for the child and the development of a positive relationship as a member of a family;
- (g) the love, affection and ties between the child and other persons in the life of the child;
- (h) the capacity of a person other than a parent to exercise custody rights and duties respecting the child;
- (i) the continuity of the care for the child and the possible effect of disruption of that care on the child;
- (j) a disability which the child may have;
- (k) the wishes expressed by one or both parents of the child;
- (l) the relationship that the child has with his or her biological parents or siblings, if any and a significant other person including a relative if this is considered to be relevant;
- (m) the physical, emotional and educational needs of the child, including the child's sense of personal, family and cultural identity;
- (n) the child's age, maturity, level of understanding, gender, background and family relationships and other characteristics of the child, if this is considered to be relevant;

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- (o) the attitude of a person wishing to adopt the child towards the child and to parental responsibilities;
- (p) the nature of the relationship of the child with the person wishing to adopt the child;
- (q) the suitability and capacity of the person wishing to adopt the child, to provide for the needs of the child, including the child's emotional and intellectual needs;
- (r) the need to protect the child from abuse;
- (s) a wish expressed by the child;
- (t) the likely effect on the child throughout his or her life of having ceased to be a member of his or her biological or original family and become an adopted child;
- (u) harm which the child has suffered or is at risk of suffering;
- (v) the likely prejudicial effect in the delay in arriving at a decision relating to a child; and
- (w) the making of an adoption order in determining alternative forms of care to best meet the needs of the child.

(3) In this Act, a child is in need of care and protection if the child —

- (a) has suffered harm or is likely to suffer harm caused by —
  - (i) the neglect of the child,
  - (ii) the failure of the child's parent to adequately supervise or protect the child, or
  - (iii) the failure of the child's parent to provide for the adequate supervision or protection of the child;
- (b) has been abused or is likely to be abused by his or her parent or by another person and the parent knew or



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- ought to have known of the possibility of the abuse of the child and the parent failed to protect the child;
- (c) has been harmed or is likely to be harmed as a result of sexual abuse and the parent has failed or has not been able to protect the child;
  - (d) has suffered or is likely to suffer as a result of being exposed to domestic violence by or towards a parent or other person residing with the child;
  - (e) requires specific medical, physical, emotional or psychological treatment to cure, prevent or ameliorate the effects of physical abuse or emotional abuse suffered, and the parent does not, or refuses to obtain treatment or is unavailable or unwilling to consent to services for treatment to remedy or to ameliorate the effects of the abuse;
  - (f) has been abandoned, or is likely to be abandoned or the only parent of the child has died or is unavailable, unwilling to take custody of the child, and adequate provisions have not been made for the care of the child;
  - (g) suffers or is likely to suffer from a mental, emotional, physical or developmental condition, that, if not addressed, could seriously harm the child and the parent does not, or refuses to obtain treatment or is unavailable, unwilling or unable to consent to services or treatment to remedy or ameliorate the effects of the condition;
  - (h) is beyond the control of his or her parent or guardian;
  - (i) is destitute or wanders without a settled place of abode and without visible means of subsistence;
  - (j) begs or receives alms;
  - (k) frequents the company of a person of undesirable character;
  - (l) is in the custody of the Director, a child care service or another person and the parent of the child refuses or is unable to resume custody of the child; or

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- (m) has a parent or guardian who is by —
  - (i) reason of mental or bodily disease,
  - (ii) infirmity or other capacity, or
  - (iii) other circumstances,
 prevented from providing for the child's up-bringing, and there is no available person capable, fit or willing to undertake the care of the child.

**Purpose**

**3.—(1) The purposes of this Act are —**

- (a) to provide for the care and protection of a child from abuse and neglect;
- (b) to provide for the adoption of a child in Saint Lucia in a way that —
  - (i) promotes the well-being and the best interest of the child throughout his or her life, and
  - (ii) supports efficient and accountable practice in the delivery of an adoption service;
- (c) to ensure that in an action and decision made under this Act, whether by legal or administrative process, concerning a child, the safety, welfare and well-being of the child is of paramount consideration;
- (d) to ensure that if a child is able to form his or her own view on a matter concerning his or her safety, welfare or well-being, he or she is given an opportunity to express that view freely and that view is to be given due weight in accordance with the developmental capacity of the child and the circumstances;
- (e) to ensure that in deciding what action it is necessary to take, whether by legal or administrative process, in order to protect a child from harm, the course to be followed is the least intrusive intervention in the life of the child and his or her family, that is consistent with the paramount concern to protect the child from harm and to promote the development of the child;

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- (f) to ensure that if a child is temporarily or permanently deprived of his or her home or environment or cannot be allowed to remain in that home or environment in his or her own best interest, the child is entitled to special protection and assistance from the Government and his or her own name and identity is, if possible, preserved;
- (g) to ensure that if a child is placed in a child care service, arrangements are made in a timely manner, to ensure the provision of a safe, nurturing, stable and secure environment;
- (h) to ensure that if a child is removed from the home of his or her parent under this Act, whether temporarily or permanently, the child is entitled to a safe, nurturing, stable and secure environment and unless it is contrary to his or her best interest, and taking into account the wishes of the child, this may include the retention by the child of relationships with people significant to the child, including his or her biological or adoptive parents, siblings, extended family, peers, family friends and community;
- (i) to promote and encourage permanency for every child in need of care and protection;
- (j) to ensure that a child is able to participate in a decision that is likely to have a significant impact on the life of the child through the provision to the child of —
  - (i) adequate information, in a manner and language that he or she can understand, concerning the decisions to be made, the reasons for the intervention of the Director, the ways in which the child may participate in the decision making and relevant complaint mechanisms,
  - (ii) the opportunity to express his or her views freely, according to his or her abilities, age, maturity and developmental capacity,

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- (iii) assistance that is necessary for the child to express his or her views,
- (iv) information as to how the views of the child will be recorded and taken into account,
- (v) information with respect to the outcome of a decision concerning the child and an explanation of the reasons for the decision, and
- (vi) an opportunity to respond to a decision made concerning the child.

(2) For the purposes of subsection (1)(j), decisions that are likely to have a significant impact on the life of a child include —

- (a) a plan for an emergency or ongoing care, including placement of the child;
- (b) the development of a care plan under section 26;
- (c) the review of a care plan under section 27;
- (d) a court application concerning the child;
- (e) the provision of a counselling or treatment service; or
- (f) contact with a parent, relative or other persons connected with the child.

## PART I ADMINISTRATION

### Functions of the Minister

4. The functions of the Minister are —

- (a) to establish goals, objectives and guidelines for the delivery of child safety, well-being, care, protection and adoption;
- (b) to promote a partnership approach between the Government and agencies or corporations respecting the care and protection of a child;
- (c) to enter into an agreement and establish a procedure and protocol aimed at promoting the care and protection of a child and ensure that the agreement, procedure and protocol are implemented;

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- (d) to ensure that there is coordination between Government and a non-governmental agency in a matter relating to child care, protection and adoption; and
- (e) to administer this Act.

**Designation of child care service**

**5.—(1)** The Minister may, by Order published in the *Gazette*, designate as a child care service —

- (a) a boarding home;
- (b) a group home;
- (c) a foster home;
- (d) a residential care;
- (e) a training centre or training school;
- (f) an assessment centre;
- (g) a children's home; or
- (h) a place that provides substitute family care for a child until —
  - (i) the parent of a child is able to provide adequate care to meet the basic needs of the child,
  - (ii) the child can be reunited with his or her family, or
  - (iii) an arrangement for permanency is made for the child.

**(2)** A child care service shall —

- (a) provide care that is safe, positive and nurturing;
- (b) promote the educational, social and developmental well-being of a child;
- (c) provide services to a child that meet the child's individual needs, including the needs of a child with a disability, and services that enhance his or her physical, emotional, cognitive, social and cultural development; and

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- (d) provide the Division with a progress report on each child.

**Functions of the Director**

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

(2) Without prejudice to subsection (1), the Director shall —

- (a) promote and safeguard the safety, welfare and well-being of a child;
- (b) assess and investigate or cause an assessment to be undertaken or reports to be assessed and investigated under Part II;
- (c) oversee the operation and delivery of a child care service;
- (d) establish, with the approval of the Minister, policies and procedures for a child care service;
- (e) provide consultation and direction respecting a child care service under this Act;
- (f) establish procedures for the delegation of his or her functions and to establish policies respecting the direction and supervision of the delegation;
- (g) advise the Minister and other persons on matters relating to a child care service, or a programme, facility and resource necessary to carry out the requirements of this Act;
- (h) determine in association with the Adoption Committee the manner in which a child is selected for adoption;
- (i) establish guidelines for the conduct of negotiations entered into by the Adoption Committee with a parent who wishes to have a child selected by the Adoption Committee under this Act;

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- (j) receive applications for adoption made under this Act on behalf of the Adoption Committee and assist the Adoption Committee in the conduct of the investigation required under this Act with respect to the adoption of a child;
- (k) make arrangements for and in relation to the placement of a child;
- (l) take appropriate measures to ensure confidentiality of the records of a child, and the parent of a child;
- (m) issue guidelines to a child care service in giving effect to this Act; and
- (n) perform other functions as may be necessary to carry out this Act or as assigned by the Minister.

**Request for service from agencies**

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

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

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

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

(4) If a government department, an agency or a person to which a request is made under subsection (1) is not able to comply with the request, the government department, agency or person shall, by notice in writing to the Director, inform the Director of the reasons for not being able to comply with the request.

*Child (Care, Protection and Adoption) Act***Delegation**

8.—(1) Subject to subsection (2), the Director may delegate his or her functions to a staff member of the Division or to another person.

(2) The Director shall not delegate the power of delegation under subsection (1).

**Committees**

9. The Minister may, to assist the Director in the exercise of the Director's functions under this Act, establish and appoint the members of —

- (a) an Advisory Committee —
  - (i) to review this Act and the services performed under this Act, and
  - (ii) to report to the Minister on the operation and administration of this Act and whether or not the purposes of this Act are being achieved; and
- (b) another Committee.

**PART II****REQUEST, REPORT, INVESTIGATION AND ASSESSMENT****Request for assistance from parent or child**

10. A parent or a child may request assistance from the Director if the safety, welfare or well-being of a child is in jeopardy due to —

- (a) a serious or persistent conflict between the parent and the child; or
- (b) a parent being unable or the child determining that the parent is unwilling to provide adequate supervision for the child.

**Response to request**

11.—(1) In responding to a request under section 10, the Director shall consider the appropriateness of providing assistance as is necessary —

- (a) to enable the parent and the child to resolve the conflict without recourse to legal proceedings;



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- (b) to ensure that the child is adequately supervised; or
- (c) to enable the child and his or her parent to have access to a service.

(2) In making provision for the receipt of assistance under subsection (1), the Director shall ensure that the child has been counselled about the assistance necessary to resolve the conflict with his or her parent.

(3) If the Director is of the opinion that, despite the assistance provided under subsection (1), the safety, welfare or well-being of the child continues to be in jeopardy, the Director shall cause the child to be brought before the Court.

(4) The Court may place the child under the supervision of the Director, for a period not exceeding three years or may make a care order, if the Court is satisfied that —

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

(5) The Court may extend the period of placement under subsection (4) for a period the Court considers appropriate.

(6) During the period of placement under subsections (4) and (5), the Director shall determine permanency in relation to that child.

**Alternative dispute resolution**

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

- (a) ensure intervention so as to resolve a problem which may exist at an early stage;
- (b) develop a care plan under section 26;
- (c) reduce the likelihood for the making of a care application;

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- (d) reduce the incidence of breakdown in a child-parent relationship; and
- (e) work towards the making of a decision that is in the best interest of the child concerned if an application for a care order is made.

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

(3) A care plan developed under subsection (1)(b) during the course of alternative dispute resolution may be registered in the Court and may be used as evidence of an attempt to resolve the matter, without making an application for a care order.

**Report of child in need of care or protection**

**13.** —(1) A person who has knowledge or has reasonable grounds to suspect that a child is in need of care and protection shall immediately report the need to the Director or a police officer.

(2) A report under subsection (1) may be made anonymously.

(3) The police officer under subsection (1) shall report the information to the Director and provide the Director with additional information as is known or available to the police officer.

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

(5) A person who falsely and maliciously reports information indicating that a child is in need of care and protection commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or imprisonment for a term not exceeding one year.

**Protection of person**

**14.** —(1) If a person, in good faith, makes a report under section 13 —

- (a) the making of the report does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;

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- (b) liability is not incurred for defamation as a consequence of the report;
- (c) the making of the report does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy;
- (d) the report or evidence of its contents, is not admissible in proceedings, other than in proceedings relating to the care and protection of a child in the Court;
- (e) the person cannot be compelled in proceedings, to produce the report or a copy of or an extract from the report or to disclose or give evidence of its contents; and
- (f) the identity of the person who made the report or information from which the identity of that person could be deduced, must not be disclosed to another person, except with —
  - (i) the consent of the person who made the report, or
  - (ii) the leave of the Court before which proceedings relating to the report are conducted.

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

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

(4) Subsection (1)(f) does not prevent the disclosure of information from which the identity of the person may be deduced if the prohibition on the disclosure of that information would prevent the proper investigation of the report.

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

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

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

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

(8) A report that is certified by the Director is admissible in proceedings relating to the care and protection of a child.

**Investigation and assessment**

**15.—**(1) The Director shall conduct an investigation and assessment of the circumstances concerning a child, regardless of the consent of a person if —

- (a) it appears to the Director that the child may be in need of care and protection;
- (b) the parent or the child requests assistance under section 10; or
- (c) a person makes a report under section 13.

(2) An investigation and assessment must be conducted within seventy-two hours of the appearance by the Director that a child may be in need of care and protection, receipt of the request for assistance or the receipt of the report.

**Conduct of investigation and assessment**

**16.—**(1) In conducting an investigation and assessment under section 15, the Director may —

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

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- (d) interview a parent of a child;
- (e) interview a person who cares for a child or a person who has had an opportunity to observe the child;
- (f) interview a person who provides health, social, educational and other services to a child or a parent of the child;
- (g) request information to be provided to the Director from medical, social, educational and other service records concerning a child, a parent of the child or both;
- (h) cause an examination to be made of the physical, mental and emotional health and development of a child;
- (i) request a parent of a child to undergo an examination of his or her physical, mental, or emotional health or other assessment;
- (j) cause an analysis of the economic and other factors affecting the life of a child; or
- (k) consult with other persons and gather other evidence as may be necessary to complete the investigation.

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

**Order for the provision of information or assistance**

**17.—**(1) The Director may make an application to the Court for an order compelling a person to provide the information or assistance sought in the conduct of the investigation by the Director under section 16.

(2) On an application under subsection (1), the Court may order a person —

- (a) to provide information under subsection (1) to the Director;
- (b) to allow the Director access to a person, place or record;  
or
- (c) to co-operate with an investigation by the Director.

*Child (Care, Protection and Adoption) Act***Report of investigation and assessment**

**18.—**(1) Subject to subsection (2), the Director shall provide a report of the results of an investigation or assessment to —

- (a) the parent of the child who is the subject of the investigation; and
- (b) the child, if the child is at least twelve years old and is capable of understanding the circumstances of the investigation.

(2) A report shall not be provided under subsection (1) if —

- (a) the Director has reasonable grounds to believe that the report will endanger the safety of the child or another person; or
- (b) a criminal investigation related to the matter has been initiated or is likely to occur.

(3) A person who intimidates, threatens or obstructs the Director in the exercise of his or her functions under this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term of imprisonment not exceeding three months.

**Action by Director**

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

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

- (a) provide or arrange for the provision of support services for the child or his or her family or both;
- (b) develop, in consultation with the parents of the child, whether jointly or separately, a care plan to meet the needs of the child or his or her family which does not involve taking the matter before the Court;

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- (c) ensure the protection of the child by exercising his or her powers to remove the child under this Act; or
- (d) apply to the Court for a care order.

(3) The Director may decide that no action is necessary if he or she considers that proper arrangements exist for the care and protection of the child and the circumstances which led to the investigation or assessment have been or are being adequately dealt with.

(4) If the Director decides that no action is necessary under subsection (3), the Director shall make a record of the reasons for his or her decision.

**Warrant**

**20.—**(1) The Director may make an application without notice to the Court for the issue of a warrant.

(2) On an application under subsection (1), the Court may issue a warrant to the Director under this section if the Court is satisfied that —

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

(3) Notwithstanding subsection (1), in the case of an emergency, the Director may, with the assistance of a police officer, and without the need for further authority other than that conferred by this subsection, enter a place or premises where a child is believed to be present or to reside and search for, locate, remove and take the child into custody if the Director has reasonable grounds to believe that —

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

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

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

**Assumption of care responsibility by the Director**

**21.—**(1) The Director may assume the care responsibility of a child by notice in writing signed by the Director and served on the person, whether or not a parent of the child, who in the opinion of the Director appears to be in charge of the place or premises if the Director —

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

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

**Prompt application to court for a care order**

**22.** If a child is taken into custody under section 20 or the care responsibility of the child is assumed by the Director under section 21, the Director shall immediately or within twenty-four hours of removing the child, apply to the Court for a care order in respect of the child as follows —

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

**Record of report and subsequent action**

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

- (a) a report made to or by the Director;
- (b) action taken under this Act, as a consequence of a report; and



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- (c) a disposition of and dealings with a child to whom the report and action referred to in paragraph (b) relate.

(2) The record of a report kept under subsection (1) must be as prescribed.

### **PART III**

#### **CARE ORDER**

##### *Division 1* *Care Application*

#### **Care application**

**24.—**(1) The Director may make a care application to the Court —

- (a) in the case of a supervision order, if the Director is satisfied that there is need for continuous supervision enforced by the supervision order;
- (b) in the case of an emergency protection order —
  - (i) within twelve hours of the removal of a child under section 22,
  - (ii) vesting care responsibility in a child care service —
    - (A) after all possible alternative methods of assisting the child have been tried without success and the abuse or harm from which the child is suffering or is likely to suffer requires his or her removal from where he or she is living; or
    - (B) if the danger to which the child is exposed is so severe as to require his or her immediate removal from where he or she is living.

(2) A care application must —

- (a) specify the particular care order sought and the grounds on which it is sought; and
- (b) be accompanied by —

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- (i) a care plan,
- (ii) an affidavit in support from the Director, and
- (iii) other supporting documents.

(3) Before making a care application for a supervision order under subsection (1)(a), the Director shall appoint a person to perform the duties of supervisor and to offer services the Director considers appropriate.

(4) The Director shall, in making a care application to the Court under subsection (1), furnish details to the Court of —

- (a) the support and assistance provided for the safety, welfare and well-being of the child; and
- (b) an alternative action plan to a care order that was considered, prior to the making of the care application and the reasons the alternative action plan was rejected or abandoned.

(5) The Court shall not —

- (a) dismiss a care application in relation to a child; or
- (b) discharge a child who is under the care responsibility of the Director from that care responsibility,

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

**Notification of care application**

**25.—**(1) Subject to subsection (2) the Director shall make all reasonable efforts to notify the parents of a child of the making of a care application by the Director in relation to the child.

(2) The Director shall, as soon as possible, after a care application is made, cause a copy of the care application to be served on the parents of the child.

(3) The Director shall notify the child who is the subject of a care application of the making of the application and the notification shall

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be made in a language and in a manner that the child can understand having regard to his or her age, maturity and the circumstances.

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

**Consideration of care plan**

**26.—**(1) A care plan must outline the steps to be taken to protect the welfare of a child and to reduce the likelihood of further harm to him or her and must include reunification.

(2) If the Director makes an assessment that there is no realistic possibility of reunification, the Director shall prepare a care plan for suitable adoption or guardianship for the child and submit it to the Court for the Court's consideration.

(3) In preparing a care plan under subsection (1), the Director may consider and state what is the preferred option for the child.

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

**Review of care plan**

**27.—**(1) A care plan shall be reviewed by the Court within six months after the last occasion on which it was considered by the Court.

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

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

**Withdrawal of care application**

**28.—**(1) The Director may, with the leave of the Court, make an application for leave to withdraw a care application.

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(2) An application for leave to withdraw a care application under subsection (1) must be accompanied by —

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

*Division 2*

*Care and Protection Order, Emergency Protection Order, Assessment Order, Supervision Order and Contact Order*

**Making of care order**

**29.** —(1) If the Director makes a care application, the Court may make a care order.

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

*Care and Protection Order*

**Care and protection order**

**30.** —(1) The Court may make a care and protection order in relation to a child if it is satisfied that the child is in need of care and protection.

(2) The Court shall not make a care and protection order under subsection (1) unless the Court is satisfied that —

- (a) a parent is not available to care for the child as a result of death or incapacity of the parent or for another reason;
- (b) the parents acknowledge that they have difficulties in caring for the child;
- (c) the child has been, or is likely to be abused;
- (d) subject to subsection (3), the basic physical, psychological, emotional or educational needs of the child are not being met, or are not likely to be met by his or her parents;

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- (e) the child is suffering or is likely to suffer developmental impairment or psychological harm, as a consequence of the domestic environment in which the child is living;
- (f) the child has exhibited sexually abusive behaviour and an order of the Court is necessary to ensure his or her access to, or attendance at an appropriate therapeutic service;
- (g) the child is subject to a care and protection order issued by another jurisdiction that is not being enforced; or
- (h) a care plan has been considered.

(3) The Court shall not conclude that the basic physical, psychological, emotional or educational needs of a child are not likely to be met solely on the grounds of the disability of a parent or on the grounds of poverty.

**Effect of care and protection order**

**31.** A care and protection order authorizes the Director —

- (a) to remove a child;
- (b) to assist the child and those with whom the child is living or wishes to live with to examine the circumstances that have led to the making of the order; and
- (c) to take steps to resolve or ameliorate the problem so as to ensure permanency.

**Duration of care and protection order**

**32.—(1)** A care and protection order is valid for a period not exceeding two years or until the child attains the age of eighteen years, whichever is the earlier.

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

**Duty of Director after termination of care and protection order**

**33.—(1)** The Director shall work with the parent of the child after the termination of a care and protection order.

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(2) The Director shall —

- (a) arrange family and child counselling for the child and his or her family after reunification; and
- (b) seek the assistance of a person in the family or community who can help in the process of resolving the problems which caused the care and protection order to be made.

(3) If a child is removed under section 31(a), the Director shall communicate with the parent of the child, to —

- (a) inform the parent of the progress of the child; and
- (b) arrange a trial period for reunification.

*Emergency Protection Order*

**Emergency protection order**

**34.—**(1) The Court may make an emergency protection order in relation to a child if it is satisfied that the child is suffering or is likely to suffer harm and is in urgent need of care and protection.

(2) The Court may, by an emergency protection order, vest the care responsibility of a child in the Director and a child care service.

(3) The Court may make an order prohibiting a person from doing anything that could be done by the parent in carrying out his or her parental responsibility.

**Duration of emergency protection order**

**35.—**(1) An emergency protection order has effect for a period not exceeding thirty days, unless the order is extended under subsection (2).

(2) An emergency protection order may, while it remains in effect, be extended once for a period not exceeding thirty days.

**Care responsibility**

**36.—**(1) The Director and a child care service specified in an emergency protection order under section 34(2) shall in exercising care responsibility —

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- (a) consent to the medical treatment of the child not involving surgery, on the advice of a medical practitioner;
- (b) consent to medical treatment involving surgery if a medical practitioner certifies in writing that the surgery needs to be carried out as a matter of urgency and in the best interest of the child;
- (c) correct and manage the behaviour of the child;
- (d) give permission for the child to participate in activities;
- (e) encourage contact of the child with his or her parent, relative and friends unless it is not in the best interest of the child;
- (f) ensure that the development of the child particularly the child's health and education, is given paramount attention;
- (g) assist in reunification; and
- (h) make other decisions that are required to be made with respect to the day-to-day care of the child.

(2) If reunification is not possible, the child shall, where possible, be cared for and assisted by the child care service specified in the emergency protection order and the Director until permanency is achieved.

**Delegation of care responsibility**

**37.—**(1) The Director and a child care service specified in an emergency protection order under section 34(2) may delegate care responsibility to a relative of the child, or to a person approved by the Court.

(2) Notwithstanding subsection (1), the Director may delegate the care responsibility for a child on an interim basis to a person other than a person specified in subsection (1) but the Director shall delegate that responsibility to a person so specified as soon as is reasonably practicable.

(3) The exercise of the care responsibility by a person under subsection (1) or (2) is subject to directions given to the person by

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the Director or the child care service specified in an emergency protection order.

**Discharge of child from care responsibility**

**38.**—(1) The Director and child care service may make an application to the Court for the discharge of a child from care responsibility with or without an undertaking being given by the child or the parent of the child.

(2) An undertaking under subsection (1) shall be in writing and shall be signed by the child or the parent of the child.

(3) In determining whether or not to discharge a child from care responsibility under subsection (1), the Director and child care service specified in an emergency protection order shall have regard to —

- (a) views expressed by the child as to whether he or she wishes to be discharged;
- (b) views expressed by the child in relation to reunification;
- (c) whether the discharge of the child by the Director or child care service specified in an emergency protection order is likely to protect the safety, welfare and well-being of the child; and
- (d) whether the failure of the Director or child care service specified in an emergency protection order to discharge is likely to endanger the safety, welfare and well-being of the child or any other person.

(4) If the Director and child care service specified in an emergency protection order intend to discharge a child from care responsibility, the Director and child care service specified in an emergency protection order shall explain to the Court why care responsibility with respect to the child is no longer required.

(5) After reunification, the Director may visit the child and his or her family twice a month for six months for the duration of the emergency protection order or until the emergency protection order is varied or revoked.



*Child (Care, Protection and Adoption) Act***Transfer of child from child care service**

**39.**—(1) A person shall not transfer a child from a child care service without the consent of the Court.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding one year.

*Assessment Order***Assessment order**

**40.**—(1) Subject to subsection (4) the Court may make an assessment order for —

- (a) the physical, psychological, psychiatric or other medical examination of a child or a parent of the child; or
- (b) a child and family assessment; or
- (c) the matters referred to in paragraphs (a) and (b).

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

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

(4) The Court may make an assessment order on its own motion, whether or not an application has been made for a care order under section 29.

**Matters for consideration in making assessment order**

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

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

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

(3) An assessment under subsection (2) must be carried out with the consent of the person whose capacity is to be assessed.

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

**Information concerning assessment**

**42.** A child must be informed of the reasons for an assessment in a language and a manner that he or she understands, having regard to his or her age, maturity and circumstances.

**Report of assessment**

**43.** A report of an assessment prepared under section 40(2) shall be submitted to the Court in the prescribed manner.

*Supervision Order***Supervision order**

**44.—**(1) The Court may make a supervision order placing a child in relation to whom a care application has been made under the supervision of the Director if the Court is satisfied that the child is in need of care and protection.

(2) In making a supervision order, the Court shall specify —

- (a) the reasons for making the supervision order;
- (b) the purpose of the supervision order; and

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- (c) the length of the supervision order.

**Requirements of supervision order**

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

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

**Duration of supervision order**

**46.—(1)** The Court may make a supervision order for six months and a supervision order may be extended for a period not exceeding six months.

(2) An application for extension of a supervision order shall be supported by a written report from the Director.

(3) Notwithstanding subsection (2), the Court may, on its own motion and after giving the parties an opportunity to be heard, extend the period of a supervision order for a further period, not exceeding six months as it considers necessary in the circumstances.

(4) The Court may require the Director to present —

- (a) a report before the end of the period of supervision which sets out —
  - (i) the outcome of the supervision,
  - (ii) whether the purpose of the supervision has been achieved,
  - (iii) whether there is need for an extension of the period of supervision under subsection (1),

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- (iv) whether another order should be made for the care and protection of the child;
- (b) a report during the period of supervision which describes the progress of the report; or
- (c) reports under paragraphs (a) and (b).

**Duties of the Director in relation to a supervision order**

**47.** The duties of the Director while a supervision order is in force with respect to a child are —

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

**Enforcement of supervision order**

**48.—(1)** The Director shall enforce a supervision order and inspect the premises in which the child resides.

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

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

(3) If the Court finds that a supervision order has been breached, the Court may make an order it considers appropriate in the circumstances.

*Child (Care, Protection and Adoption) Act**Contact Order***Contact order**

**49.**—(1) If a child is the subject of proceedings before a Court, the Court may, on an application made by a party to the proceedings, make a contact order in respect of the following —

- (a) stipulating minimum requirements concerning the frequency and duration of contact between the child and his or her parent, a relative or another person of significance to the child;
- (b) that contact with a specified person be supervised;
- (c) denying contact with a specified person if contact with that person is not in the best interest of the child; or
- (d) that contact with the child be supervised by the Director.

(2) A contact order under —

- (a) subsection (1)(a) does not prevent more frequent contact with a child with the consent of a person having parental responsibility for the child;
- (b) subsection (1)(b) may be made only with the consent of the person specified in the order and the person who is required to supervise the contact.

*General***Interim or final order**

**50.**—(1) The Court may make an interim care order or a final care order.

(2) The Court shall not make a final care order unless it finds that permanency has been appropriately and adequately addressed.

**Making of interim care order**

**51.**—(1) The Court may make an interim care order in relation to a child before a care application is finally determined if the Court considers an interim care order appropriate for the welfare, safety, and

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well-being of a child in proceedings before it, pending the conclusion of the proceedings.

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

**Child and family assessment report before final order**

**52.**—(1) The Director shall submit to the Court for consideration a written child and family assessment report in respect of a child before the Court makes a final order.

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

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

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

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

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

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

**Parties to receive copy of final order**

**53.** The Court shall take action as is reasonably practicable to ensure that each party to a care application receives a copy of a final order of the Court.

*Child (Care, Protection and Adoption) Act***Variation and revocation of care order**

**54.—**(1) An application for the variation or revocation of a care order may be made with leave of the Court by —

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

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

(3) An applicant under subsection (1)(b) or (c) shall notify the Director of the application and the Director is entitled to be a party to the application if —

- (a) the application for the variation or revocation is in relation to a care order, other than a contact order;
- (b) the application seeks to change the parental responsibility for the child; and
- (c) the Director is not a party to the proceedings.

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

(5) In determining whether to grant leave to vary or revoke a care order, the Court shall take the following matters into consideration —

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

*Child (Care, Protection and Adoption) Act*

(6) If —

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

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

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

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

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

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

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



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**Escape from a child care service**

**55.**—(1) A child who runs away from a child care service specified under a care order may, pending investigation —

- (a) be returned to the child care service specified in the care order; or
- (b) be put in another child care service to be determined by the Court.

(2) If returning the child under subsection (1)(a) is not in the best interest of the child, the Director may make an application to the Court for variation of the care order.

(3) In making a determination under subsection (2), the Director may interview the manager of the child care service.

**PART IV**  
**OTHER ORDERS**

**Other orders which may be made by the Court**

**56.** The Court may, in addition to making a care order, make the following orders —

- (a) an order —
  - (i) accepting undertakings,
  - (ii) for the provision of support services to the child or a parent of the child, or
  - (iii) for the child or a parent of the child to attend a therapeutic programme or a treatment programme;
- (b) a compulsory assistance order;
- (c) a contribution order; or
- (d) recovery order.

**Order accepting undertakings**

**57.**—(1) The Court may, in considering a care application, make an order accepting an undertaking given by the parent of a child, with respect to the care and protection of the child.

*Child (Care, Protection and Adoption) Act*

(2) An undertaking under subsection (1) —

- (a) must be in writing signed by the person giving the undertaking; and
- (b) remains in force until the child attains the age of eighteen years or as may be specified in the undertaking.

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

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

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

(6) If the Court finds that the undertaking under subsection (1) has been breached, it may make an order it considers appropriate in the circumstances.

**Order for the provision of support services**

**58.**—(1) The Court may, to facilitate reunification, make an order directing a person or child care service named in the order to provide support services to a child or the parent of a child for a period not exceeding twelve months or as stipulated in the order.

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

- (a) it gives notice of its intention to consider making the order to the person or child care service who would be required to provide support under the order;
- (b) the person or child care service is given an opportunity to appear and be heard by the Court;
- (c) the person or child care service consents to the making of the order; and
- (d) the views of the child in relation to the proposed order have been taken into account.

*Child (Care, Protection and Adoption) Act*

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

**Support services by government department, agency or funded non-government agency**

**59.** A government department, agency or a funded non-government agency that is requested by the Court to provide support services under section 58 shall use its best efforts to provide the support services.

**Order to attend therapeutic or treatment programme**

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

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

in accordance with the terms specified in the order.

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

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

**Compulsory assistance order**

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

- (a) compulsory assistance is necessary for the child; and
- (b) a less intensive means would be inadequate for the safety of the child.

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

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- (a) the child will receive treatment, therapy or other services that will assist the child to deal with the problems that have led the child to be a danger to himself or herself;
  - (b) the programme offered to the child is likely to lead to a significant improvement in his or her circumstances; and
  - (c) the necessary resources have been allocated by the person who will be required to provide intensive supervision of the child.
- (3) A compulsory assistance order must make provision for —
- (a) the person who will be responsible for the child under the order;
  - (b) the place at which the child is to reside;
  - (c) a description of the therapeutic programme and other support to be provided to the child;
  - (d) the maintenance of twenty-four hour supervision of the child;
  - (e) subject to subsection (4), the duration of the order; and
  - (f) other matters the Court determines.

(4) The duration of a compulsory assistance order must not exceed three months.

(5) For the purposes of this section “compulsory assistance” means support in the form of intensive care and aid that is necessary to protect the child from suicide or other life threatening or serious self-destructive behaviour.

**Contribution order**

**62.**—(1) If a child has been placed in a child care service, the Court may make a contribution order compelling the parent of the child to contribute towards the maintenance of the child.

(2) The contribution under subsection (1) must be reasonable and within the means of the parent and may be varied or dismissed

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by the Court if there is a change in the circumstances of the parent or the child.

(3) A contribution order made under subsection (1) remains in force as long as the child is in the child care service.

(4) A parent in relation to whom a contribution order has been made may make an application to the Court for the order to be varied or dismissed on the ground that the circumstances have changed since the order was made.

**Orders with significant impact on persons**

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

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

**Application for recovery order**

**64.** The Director or a parent may make an application for a recovery order.

**Recovery order**

**65.—**(1) If a Court has been provided with information on oath that a child has been removed unlawfully, it may make a recovery order.

(2) A recovery order may —

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

*Child (Care, Protection and Adoption) Act***PART V  
FOSTER CARE****Conditions for foster care**

**66.**—(1) A person may make an application in the prescribed form to the Director to foster a child.

(2) A relative of a child may foster a child without applying to the Director.

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

(4) The Director shall cause a Register of approved foster parents to be maintained.

(5) If an applicant is found to be a suitable foster parent, the Director shall ensure that the applicant is trained in his or her roles, functions, and duties as a foster parent.

**Responsibility of foster parent**

**67.** A foster parent shall be responsible for the safety, education and welfare of the foster child in the care of the foster parent.

**Visits to child in foster care**

**68.**—(1) The Director shall authorize a person to visit a foster child and the premises in which he or she is being kept in order to be satisfied as to whether the safety, educational and welfare needs of the child are being met and to give, if necessary, advice or directions to the foster parent to the care of the foster child.

(2) If a person authorized under subsection (1) is refused admission to premises or has reason to believe that a foster child is being kept in premises in contravention of this Act, the person may apply to the Court for a warrant to enter the premises.

(3) If the Court is satisfied with information on oath that admission has been refused, or that there is reasonable grounds to believe that an offence under this Part has been committed, the Court may issue a warrant authorising the person to enter the premises to take the foster child to a child care service and to detain him or her

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there, until the foster child can be brought before a court for child care proceedings.

(4) A court issuing a warrant under this section may by the same warrant cause a person accused of an offence in respect of the foster child to be apprehended and brought before the Court.

**Persons prohibited from receiving a foster child**

**69.—**(1) A person shall not receive or keep a foster child without the consent of the Director —

- (a) if that child has been previously taken from the care of that person under this Part; or
- (b) in premises from which a child has been removed under this Part by reason of the premises being dangerous or unsanitary.

(2) A person who keeps or causes a foster child to be kept in contravention of this section, commits an offence and is liable on summary conviction to a fine not exceeding five hundred dollars and to imprisonment for a term not exceeding six months and the Court may make other orders in respect of that child.

**Transfer of foster child kept in unsuitable premises or by unsuitable persons**

**70.** If a foster child is to be received or is being kept —

- (a) in premises which are unsanitary, overcrowded or dangerous;
- (b) by a person who by reason of old age, infirmity, ill-health, negligence, immorality or criminal conduct or for other reasons is unfit to care for the foster child;
- (c) in an environment which is detrimental to the foster child;
- (d) in premises or by a person in contravention of the provisions of this Part,

the Director may —

- (i) if the foster child is the subject of a care order

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placing him or her in foster care, apply to the Court for an order to transfer the foster child to the care of another approved foster parent until the foster child is returned to his or her parent or other arrangements are made with respect to the foster child, or

- (ii) if the foster child is not the subject of a care order placing him or her in foster care, transfer the foster child to another approved foster parent until the foster child is returned to his or her parent or other arrangements are made with respect to the foster child.

**Notice to be given of change of residence**

**71.—**(1) A person who has received a foster child and intends to move to another residence, shall, not less than seven days before moving, give notice to the Director of the intended change of residence.

(2) If an immediate change of residence is necessitated by an emergency, a notice under subsection (1) may be given within twenty-eight hours after the change of residence.

**Foster parent to give notice**

**72.** A foster parent shall, if a foster child leaves the foster home without permission, notify the Director within twenty-four hours of the departure of the foster child.

**PART VI  
ADOPTION**

*Division 1  
Adoption Committee*

**Establishment of Adoption Committee**

**73.—**(1) There is established an Adoption Committee.

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



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(3) The Minister shall appoint the following persons as members of the Adoption Committee —

- (a) the Director, who is the Chairperson;
- (b) a family case worker;
- (c) a paediatrician;
- (d) a mental health practitioner;
- (e) a representative from the Attorney General's Chambers;  
and
- (f) one representative from a non-governmental organization whose mandate reflects the care and protection of children registered by the Ministry.

(4) A person under subsection (3)(f) must possess the relevant experience, qualifications and expertise in the field of child care, protection and adoption.

**Terms of appointment**

**74.** A member of the Adoption Committee holds office for a period not exceeding two years and is eligible for reappointment.

**Functions of the Adoption Committee**

**75.** —(1) The Adoption Committee shall act as an advisory body to the Division with respect to matters relating to adoption.

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

- (a) assess adoption applications received by it from the Division and make recommendations to the Director as it considers fit including recommendations with respect to the suitability of a person to adopt a child;
- (b) assess the suitability of a person to adopt a child;
- (c) prepare and maintain an Adoption List;
- (d) take appropriate measures to ensure confidentiality of the records of a child, the biological parents of a child and the adoptive parents of the child; and

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- (e) perform other functions as may be necessary to carry out this Act.

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

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

**Secretary to the Adoption Committee**

**76.** The Minister shall designate a public officer to serve as the Secretary of the Adoption Committee.

**Office of the Adoption Committee**

**77.** The Minister shall designate an office for the Adoption Committee and the records of the Adoption Committee must be kept there securely and confidentially.

**Oath or affirmation of secrecy**

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

**Conduct of meetings of the Adoption Committee**

**79.** —(1) The Adoption Committee shall meet once a month at a time and a place the Director decides.

(2) The Chairperson may call a meeting as necessary if five days notice is given to the members of the Adoption Committee, indicating the day, time and place of the meeting.

(3) The Chairperson shall preside at a meeting of the Adoption Committee.

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(4) If the Chairperson is unable to preside at a meeting of the Adoption Committee, he or she shall appoint another member of the Adoption Committee to preside at that meeting.

(5) The quorum for a meeting of the Adoption Committee is four members.

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

**Report to the Minister**

**80.** The Adoption Committee shall report to the Minister on the conduct of the business, activities and other affairs of the Adoption Committee.

*Division 2*

*Placement of a child for adoption*

**Placement of a child for adoption**

**81.—**(1) The Division may place a child for adoption with a prospective adoptive parent if it is satisfied that the child be placed for adoption.

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

**Application for placement of a child**

**82.—**(1) A person may make an application to the Division to have a child placed in his or her home for adoption if that person —

- (a) has attained the age of twenty-five years;
- (b) is at least twenty-one years older than the child, except where he or she is the spouse of the parent of the child or a relative of the child; and
- (c) has been resident in Saint Lucia for at least one year.

(2) An application under subsection (1) must be in the prescribed form and accompanied by the prescribed fee.

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

(4) The Court may waive the requirements under subsection (1) if it determines that —

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

**Home study assessment**

**83.—**(1) If the Division receives an application under section 82(1), the Division shall conduct a home study assessment on the applicant in order to determine the suitability of the applicant to be an adoptive parent and the capability and willingness of the applicant to assume the responsibility as a parent of the child.

(2) The Division shall compile a report of its findings under the home study assessment conducted under subsection (1) and submit the report to the Adoption Committee together with recommendations of the Division.

**Decision of the Adoption Committee**

**84.—**(1) If, having regard to the application for adoption under section 82, the Adoption Committee determines that an applicant —

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

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- (i) inform the Division of its decision,
- (ii) issue a notice of refusal to the applicant in the prescribed form, and
- (ii) attach the reasons for its decision.

(2) The Division may place a child for adoption with a prospective adoptive parent if the Adoption Committee makes a decision under subsection (1)(a).

**Review of decision of Adoption Committee**

**85.** An applicant who is aggrieved by a decision of the Adoption Committee made under section 84, may, not later than two weeks after the date of receipt of the written notice of the decision from the Adoption Committee, make an application to the Court in the prescribed form for review of that decision.

**Confidentiality of information**

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

(2) A member of the Adoption Committee who contravenes subsection (1) is liable to be dismissed as a member of the Adoption Committee or, in the case of all members of the Adoption Committee is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding one year.

**Adoption List**

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

- (a) the name of each prospective adoptive parent, in a form that —
  - (i) sets out the chronological order in which applications were received by the Adoption Committee,

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

**Adoption Committee to have regard to Adoption List**

**88.** In making arrangements for and in relation to the placement of a child for adoption, the Adoption Committee shall, having regard to the Adoption List and without prejudice to its duty, consider other relevant matters, including —

- (a) the welfare and interests of the child; and
- (b) the wishes of the parent of the child and the prospective adoptive parent.

**Duties of the Division prior to placement**

**89.—(1)** Before a child is placed for adoption with a prospective adoptive parent, the Division shall —

- (a) provide counselling and information on adoption and alternatives to adoption to the biological parents of the child or another person having care and protection of the child who is requesting a placement of that child for adoption;
- (b) if a biological parent of the child wishes to select the child's prospective adoptive parent, provide the biological parent with information about the prospective adoptive parent;
- (c) obtain as much information as possible about the medical and social history of the biological parents of the child and preserve the information for the child;

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- (d) give the prospective adoptive parent information about the medical and social history of the biological parents of the child;
- (e) ensure that the child —
  - (i) if sufficiently mature, has been counselled about the effects of adoption, and
  - (ii) if twelve years of age or older, has given consent to the adoption;
- (f) make reasonable efforts to obtain consent under section 99;
- (g) enter into a placement agreement with the prospective adoptive parent under subsection (2).

(2) A placement agreement under subsection (1)(g) must —

- (a) be for a period of three months;
- (b) be made in the prescribed form; and
- (c) specify the terms and conditions of the placement and the manner and the circumstances under which the placement agreement may be revoked.

(3) The Division may reduce or extend the placement period if it is in the best interest of the child to do so.

(4) The date on which a placement agreement comes into effect is the date on which the child is placed in the home of the prospective adoptive parent.

**Supervision of placement**

**90.**—(1) If a placement agreement has been entered into under section 89, and a child is placed in the home of a prospective adoptive parent, the Division shall appoint a person to supervise the placement of the child.

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

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

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

(4) The post placement report must include —

- (a) the relevant circumstances of the placement;
- (b) the relations between the child and the prospective adoptive parents and members of the household of the prospective adoptive parents;
- (c) the care the child is receiving;
- (d) whether the child understands the meaning of adoption;
- (e) whether the child has views on the proposed adoption and proposed change of the name of the child; and
- (f) further information as the Court requires for the purpose of considering an application for an adoption order made under section 95.

**Transfer of care responsibility during placement**

**91.** If a child is placed in the home of a prospective adoptive parent, the Director retains the care responsibility of the child —

- (a) until an adoption order is made;
- (b) if the consent to the adoption is withdrawn; or
- (c) if the placement agreement is revoked under section 89(2).

**Return of child to child care service**

**92.** If an application for an adoption order in respect of a child is refused, the prospective adoptive parent shall, within seven days of the date on which the application was refused return the child to the child care service and the manager of the child care service shall receive the child into the child care service and keep the child there



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for the unexpired period, if any, of the term for which he or she was originally sent to the child care service.

**Contravention of placement requirements**

**93.**—(1) Unless a child has been placed by the Division under this Act, a person shall not —

- (a) place or arrange the placement of a child for the purposes of adoption; or
- (b) receive a child in his or her home for the purpose of adoption.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding two years.

**Advertising**

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

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding two years.

*Division 3*  
*Adoption Proceedings*

**Application for adoption order**

**95.**—(1) Within four weeks of the decision of the Adoption Committee, a prospective adoptive parent with whom a child has been placed for adoption may make an application to the Court for an adoption order under this Part.

(2) An application under subsection (1) must be accompanied by the following documents —

- (a) the consent required for the adoption, an order dispensing with consent or an application to dispense with consent;

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- (b) the birth certificate of the child or if it cannot be obtained, satisfactory evidence of the facts relating to the birth of the child;
- (c) a copy of the report of the home study assessment;
- (d) a copy of the notice of approval of application for placement under section 84;
- (e) a copy of the placement agreement and a statement from the Director that applicable placement requirements as stipulated in the placement agreement have been met; and
- (f) other information prescribed or required by the Court.

(3) The Court may dispense with the need to provide a document under subsection (2).

(4) If a parent or other person having custody of a child requires that the parentage or the surname of the child be kept secret, the documents referred to in subsection (2)(a) and (b) must be sealed or masked to prevent the identification of the biological parent of the child or the disclosure of the surname of the child.

(5) If the biological parent of a child does not know the identity of a prospective adoptive parent of his or her child and an applicant does not know the identity of the biological parent of the child he or she is desirous of adopting, the Court may order that the identity of either party or information that could reveal their identities not be disclosed in a document.

(6) The Court may require the Division to inquire into matters respecting an application for an adoption order that the Court considers necessary.

**Notice of application to Adoption Committee**

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

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

- (a) a copy of the report of the home study assessment conducted on the prospective adoptive parent;
- (b) a copy of the post placement report prepared and approved under section 90;
- (c) certification in the prescribed manner, that the prospective adoptive parent has been resident in Saint Lucia for at least one year;
- (d) a copy of the placement agreement and a statement from the Director that applicable placement requirements as stipulated in the placement agreement have been met;
- (e) a recommendation on an issue relating to adoption which the Adoption Committee considers necessary; and
- (f) other information which the Adoption Committee considers necessary to enable the Court to determine whether the proposed adoption is in the best interest of the child.

**Search of documents**

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

**Hearing**

**98.** The hearing of an application made under section 95 must be held in private and access to the files of the Court concerning an application for adoption is restricted unless the Court determines otherwise, having regard to the best interest of the child.

**Consent to be obtained prior to adoption**

**99.—**(1) Subject to section 100, the Court shall not make an adoption order in relation to a child unless consent is obtained from —

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

(2) Consent given by the biological mother to the making of an adoption order is invalid if it is given less than six weeks after the birth of the child.

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

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

(5) Notwithstanding subsections (2) and (3), the Court may approve an adoption if it is in the best interest of the child.

**Form of consent**

**100.**—(1) Consent to the adoption of a child shall be in writing and contain particulars as prescribed.

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

**Dispensing with consent**

**101.**—(1) On application, the Court may, by order, dispense with consent required under section 99 if —

- (a) the Court is satisfied that it is in the best interest of the child to do so;
- (b) the person or child whose consent is to be dispensed with is not capable of giving an informed consent;
- (c) reasonable but unsuccessful attempts have been made to locate the person whose consent is to be dispensed with;

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- (d) the person whose consent is to be dispensed with
  - 
  - (i) has abandoned or deserted the child,
  - (ii) is not capable of caring for the child, or
  - (iii) has not made reasonable efforts to meet his or her parental obligations with respect to the child; or
- (e) other circumstances exist which, in the opinion of the Court, justify dispensing with consent.

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

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

**Withdrawal of consent**

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

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

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

(4) If a child is required to give his or her consent to an adoption, that child may, before the adoption order is made by the Court, withdraw his or her consent in the prescribed form.

(5) The withdrawal of consent is ineffective if it is given after an adoption order is made.

*Child (Care, Protection and Adoption) Act***Withdrawal of consent given outside Saint Lucia**

**103.**—(1) If consent to the adoption of a child residing in Saint Lucia was given by a person under the laws of another jurisdiction, the consent given must be withdrawn in accordance with the laws of that jurisdiction.

(2) Subsection (1) does not operate to limit the right of a child to withdraw his or her consent under section 102.

**Withdrawal of consent by the Court**

**104.**—(1) Subject to subsection (2), if an application for an adoption order has been made after consent to the adoption of a child has been given under this Act, a person who has provided consent under section 99 may make an application to the Court to have his or her consent withdrawn and that consent may only be withdrawn with the approval of the Court.

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

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

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

**Change of name**

**105.**—(1) An adoptive parent may request the Court to change the given name or the surname of the child or both.

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

- (a) the child is five years or older and his or her views are considered on the matter; and
- (b) the child is twelve years or older and gives his or her consent.

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

(4) Before changing the given name or surname of a child the Court shall consider factors that it considers relevant, including the level of maturity or the level of understanding of the child, in determining the weight that it should give to the views of the child.

**Interim adoption order**

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

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

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

**Adoption order**

**107.**—(1) The Court may, on consideration of the documents and evidence filed under section 96, make an adoption order if it is satisfied that —

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

(2) Without limiting subsection (1), the Court shall —

- (a) take into account the wishes or feelings expressed by the child, in light of the age, maturity and understanding of the child; and

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- (b) consider whether there is a need for arrangements to allow a person to have contact with the child and to that effect consider existing or proposed arrangements and obtain views of the parties to the proceedings.

(3) An adoption order must contain a direction to the Registrar to make in the Register of Adoptions an entry and must specify the particulars to be entered.

(4) If an adoption order is made by the Court, the Registrar shall cause compliance to be made with the directions contained in the order in regard to marking an entry in the Register of Births with the word “Adopted” and in regard to making the appropriate entry in the Register of Adoptions.

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

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

**Effect of adoption order**

**108.**—(1) If an adoption order is made under section 107 —

- (a) the adopted child becomes the child of the adoptive parent and the adoptive parent becomes the parent of the adopted child;
- (b) the adopted child has the same rights in relation to the adoptive parent, as a child born to the adoptive parent;
- (c) the adoptive parent has the same parental responsibility to the adoptive child as the parent of a child born to the adoptive parent;
- (d) the adopted child ceases to be regarded as the child of the biological parent and the biological parent ceases to have parental responsibility with respect to the child, except a biological parent



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who remains as a parent jointly with the adoptive parent;

- (e) a person having custody of the child ceases to have custody of the child; and
- (f) a person whose consent is required under this Act, ceases to have a right or obligation to consent on a matter with respect to that child.

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

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

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

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

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

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

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

**Submission of certified copy of adoption order**

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

- (a) the Registrar; and
- (b) the Division.

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

**Revocation of adoption on marriage of biological parents**

**110.** If a biological parent of a child who has adopted the child marries the other biological parent of the child, the Court by which an adoption order was made may revoke the adoption order, on application of the biological parents.

*Division 4**Registration of Adoption Orders***Register of Adoption and other registers**

**111.**—(1) The Registrar shall make entries in the Register of Adoptions as may be directed to be made in it under an adoption order.

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

*Child (Care, Protection and Adoption) Act*

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

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

- (a) search the index; and
- (b) have a certified copy of an entry in the Register of Adoptions and subject to the same terms, conditions and Regulations as to payment of fees or otherwise as are applicable under the Civil Status Act, Cap. 4.02 in respect of —
  - (i) a search in a register kept in the Registrar's office, and
  - (ii) the supply from the office of certified copies of entries in the Register of Births.

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

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

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

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

- (a) if the precise date of the birth of a child is not proved to the satisfaction of the Court, the Court shall determine the probable date of the birth of the child and the date determined must be specified in the order as the date of birth of the child; or

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- (b) if the given name or surname which the child is to bear after the adoption differs from his or her original given name or surname, the new given name or surname must be specified in the order instead of the original given name or surname.

**Post Register of Adoption**

**112.**—(1) The Adoption Committee shall establish and maintain a Post Register of Adoptions with respect to adoption and all information relating to adoption must be recorded in the Post Register of Adoptions.

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

*Division 5*  
*Inter-country Adoptions*

**Approval for inter-country adoptions**

**113.**—(1) A person who is not a resident of Saint Lucia may make an application to the Adoption Committee for the adoption of a child resident in Saint Lucia as provided for in this Part.

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

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

- (a) does not have a criminal record;
- (b) is a fit and proper person to adopt the child and has adequate means to maintain and look after the child in an appropriate manner;
- (c) has a current recommendation from the competent body responsible for adoption in his or her country of origin; and

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(d) that his or her country of origin will respect and recognize an adoption order made under this Act.

(4) For the purposes of an application under this section, the Division shall seek verification in writing of the recommendation referred to in subsection (3)(c) at the cost to the applicant.

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

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

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

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

(9) An adoption order made under subsection (10) remains a provisional order for twelve months during which time quarterly reports shall be submitted to the Court by the relevant competent authority in the country where the adopted child lives, on the status, and progress of the adopted child.

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

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

*Child (Care, Protection and Adoption) Act***Exception**

**114.** Section 113 does not apply to a child who is brought into Saint Lucia for adoption by a relative of the child or by a person who will become an adoptive parent jointly with a biological parent of the child.

**Memorandum of understanding**

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

- (a) collaboration and exchange of information with a competent authority in that jurisdiction that is responsible for adoption; and
- (b) establishment of safeguards to ensure that an inter-country adoption takes place in the best interest of the child and with respect to the fundamental rights of the child as recognized by law.

**Provision and exchange of information**

**116.—(1)** The Minister may, in accordance with the prescribed requirements —

- (a) furnish a person with information relating to the safety, welfare and well-being of a particular child or class of children; and
  - (b) direct a person to furnish the Minister with information relating to the safety, welfare and well-being of a particular child or class of children.
- (2) A person to whom a direction is given under subsection (1) shall comply promptly with the requirements of the direction.
- (3) If information is furnished under subsection (1) —
- (a) the furnishing of the information is not, in proceedings before a court, tribunal or committee, to be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;

*Child (Care, Protection and Adoption) Act*

- (b) liability for defamation is not incurred because of the furnishing of the information; and
- (c) the furnishing of the information does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy.

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

(5) A law in force in Saint Lucia that prohibits or restricts the disclosure of information does not operate to prevent the furnishing of information or affect a duty to furnish information, under this section.

(6) This section does not affect an obligation or power to provide information under this Act.

*Division 6*  
*General*

**Matters to be considered in making decision on adoption**

**117.** The Adoption Committee and the Court in the making of a decision with respect to the adoption of a child shall have regard, as far as practicable or appropriate, to the following —

- (a) adoption is to be regarded as a service for the child, not for a person wishing to acquire and care for the child;
- (b) a person does not have the right to adopt a child;
- (c) if a child is able to form his or her own views on a matter concerning his or her adoption, he or she shall be given an opportunity to express those views freely and those views are to be given due weight in accordance with the age, maturity, developmental capacity of the child and the circumstances; and
- (d) the given name of a child, identity, religious ties and cultural identity must, as far as possible, be identified and preserved.

*Child (Care, Protection and Adoption) Act***Making of payment prohibited**

**118.**—(1) A person shall not give or receive, agree to give or receive a payment or reward to procure or assist in procuring a child for the purposes of adoption.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding five years.

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

- (a) a prescribed fee under this Act; or
- (b) fees charged by an attorney-at-law for legal services.

**PART VII**  
**MISCELLANEOUS**

**Care plan**

**119.** — (1) A care plan must make provision for the following —

- (a) the allocation of parental responsibility for the duration of the period for which the child is removed from the care of his or her parent;
- (b) the kind of placement proposed to be sought for the child including —
  - (i) how it relates to permanency planning for the child,
  - (ii) an interim arrangement that is proposed for the child pending permanent placement and the timetable proposed for achieving a permanent placement;
- (c) the arrangements for contact between the child and his or her parent, a relative, a friend and another person connected with the child; and
- (d) the health, educational and another service that needs to be provided to the child.



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(2) A care plan must be made as far as possible with the agreement of the parent of the child concerned.

(3) A care plan is enforceable if it —

- (a) is adopted by the Court;
- (b) is developed by the Director with the parent of the child and the child, where applicable; or
- (c) represents a set of proposals developed by the Director which is in the best interest of the child.

(4) A care plan under subsection (1) must include the following

—

- (a) a description of the minimum outcomes the Director requires a parent to achieve before it is safe for reunification;
- (b) a method to assist the child and his or her parent to examine the circumstances that have led to the making of the order of the Court and to take steps to resolve or ameliorate the problem so as to ensure reunification;
- (c) details of the services that the Director will arrange for or provide to the child in order to facilitate his or her reunification;
- (d) details of other services that the Court may request from other government departments or funded non-government agencies to provide to the child or the family of the child or both, in order to facilitate reunification;
- (e) an interim arrangement that is proposed for the child pending permanent placement and the timetable proposed for achieving a permanent placement;
- (f) a statement of the length of time during which permanency may be actively pursued;
- (g) the type of permanency sought by the Division;
- (h) the arrangements for contact between the child and his or her parent, a relative, a friend, and another person connected with the child; and

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- (i) the health, educational and another service that needs to be provided to the child.

(5) A care plan must aim to provide a child with a stable placement which offers long term security and that —

- (a) meets the needs of the child; and
- (b) avoids the instability and uncertainty arising through a succession of different placements or temporary care arrangements.

**Releasing confidential information to unauthorised person**

**120.**—(1) A person shall not release information that is deemed confidential under this Act to an unauthorised person.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding two years.

**Limitation of liability**

**121.** A person acting in the course of the exercise or performance of a power, duty or function under this Act is not personally liable for damage suffered by a person in consequence of an act or thing —

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

**Costs**

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

**Appeals**

**123.** An appeal from a decision of the Court lies with the Court of Appeal.

**Regulations**

**124.**—(1) The Minister may make Regulations for giving effect to this Act.

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(2) Without prejudice to the generality of subsection (1), the Minister may make Regulations —

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

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- (q) respecting the Post Register of Adoptions;
- (r) respecting home study assessments and post placement reports;
- (s) governing the review of decisions made by the Adoption Committee;
- (t) respecting foster care; and
- (u) respecting other matters the Minister considers necessary or advisable to effectively carry out the purposes of this Act.

**Repeal**

**125.—**(1) The Adoption Act, Cap.4.07 is repealed.

(2) Until replaced by subordinate legislation made under this Act, subordinate legislation made under the repealed Act continues in force with the necessary modifications to bring them into conformity with this Act

**Transitional provisions**

**126.—**(1) If —

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

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

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

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(4) A valid consent given under the repealed Act continues to be valid for the purposes of this Act.

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

**SCHEDULE**

(Section 78)

**Oath of Secrecy**

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

**Affirmation of Secrecy**

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

Passed in the House of Assembly this 20th day of November, 2018.

**ANDY G. DANIEL,**  
*Speaker of the House of Assembly*

Passed in the Senate this 22nd day of November, 2018.

**JEANNINE GIRAUDY-MCINTYRE,**  
*President of the Senate.*



*Child Justice Act***SAINT LUCIA****No. 9 of 2018****ARRANGEMENT OF SECTIONS****PRELIMINARY***Section*

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*Child Justice Act*

I ASSENT

[L.S.]

NEVILLE CENAC,  
*Governor-General.**December 11, 2018.***SAINT LUCIA**

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**No. 9 of 2018**

**AN ACT** to establish a judicial process for a child in conflict with the law, to protect the rights of a child and for related matters.

[ 12th December, 2018 ]

**BE IT ENACTED** by The Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia and by the authority of the same as follows —

*Child Justice Act***PRELIMINARY****Short title**

1. This Act may be cited as the Child Justice Act, 2018.

**Interpretation**

2. In this Act —

“acknowledging responsibility” means an admission of liability for an offence by a child without a formal admission of guilt;

“adoptive parent” means a person who has adopted a child under the Child (Care, Protection and Adoption) Act;

“appropriate adult” means a person, other than a parent, who has attained the age of eighteen years and who is —

- (a) a member of the family of the child;
- (b) a custodian or legal guardian of the child; or
- (c) a family friend;

“assessment” means the assessment of a child by a probation officer under sections 23 and 34;

“assigned officer”, in relation to —

- (a) a family group conference, means a person appointed under section 58(2);
- (b) diversion, means a person designated under section 74;

“attorney-at-law” means a person who is admitted to practice law under the Legal Profession Act, Cap. 2.04;

“available services” includes social services, legal aid and child care services;

“biological father” includes a man who —

- (a) is the father of a child by blood;
- (b) is adjudged to be the father of a child; or

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(c) is a father as a result of artificial conception procedures under any other law;

“biological mother” includes a woman who —

(a) gave birth to a child; or

(b) is a mother as a result of artificial conception procedures under any other law;

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

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

“child in conflict with the law” means a child who is alleged to have committed an offence;

“community service work” means work for a community organization or other work of value to the community performed by a child without payment;

“compulsory school age” means the age during which a child is obliged to attend school under section 27 of the Education Act, Cap. 18.01;

“compulsory school attendance order” means an order requiring a child to attend school for a specified period to be monitored by a specified person;

“correctional facility” means a correctional facility under the Correctional Services Act, Cap. 14.02;

“correctional supervision” means a sentence under section 60;

“Court” means a District Court, the Family Court or the High Court;

“detention” includes confinement in a police cell, lock-up, place of safety or secure residential facility;

“Director” means the Director of Probation;

“Director of Human Services” means a person appointed by the Public Service Commission as Director of Human Services within the Division responsible for human services;

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“Director of Public Prosecutions” —

- (a) means the Director of Public Prosecutions appointed under section 89 of the Constitution of Saint Lucia, Cap. 1.01; and
- (b) includes a representative or a person who holds the *fiat* of the Director of Public Prosecutions and a police prosecutor;

“diversion” means the removal of cases of a child in conflict with the law from the formal court procedures and the adoption of informal procedures in relation to the child, under Part VII;

“diversion option” means a plan or programme with a specified content and duration set out in three levels under section 72;

“family group conference” means a gathering convened by an assigned officer as a sentencing option under section 58;

“initial inquiry” means a procedure under Part V which takes place after an assessment and before trial in a Court;

“legal guardian”, in relation to a child, means a person appointed, by deed, will or by an order of a court of competent jurisdiction with legal responsibility and authority for making decisions with respect to a child;

“Minister” means the Minister responsible for legal affairs;

“parent” includes —

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

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

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“place of assessment” means a place designated or certified by the Minister under section 6 to receive a child in conflict with the law;

“place of safety” means a place or institution, other than a police cell, lock-up or a correctional facility, whereby the person in charge is willing to receive and take care of a child in conflict with the law temporarily and which, in the opinion of the Court, provides safety for a child;

“police custody” includes keeping by the police in a place of assessment or secure residential facility;

“police officer” means a member of the Royal Saint Lucia Police Force under section 3 of the Police Act, Cap. 14.01;

“prescribed” means prescribed by Regulations made under section 79;

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

“residential requirement” means compulsory residence in a secure residential facility or a place other than the home of the child;

“restorative justice” means an approach to justice which aims to involve a child in conflict with the law, the victim, the families concerned and community members to collectively identify and address harms, needs, and obligations through accepting responsibility making restitution, taking measures to prevent a recurrence of the incident and promoting reconciliation;

“secure residential facility” means a residential facility established or certified by the Minister under section 7;

“supervision and guidance order” —

- (a) means an order placing a child under the supervision and guidance of a mentor or peer in order to guide the behaviour of the child; and

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(b) includes a probation order;

“symbolic compensation” means the giving of an object owned, made, or brought by a child to a person, or group of persons or an institution as compensation for the harm caused by the child.

**Application**

**3.—**(1) Subject to subsections (2) and (3) and section 5, this Act applies to —

- (a) a child in conflict with the law; and
- (b) a person under paragraph (a) who attained the age of eighteen years before proceedings that were instituted against him or her, under this Act, have been concluded.

(2) The Criminal Code, Cap. 3.01 and the District Courts Act, Cap. 2.02 apply to a person under subsection (1), except in so far as this Act provides for different procedures in respect of that person.

(3) Subject to subsection (4), the Director of Public Prosecutions may issue a direction that this Act applies to a person who is alleged to have committed an offence and who, at the time of the alleged commission of the offence —

- (a) was at least twelve years old but under the age of sixteen years;
- (b) was over the age of eighteen years but under the age of twenty-one years;
- (c) was over the age of eighteen years but is mentally handicapped or of unsound mind.

(4) A direction under subsection (3) may be issued if —

- (a) where applicable, the person commits a further offence while serving a sentence involving a residential requirement imposed under this Act and after having reached the age of eighteen years; or



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- (b) in the opinion of the Director of Public Prosecutions, another circumstance merits the issuance of a direction under that subsection.

**Purpose**

- 4. The purposes of this Act are to ensure that —
  - (a) the best interest of a child, the safety, welfare, and well-being of a child are of paramount consideration;
  - (b) a child is as far as possible given an opportunity to respond before a decision is taken which affects the child;
  - (c) a child is addressed in a manner appropriate to his or her age, maturity, and intellectual development;
  - (d) a child is treated in a manner which considers his or her beliefs;
  - (e) procedures to be carried out under this Act are conducted and completed in a timely manner;
  - (f) parents, relatives, and other family members have the right to assist a child in proceedings under this Act and, wherever possible, to participate in decisions affecting the child;
  - (g) consequences arising from the commission of an offence by a child are proportionate to the circumstances of the child, the nature of the offence, the interests of society and that a child is not treated more severely than an adult would be treated in the same circumstances;
  - (h) a child has equal access to available services if the child is lacking in —
    - (i) family support,
    - (ii) educational support, or
    - (iii) employment opportunities, if the child is between the ages of sixteen years and eighteen years;
  - (i) every effort is made to ensure that a child receives equal treatment to other children when having committed a similar offence; and

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- (j) when deciding to release a child in detention —
  - (i) preference is given to the release of the child into the care of a parent or an appropriate adult, with or without the imposition of conditions,
  - (ii) if the release of a child into the care of a parent or an appropriate adult is not feasible, the release of the child on bail or recognisance is considered,
  - (iii) if the child is detained as a measure of last resort, the least restrictive form of detention appropriate to the child and the offence is selected.

**PART I**  
**CRIMINAL RESPONSIBILITY**

**Age of criminal responsibility**

**5.—**(1) A child under the age of twelve years is not capable of or guilty of committing a criminal offence.

(2) A child over the age of twelve years and under the age of sixteen years is criminally responsible for an act or omission if at the time of doing the act or making the omission, he or she had the capacity to know that he or she ought not to do the act or make the omission.

(3) The criminal responsibility of a child over the age of twelve years must be proved by the Crown beyond reasonable doubt.

(4) For the purposes of subsection (3), the Director of Public Prosecutions or an attorney-at-law appointed by the Crown and representing the child may request the Court to order a medical examination by a medical practitioner or an evaluation of the child by a suitably qualified person to be conducted at the expense of the Crown.

(5) If an order is made by the Court under subsection (4), the person identified to conduct the medical examination or evaluation of the child shall furnish the Court with a written report of the examination or evaluation within thirty days of the date of the order.

(6) An evaluation under subsection (4) must include an assessment of the cognitive, emotional, psychological and social development of the child.

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(7) The person who conducts the evaluation may be summoned to attend the Court proceedings and to give evidence and if called must be remunerated by the Crown.

**PART II**  
**PLACE OF ASSESSMENT AND SECURE RESIDENTIAL**  
**FACILITY**

**Place of assessment**

**6.—**(1) The Minister may designate and maintain by the Ministry or under an agreement with a voluntary organization, a place of assessment for the temporary reception of a child in conflict with the law prior to or pending the completion of an initial inquiry regarding the child under this Act.

(2) Notwithstanding subsection (1), if the Minister believes an institution other than a place of assessment under subsection (1), is fit for the temporary reception of a child in conflict with the law pending an initial inquiry regarding the child, the Minister shall certify the institution as a place of assessment for the purposes of this Act.

(3) The Minister may make Rules to provide for the management of a place of assessment including the standards and the various types of services to be provided by the place of assessment and the circumstances under which and the manner in which the certification of a place of assessment may be granted or withdrawn.

(4) A child who, on commission of an alleged offence is not placed under the charge of a parent and is sent to a place of assessment, must be initially kept in a reception unit of the place of assessment for initial assessment, care and classification, giving due consideration to the age, physical and mental status of the child and the degree of the alleged offence.

**Secure residential facility**

**7.—**(1) The Minister may establish and maintain by the Ministry or under an agreement with a voluntary organization, a secure residential facility as may be required for the reception and rehabilitation of a child that is sentenced.

(2) Notwithstanding subsection (1), if the Minister believes an institution other than a secure residential facility established under

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subsection (1), is fit for the reception of a child that is sentenced, the Minister shall certify that institution as a secure residential facility.

(3) The Minister may make Rules to provide for the management of a secure residential facility including the standards and various types of services to be provided by that facility which are necessary for the rehabilitation and social integration of a child.

(4) Without limiting the generality of subsection (3), the Rules may provide for the management, classification and separation of a child on the basis of age and the nature of the offence committed by the child and his or her physical and mental status.

**PART III**  
**METHODS OF SECURING ATTENDANCE OF CHILD AT**  
**INITIAL INQUIRY**

**Method of securing attendance of child**

**8.—**(1) If a police officer reasonably believes that a child has committed an offence, the police officer may secure the attendance of the child in conflict with the law, at an initial inquiry, by one of the following methods —

- (a) apprehension;
- (b) summons; or
- (c) a written notice.

(2) Before a police officer uses a method under subsection (1), the police officer shall consult with the Director of Public Prosecutions as to whether or not the matter should be set down for an initial inquiry.

**Apprehension**

**9. —**(1) Subject to subsections (2) and (3), a police officer may apprehend a child in conflict with the law with or without a warrant.

(2) A police officer shall not apprehend a child for an offence under Schedule 1.

(3) A police officer shall not apprehend a child who is under the age of twelve years alleged to have committed an offence but —

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- (a) shall inform a probation officer of the particulars of the child as may be prescribed; and
- (b) may remove the child to a place of safety if the police officer has reasons to believe that it is necessary to do so for the safety of the child.

(4) A warrant to apprehend issued under the Criminal Code, Cap. 3.01, the District Courts Act, Cap. 2.02 or any other law in respect of a child must direct that the child be brought to appear at an initial inquiry.

(5) A police officer on apprehending a child shall immediately notify the parent of the child, or if the parent cannot be found, an appropriate adult, of the apprehension.

(6) If a police officer has notified a parent of a child or an appropriate adult of an apprehension under subsection (5), the police officer shall inform the child in the presence of the parent of the child or appropriate adult of —

- (a) the nature of the allegation against the child;
- (b) the rights of the child, in the prescribed manner; and
- (c) the immediate procedures to be followed under this Act and any other law.

(7) A police officer who has apprehended a child shall, promptly but not later than twenty-four hours after the apprehension, inform a probation officer of the apprehension in the prescribed manner.

(8) If a police officer is unable to inform a probation officer of the apprehension under subsection (7), he or she shall submit a written report to a magistrate at an initial inquiry in the prescribed manner giving reasons for the non-compliance.

**Detention of child**

**10.—(1)** A child who is apprehended shall, whether an assessment of the child is effected or not, be detained by a police officer to appear at an initial inquiry within a reasonable time but not later than seventy-two hours after the apprehension.

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- (2) A child who is in detention in police custody —
- (a) must be —
    - (i) detained separately from adults,
    - (ii) detained with children of the same sex and monitored by a police officer of the same sex,
    - (iii) detained in conditions which will reduce the risk of harm to that child, including the risk of harm caused by other children;
  - (b) must have —
    - (i) adequate food and water,
    - (ii) medical treatment,
    - (iii) reasonable visits by a parent, relative, appropriate adult, an attorney-at-law, social worker, assigned officer, health worker and religious counsellor or another person having a close relationship with the child;
    - (iv) access to reading material,
    - (v) adequate exercise, and
    - (vi) adequate clothing.

**Report of injury sustained by child**

**11.—**(1) If a child in detention in police custody complains of an injury sustained during apprehension or otherwise, whilst in detention —

- (a) the police officer to whom the complaint is made shall report the complaint to the police officer in charge of the police station where the child was apprehended; and
- (b) the police officer in charge of the police station where the child was apprehended, shall immediately inform a parent or an appropriate adult and delegate a police officer to take the child, accompanied by his or her parent or the appropriate adult, to a medical practitioner for examination of the child.

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(2) A report of a medical practitioner who conducted an examination on the child under subsection (1)(b) must be included in the police file.

**Register of children in detention in police custody**

**12.**—(1) The police officer in charge of a police station shall keep a register in which prescribed details regarding the detention in police custody of all children must be recorded.

(2) A register under subsection (1) may be examined by the persons to be prescribed.

**Release of child into care of parent or appropriate adult before initial inquiry**

**13.**—(1) Subject to section 14, a police officer shall release a child who is in detention in police custody into the care of the parent or an appropriate adult, before the child appears at the initial inquiry unless —

- (a) exceptional circumstances, as may be prescribed, warrant detention;
- (b) the parent of the child or an appropriate adult cannot be located or is not available and all reasonable efforts have been made to locate the parent or appropriate adult; or
- (c) there is a substantial risk that the child may be a danger to any other person or to himself or herself.

(2) Subject to subsection (3), a police officer may, in consultation with the Director of Public Prosecutions, release into the care of a parent or an appropriate adult a child who —

- (a) is accused of an offence under Schedule 1 but has not been released under subsection (1); or
- (b) is in detention in police custody and who is accused of an offence under Schedule 2.

(3) A child may be released under subsection (2) on condition that he or she —

- (a) appears at a specified place and time for assessment;

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- (b) does not interfere with a witness, tamper with evidence or associate with a person or group of specified people;
- (c) resides at a particular address; and
- (d) complies with terms that the Court or Director of Prosecutions' orders.

**Release by Director of Public Prosecutions**

**14.** The Director of Public Prosecutions may authorize the release of a child from detention in police custody into the care of the parent or an appropriate adult on any of the conditions under section 13(3).

**Duty of police officer**

**15.—(1)** A police officer who releases a child from detention in police custody under section 13 or who releases a child on the direction of the Director of Public Prosecutions under section 14, and places the child in the care of a parent or an appropriate adult, shall —

- (a) at the time of release of the child, complete and hand to the child and to the parent or appropriate adult, a written notice in the prescribed form on which must be entered the offence in respect of which the child is being accused, conditions relating to the release of the child and the place, date and time at which the child must appear for the initial inquiry;
- (b) direct the parent or appropriate adult to bring the child or cause the child to be brought to appear at the initial inquiry at a specified place, date and time and to remain in attendance and, if a condition under paragraph (a) is imposed, to ensure that the child complies with the condition; and
- (c) direct the child to appear at the initial inquiry at a specified place, date and time and to remain in attendance and, if a condition under paragraph (a) is imposed, to comply with the condition.

(2) A parent or appropriate adult who fails to comply with a notice or a direction issued under subsection (1) commits an offence



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and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year.

**Release of child on recognisance prior to initial inquiry**

**16.—**(1) If a child is taken into police custody with or without a warrant and cannot be brought immediately before a magistrate, the police officer in charge of a police station to which the child is brought shall inquire into the matter and shall, unless —

- (a) the child is accused of an offence under Schedule 3;
- (b) it is necessary in the interest of the child to remove him or her from association with an undesirable person; or
- (c) the police officer has reason to believe that the release of the child would defeat the ends of justice,

release the child on recognisance, with or without sureties, for an amount as will, in the opinion of the police officer, secure the attendance of the child at the initial inquiry related to the charge on the hearing of the charge, being entered into by the child or by his or her parent or an appropriate adult.

(2) A recognisance under subsection (1) may require the attendance at the initial inquiry of the parent or the appropriate adult and the child.

(3) The Commissioner of Police may, after consultation with the Director of Public Prosecutions, issue directives regarding the amounts to be set for recognisance of bail.

(4) The Director of Public Prosecutions may, in consultation with the police officer charged with an investigation with respect to a child under this Act, authorize the release of a child accused of an offence under Schedule 2 on recognisance prior to the appearance of the child at the initial inquiry, subject to reasonable conditions if the release of the child into the care of a parent or an appropriate adult is considered appropriate.

(5) If a child is released under this section, a probation officer may monitor the child in a manner prescribed.

*Child Justice Act***Release to place of safety**

**17.** If a child cannot, for any reason, be released, the child may be detained in a place of safety —

- (a) into the care of a parent or an appropriate adult; or
- (b) on recognisance.

**Child accused of Schedule 3 offence**

**18.** A police officer shall not release a child accused of an offence under Schedule 3 from detention in police custody.

**Report of non-release**

**19.** If a child in conflict with the law is not released from detention in police custody before appearing at an initial inquiry, the police officer who apprehended the child shall provide a magistrate with a written report in the prescribed manner giving the reasons for not releasing the child.

**Uncertainty as to age of person**

**20.** If a police officer is uncertain as to the age of a person suspected of having committed an offence but has reason to believe that the person is a child, the police officer shall treat the person as a child for the purposes of this Part, subject to the ascertainment of the age of the person at the initial inquiry.

**Summons**

**21.—(1)** A summons issued in respect of a child in conflict with the law under the Criminal Code, Cap. 3.01, the District Courts Act, Cap. 2.02 or any other law must specify the place, date and time for the initial inquiry.

(2) A copy of the summons relating to the child in conflict with the law must be served on the parents of the child or an appropriate adult.

(3) A police officer shall —

- (a) not later than twenty-four hours after the service of the summons under subsection (1), inform a probation officer of the service of the summons in the prescribed manner;

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- (b) as soon as is reasonably possible, but prior to the commencement of the initial inquiry, explain the following to the child —
  - (i) the nature of the allegation against him or her,
  - (ii) the rights of the child, in the prescribed manner, and
  - (iii) the immediate procedures to be followed under this Act or other law.

**Written notice**

**22.**—(1) A police officer may, by a written notice, direct a child in conflict with the law to appear at an initial inquiry at a specified time, specified place and on a specified date and to remain in attendance at the initial inquiry relating to the offence.

(2) If a release is authorized under section 14, the written notice under subsection (1), must be delivered to the child and to the parent or appropriate adult.

(3) A police officer who directs a child under subsection (1) shall —

- (a) direct the parent or an appropriate adult to bring the child or cause the child to be brought to appear at the initial inquiry; and
- (b) complete and hand to the child and the parent or an appropriate adult, a written notice on which is entered the offence in respect of which the initial inquiry will be conducted and the time and place at which the child must appear.

(4) A police officer shall —

- (a) when he or she hands the written notice to a child, the parent or an appropriate adult —
  - (i) inform the child, the parent or appropriate adult of the nature of the allegation against the child,
  - (ii) inform the child, the parent or appropriate of his or her rights in the prescribed manner, and

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(iii) explain to the child, the parent or appropriate adult the immediate procedures to be followed under this Act; and

(b) not later than twenty-four hours after handing the written notice to the child, inform a probation officer that he or she has done so.

(5) A child, a parent or an appropriate adult who is directed to appear at an initial inquiry by a police officer under this section and who fails to do so, commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

**PART IV  
ASSESSMENT OF CHILD**

**Assessment of child by probation officer**

**23.** A probation officer shall assess a child at a place of assessment or in a place that is conducive to privacy, before the child appears at the initial inquiry relating to that child when he or she is informed by a police officer of —

- (a) the apprehension of the child under section 9(7);
- (b) the service of a summons under section 21(3)(a); or
- (c) the delivery of a written notice under section 22(3)(b).

**Notice of assessment**

**24.—(1)** A probation officer shall within a reasonable time, being not less than forty-eight hours, before the assessment of a child issue a notice in the prescribed form to the parent or an appropriate adult to appear at the assessment.

(2) A notice issued under subsection (1) must be delivered by a police officer on the request of the probation officer in the prescribed manner.

(3) A parent or appropriate adult notified under subsection (1) may apply to the probation officer for permission to be absent or excluded from the assessment, and if the probation officer grants the permission, the permission must be in writing.

*Child Justice Act***Attendance at assessment**

**25.—**(1) Unless permission to be absent or excluded from the assessment is granted under section 24(3), the parent or an appropriate adult shall attend the assessment of the child.

(2) A child shall be present at his or her assessment.

(3) The following persons may attend the assessment of a child —

- (a) the Director of Public Prosecutions;
- (b) the attorney-at-law representing the child;
- (c) the police officer who apprehended the child, issued the summons or notice or any other police officer designated by the Commissioner of Police; and
- (d) a person whose presence the probation officer believes is necessary or desirable for the assessment or whom the probation officer believes should attend in the best interest of the child.

(4) A probation officer may in the prescribed manner, request a police officer to —

- (a) locate the parent or an appropriate adult; and
- (b) provide transport to secure the attendance of the child, and his or her parent or appropriate adult at the assessment.

(5) A probation officer shall make an effort to locate a parent or an appropriate adult for the purposes of concluding the assessment of a child.

(6) If reasonable efforts to locate a parent or an appropriate adult have failed, the probation officer shall conclude the assessment in the absence of the parent or appropriate adult and the probation officer shall record his or her efforts to locate the parent or appropriate adult.

**Powers and duties of probation officer at assessment**

**26.—**(1) A probation officer shall, during an assessment —

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- (a) explain the purpose of the assessment to —
  - (i) the child, and
  - (ii) the parent or an appropriate adult;
- (b) inform the child of his or her rights in the prescribed manner;
- (c) explain the procedures to be followed under this Act to —
  - (i) the child, and
  - (ii) the parent or an appropriate adult;
- (d) inquire from the child whether he or she intends to acknowledge responsibility for the offence;
- (e) request a police officer to obtain documentation required for the completion of the assessment of the child;
- (f) consult individually with a person at the assessment;
- (g) contact or consult a person who is not present at the assessment and who may have information relating to an assessment and if the information is obtained, the child must be informed of the information, in a language that the child can understand; or
- (h) encourage participation of the child during the assessment process.

(2) If a child is accused with another child, a probation officer may conduct the assessment of the children simultaneously.

(3) A probation officer shall complete an assessment report at the end of an assessment in the prescribed manner and shall provide recommendations with respect to —

- (a) the prospects of diversion;
- (b) the possible release of the child into the care of a parent or an appropriate adult, if the child is in detention; or
- (c) the placement, where applicable, of the child in a place of safety or a place of assessment.

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(4) If it appears to a probation officer that the child does not intend to acknowledge responsibility for the alleged offence, this must be indicated in the assessment report.

(5) A probation officer shall submit the assessment report under subsection (3) to the Director of Public Prosecutions and the attorney-at-law representing the child prior to the commencement of an initial inquiry.

**PART V  
INITIAL INQUIRY**

**Decision to hold initial inquiry**

**27.—(1)** A magistrate shall, after an assessment, hold an initial inquiry in respect of a child in conflict with the law to —

- (a) determine the prospects of diversion before a trial;
- (b) identify a suitable diversion option, where applicable;
- (c) provide an opportunity for the Director of Public Prosecutions to assess whether there are sufficient grounds for the matter to proceed to trial;
- (d) ensure that all available information relevant to the child, his or her circumstances and the offence are considered to decide on diversion and placement of the child;
- (e) ensure that the views of all persons present are considered before a decision is taken concerning the child;
- (f) encourage the participation of the child and his or her parent or an appropriate adult in decisions concerning the child; and
- (g) determine the release or placement of the child pending —
  - (i) conclusion of the initial inquiry, or
  - (ii) appearance of the child in Court.

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(2) An initial inquiry must be held in a place as a magistrate determines having regard to privacy and confidentiality.

**Attendance at initial inquiry**

**28.—**(1) The following persons must attend an initial inquiry —

- (a) the child in conflict with the law;
- (b) the parent or an appropriate adult;
- (c) the probation officer who conducted the assessment of the child;
- (d) the Director of Public Prosecutions;
- (e) the victim or complainant; and
- (f) any other person as may be considered necessary by a magistrate under section 30(1).

(2) A magistrate may exclude a parent or an appropriate adult from attending the initial inquiry if his or her presence at the initial inquiry is not in the best interest of the child.

(3) If an initial inquiry proceeds in the absence of a probation officer who conducted the assessment of the child, the assessment report of the probation officer must be made available at the initial inquiry unless the assessment is dispensed with under section 30(2).

(4) The following persons may attend an initial inquiry —

- (a) the attorney-at law representing the child;
- (b) a police officer who apprehended the child, issued the summons or notice or any other police officer designated by the Commissioner of Police; and
- (c) a person as may be considered by a magistrate under section 30(1).

**Conduct of initial inquiry**

**29.—**(1) A Magistrate shall conduct an initial inquiry in an informal manner by asking questions, interviewing persons and using other lawful methods to obtain information.



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(2) At the commencement of an initial inquiry a Magistrate shall —

- (a) confirm or determine the age of the child;
- (b) explain the purposes of the initial inquiry to the child;
- (c) inform the child of the nature of the allegation against him or her;
- (d) inform the child of his or her rights; and
- (e) explain to the child the immediate procedures to be followed under this Act.

(3) The Director of Public Prosecutions shall ensure that the magistrate has a copy of the assessment report prepared under section 26(3).

(4) A person attending an initial inquiry may submit to the Magistrate information regarding a previous diversion or conviction of the child.

(5) A child, the attorney-at-law representing the child, the parent, an appropriate adult and the Director of Public Prosecutions shall be given an opportunity to question the probation officer who prepared the assessment report on the child or a person giving evidence at the initial inquiry.

(6) If the child in respect of whom an initial inquiry is being conducted is a co-accused with one or more children, a joint initial inquiry may be held.

(7) If a joint initial inquiry is held under subsection (6), different decisions may be made with respect to each child.

(8) If a child does not acknowledge responsibility for the offence with which he or she is being charged, no further questions regarding the offence may be put to the child and the Director of Public Prosecutions or a designated prosecutor may set the matter down for trial in the Court.

(9) Information furnished at an initial inquiry must not be used in subsequent proceedings against the person who furnished the information.

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(10) A magistrate shall keep a record of all proceedings relating to an initial inquiry.

**Powers of a magistrate at an initial inquiry**

**30.—**(1) A magistrate may —

- (a) summon or cause to be summoned a person to be present at an initial inquiry, whose presence is in the best interest of the child or is necessary for the conclusion of the initial inquiry;
- (b) permit the attendance of a person who may be able to contribute to the initial inquiry;
- (c) request further documentation or information which may be necessary or relevant to the initial inquiry;
- (d) after consideration of the information contained in an assessment report, elicit information from a person attending the initial inquiry to supplement or clarify the information in the assessment report;
- (e) take the steps that may be necessary to establish the truth of a statement or the accuracy of a submission; and
- (f) if the conduct of the proceedings of the initial inquiry or an aspect of it is in dispute, rule on the conduct of the initial inquiry in a manner consistent with this Act.

(2) Notwithstanding section 27(1), if a child has not been assessed at the commencement of the initial inquiry, a magistrate may dispense with the assessment if it is in the best interest of the child to do so.

(3) A magistrate shall ensure that the child, in a language that the child understands, the attorney-at-law representing the child, the parent or an appropriate adult —

- (a) has knowledge of the recommendations in the assessment report prepared by the probation officer; and
- (b) is informed of a diversion option and the aims and content of the diversion option.

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(4) A magistrate may request the probation officer to explain, elaborate on or justify a recommendation or statement made in the assessment report and provide additional information.

(5) A magistrate shall consider the reports provided by the police officer who apprehended the child, regarding the apprehension of the child and the detention of the child in police custody.

**Release of child into care of parent or appropriate adult at initial inquiry and on recognisance or bail**

**31.—**(1) A magistrate shall release a child who is in detention, into the care of the parent or an appropriate adult if —

- (a) the initial inquiry is not disposed of at the first appearance of the child before the magistrate;
- (b) it is in the interest of the child to do so; and
- (c) it is in the interest of justice to release the child.

(2) In considering whether or not it would be in the interest of justice to release a child into the care of the parent or an appropriate adult, a magistrate shall have regard to the recommendation made by the probation officer and other relevant factors, including —

- (a) the best interest of the child;
- (b) whether the child has a previous conviction;
- (c) the availability of the parent or an appropriate adult;
- (d) the likelihood of the child returning to the initial inquiry for a further appearance;
- (e) the period for which the child is in detention since apprehension;
- (f) the imposition of a curfew on release;
- (g) the probable period of detention of the child until conclusion of the initial inquiry;
- (h) the risk that the child may be a danger to himself or herself or to another person;
- (i) the state of health of the child;

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- (j) the reason for delay in the disposal or conclusion of the initial inquiry and whether such delay was due to fault on the part of the Government or on the part of the child or his or her attorney-at-law;
- (k) whether detention would prejudice the child in the preparation of his or her case;
- (l) the likelihood that if the child is found guilty of the offence, he or she will be detained for a substantial period;
- (m) the fact that the child is under the age of twelve years and conclusively presumed to lack criminal responsibility; and
- (n) the receipt of a written confirmation by the Director of Public Prosecutions that he or she intends to charge the child with an offence under Schedule 3.

(3) A magistrate may, in releasing a child under subsection (1), impose one or more of the following conditions that the child must —

- (a) appear before the magistrate at a specified place and time;
- (b) report periodically to a specified person or place;
- (c) attend a particular school;
- (d) reside at a particular address;
- (e) be placed under the supervision of a specified person; or
- (f) not to interfere with a witness, tamper with evidence or associate with a person or group of specified persons.

(4) If a magistrate releases a child into the care of a parent or an appropriate adult, the magistrate shall direct the parent or the appropriate adult to bring the child or ensure that the child appears at a specified time and place and if a condition is imposed under this section, to ensure that the child complies with the condition.

(5) A parent or an appropriate adult into whose care a child is placed, who fails to comply with a direction issued under subsection (4), commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year.

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(6) If a child is released into the care of his or her parent or an appropriate adult and the child fails to comply with a condition imposed under subsection (3), the magistrate may direct that the child be detained in a place of safety.

(7) A magistrate may, after consideration of the facts, release a child on bail or recognizance having regard to the factors under subsection (2) and subject to one or more of the conditions under subsection (3).

**Detention of child by magistrate**

**32.—**(1) A magistrate may direct the detention of a child in a place of safety if —

- (a) the proceedings of the initial inquiry are postponed under section 33 or 34;
- (b) the release of the child into the care of his or her parent or an appropriate adult is not possible; or
- (c) the child is to appear before the Court under section 38(1).

(2) A magistrate shall have regard to the recommendations made by a probation officer when deciding where to place the child under subsection (1).

(3) A child of fourteen years or older who is charged with an offence under Schedule 3 must be detained in a correctional facility if a magistrate believes there is a substantial risk that the child may cause harm to other children in a place of safety.

(4) If a magistrate issues a direction that a child be detained in a correctional facility, the magistrate shall record the reasons for issuing the direction.

(5) If a magistrate directs the detention of a child under subsection (1)(c) the probation officer shall make periodic visits to the child to ensure that the child is being properly treated or kept under suitable care.

(6) If the probation officer under subsection (5) is satisfied that the child is not being properly treated or kept under suitable care the probation officer shall issue appropriate remedial directions to the

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person in whose custody the child is detained and submit a report to a magistrate regarding the detention of the child.

(7) Subject to subsections (5) and (6), if a magistrate issues a direction for the detention of a child under subsection (1)(c), or on receipt of the report under subsection (6), the child shall appear before a magistrate at a time, date and place to be determined by the magistrate.

(8) If a child appears before a magistrate under subsection (7), the magistrate shall —

- (a) determine whether or not the detention remains necessary;
- (b) if ordering the further detention of the child, record the reasons for his or her decision;
- (c) consider a reduction of the amount of bail or recognizance, if applicable;
- (d) inquire whether or not the child is being properly treated and kept under suitable conditions; and
- (e) if satisfied that the child is not being properly treated and kept under suitable conditions, inspect and investigate the treatment and conditions and make an appropriate remedial order.

**Postponement of initial inquiry**

**33.—**(1) A magistrate may postpone the proceedings of an initial inquiry for a period not exceeding fourteen days for the purposes of —

- (a) securing the attendance of a person necessary for the conclusion of the initial inquiry;
- (b) obtaining information necessary for the conclusion of the initial inquiry;
- (c) establishing the attitude of the victim regarding diversion;
- (d) the planning of a diversion option;
- (e) finding alternatives to pre-trial residential detention;

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- (f) assessing the child, where an assessment has not previously been undertaken and it is found that an assessment may not be dispensed with;
- (g) noting a confession;
- (h) noting an admission;
- (i) holding of an identity parade;
- (j) securing an attorney-at-law to represent the child;
- (k) a detailed assessment of the child under section 34; or
- (l) other matters which the magistrate considers necessary.

(2) If the proceedings of an initial inquiry are postponed under subsection (1)(g), (h) or (i), a magistrate shall inform the child of his or her right to have his or her parent or an appropriate adult present during the proceedings.

(3) Subject to section 34, the Director of Public Prosecutions shall set the matter down for trial in the Court, if the initial inquiry is not concluded within the period specified under subsection (1).

**Detailed assessment**

**34.—**(1) A detailed assessment must determine if —

- (a) there is a possibility that the child may be a danger to others or to himself or herself;
- (b) the child has a history of repeatedly committing offences or abscondment;
- (c) there is a social welfare history of the child;
- (d) the child admits that he or she is part of a sexual offender's programme, substance abuse programme, therapeutic treatment programme or other intensive programme; or
- (e) the child is a victim of abuse.

(2) A detailed assessment under subsection (1) must be conducted in the home of the child, unless this is not in the best interests of the child, or is impossible, in which case the assessment may be conducted at a place of safety or a place of assessment.

*Child Justice Act***Referral of matter to the Director of Human Services**

**35.**—(1) If it appears during proceedings at an initial inquiry that a child is in need of care and protection under the Child (Care, Protection and Adoption) Act and that it is desirable to deal with the child under that Act, a magistrate shall stop the proceedings and transfer the matter to the Director of Human Services to be dealt with in accordance with the Child (Care, Protection and Adoption) Act.

(2) Referral of a matter to the Director of Human Services under subsection (1), shall be considered by a magistrate if a child —

- (a) is assessed on more than one occasion regarding minor offences that were committed to meet the basic need of the child for food and shelter and in the initial inquiry in question it is again alleged that the child has committed the offences;
- (b) is allegedly abusing dependence-producing substances or controlled drugs; or
- (c) does not live at his or her family home or in a child care service and is alleged to have committed a minor offence, the purpose of which was to meet the basic need of the child for food and shelter.

**Decision regarding diversion**

**36.**—(1) A magistrate shall ascertain whether a matter before him or her may be dealt with by diversion after consideration of the following —

- (a) a recommendation made by the Director of Public Prosecutions;
- (b) an assessment report, unless the report is dispensed with under section 30(2);
- (c) the views of persons present at the initial inquiry and information provided by the persons;
- (d) information requested under section 30(1); and
- (e) the willingness of the child to acknowledge responsibility for the offence.



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(2) If a magistrate decides that the matter may be diverted, the magistrate shall issue a diversion direction in the prescribed manner in respect of the child concerned.

(3) Without prejudice to the diversion options under section 72, a magistrate may, after consultation with the persons present at the initial inquiry, develop an individual diversion option which meets the purposes of and standards applicable to the diversion set out in that section.

(4) If a child fails to comply with a diversion direction, a magistrate shall on being notified of the failure in the prescribed manner, issue a warrant for the apprehension of the child or a written notice to the child to appear before a magistrate.

(5) If a child appears before a magistrate under subsection (4), the Magistrate shall inquire into the reasons for the failure of the child to comply with the diversion direction and unless the Director of Public Prosecutions decides to proceed with the prosecution of the child concerned, the magistrate may, after consideration of the views of a person present at the initial inquiry —

- (a) apply the same option with altered conditions;
- (b) apply any other diversion option; or
- (c) issue an appropriate direction that will assist the child and his or her family to comply with the diversion option initially applied.

(6) If the Director of Public Prosecutions decides to proceed with prosecution under subsection (5), the matter must be set down for trial in the Court and section 38 applies.

**Procedure on referral of matter for trial**

**37.—**(1) If diversion has not taken place and the matter has not been transferred to the Director of Human Services under section 35 on the conclusion of the initial inquiry, the Director of Public Prosecutions shall inform a magistrate of the place, date and time when the child must appear for trial in the Court.

(2) A magistrate shall, if the child is not represented by an attorney-at-law, explain to the child and the parent or an appropriate adult, the provisions of Part VI regarding legal representation.

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(3) If a child is —

- (a) in detention, a magistrate shall inform the child of the place, date and time of his or her appearance in the Court and shall direct the parent or an appropriate adult to attend the proceedings at the specified time and place;
- (b) not in detention, a magistrate —
  - (i) may alter or extend a condition imposed under section 14(3) or section 31(3), and
  - (ii) shall direct the child and his or her parent or an appropriate adult, to appear in the Court at a specified place, date and time.

**PART VI**  
**COURT PROCEEDINGS**

*Intention to Prosecute*

**Intention to prosecute**

**38.**—(1) If the Director of Public Prosecutions intends to prosecute a child in conflict with the law, he or she shall issue a certificate in the prescribed form confirming the intention to prosecute.

(2) In issuing a certificate under subsection (1), the Director of Public Prosecutions shall have regard to —

- (a) the appropriateness of diversion under this Act;
- (b) the educational level, cognitive ability, domestic and environmental circumstances, age and maturity of the child;
- (c) the nature and gravity of the alleged offence;
- (d) the impact of the alleged offence on a victim of the offence;
- (e) an assessment report prepared by a probation officer under section 26(3); and
- (f) an evaluation or a report of a counsellor, medical practitioner or psychologist, if applicable.

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(3) If a certificate under subsection (1) is not issued within twenty-eight days after an initial inquiry, the Director of Public Prosecutions is regarded as having declined to institute proceedings to prosecute.

*Legal Representation***Child to be provided with an attorney-at-law**

**39.**—(1) A child must be provided with an attorney-at-law by the State at the conclusion of an initial inquiry if no attorney-at-law was appointed by the parent or an appropriate adult and if —

- (a) it is determined by the Director that the parent of the child or the appropriate adult in charge of the child cannot afford to pay an attorney-at-law;
- (b) the child is in detention pending plea and trial in the High Court;
- (c) the proceedings is postponed for plea and trial in the Court and it is likely that a sentence involving a residential requirement may be imposed if the child is found guilty of the offence in question; or
- (d) the child is over the age of twelve years and under the age of fourteen years and a certificate is issued under section 5(3) in respect of the child.

(2) The Director of Public Prosecutions shall indicate to the Court whether he or she is of the opinion that the matter is a matter under subsection (1)(b) before the child is asked to plead and if so, a plea must not be taken until an attorney-at law is appointed.

**Requirements to be complied with by attorney-at-law**

**40.** An attorney-at-law representing a child shall —

- (a) allow the child, as far as is reasonably possible, to give independent instructions concerning the case;
- (b) explain the rights and duties of the child in relation to proceedings under this Act, in a manner appropriate to the age and intellectual development of the child;

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- (c) promote diversion where appropriate, but may not unduly influence the child to acknowledge responsibility; and
- (d) ensure that the trial is conducted without delay.

*Procedure relating to children***Summoning of parent or appropriate adult**

**41.** On the hearing of a charge against, or an application relating to, a person who is believed to be a child, the Court may summon the parent or an appropriate adult responsible for the care of the child brought before the Court, to be present in Court while the charge or application is being determined.

**Conduct of proceedings relating to child in Court**

**42.—(1)** At the commencement of the proceedings in the Court, the Judge, or magistrate shall in the prescribed manner —

- (a) inform the child of the nature of the allegations against him or her;
- (b) inform the parent or appropriate adult of the nature of the allegations against the child;
- (c) inform the child of his or her rights; and
- (d) explain to the child the procedures to be followed under this Act, the Criminal Code, Cap. 3.01, the District Courts Act, Cap. 2.02 or any other law.

(2) The proceedings in the Court is, with due regard to the procedural rights of the child, conducted in an informal manner in order to encourage maximum participation by the child and his or her parent or an appropriate adult.

(3) The police officer in charge of the investigation relating to the child, shall request a probation officer or other person to act as an independent observer and the independent observer must be present at the proceedings if —

- (a) a child refuses to have his or her parent or an appropriate adult present at the proceedings under subsections (1) and (2); or

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- (b) a parent or an appropriate adult is not present or cannot be found and an attorney-at-law is not available.

(4) A judge or magistrate shall protect a child from hostile cross examination where the cross examination is prejudicial to the well-being of the child or to the fairness of the proceedings.

**Admissibility of evidence**

**43.**—(1) Evidence obtained as a result of a confession, or an admission that is admissible under the Criminal Code, Cap. 3.01, the District Courts Act, Cap. 2.02 or any other law is admissible as evidence in the Court if the parent of the child or an appropriate adult or the attorney-at-law representing the child was present when the confession or the admission was made.

- (2) Subsection (1) applies if an identity parade has taken place.

**Treatment of child at Court**

**44.**—(1) A child shall not wear leg irons when appearing in a Court, and handcuffs may only be used if there are exceptional circumstances that warrant the use of handcuffs.

(2) A child held in custody at a police station or at a Court shall be kept separate from an adult and must be treated in a manner and kept in conditions which takes into account the age of the child.

(3) A female child must be kept separate from a male child when in the custody of a Court.

(4) If a child is transported to and from a Court he or she must, be transported separate from adults.

(5) The Commissioner of Police shall issue directives for the treatment of a child while in detention in a Court.

**Separation and joinder of trials involving child and adult**

**45.**—(1) If a child and an adult are alleged to have committed the same offence, the child and adult are to be tried separately unless it is in the interest of justice to join the trials.

(2) An application for the joinder of the trials must be made to the Court.

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(3) If the Court grants an application for joinder of trials, the matter must be transferred to the Court in which the adult is being tried and the child must appear after notice is given to the child in the prescribed manner.

(4) The Court in which the adult is being tried, shall give the child the benefits conferred on the child under this Act.

**Time limit relating to conclusion of trial**

**46.**—(1) The Court shall conclude the trial of an accused child as speedily as possible and shall ensure that adjournments are limited in number and duration.

(2) Sections 31 and 34, apply, with the necessary modifications required by the context, to the Court if the child appearing in the Court for the first time is in detention.

(3) If a child remains in detention in a place of safety, a secure residential facility or a correctional facility and the trial of the child is not concluded within eighteen months from the date on which the child has pleaded to the charge, the child shall be released from detention, unless he or she is charged with an offence listed under Schedule 3 item 1, 2 or 3.

**Order for diversion**

**47.**—(1) If before the conclusion of a case for the prosecution it comes to the attention of the Court that a child acknowledges or intends to acknowledge responsibility for an alleged offence, the Court may make an order for diversion in respect of the child if the Director of Public Prosecutions indicates that the matter may be settled by diversion.

(2) If the Court makes an order for diversion, it shall postpone the proceedings pending the compliance of the child with the diversion order.

(3) The Court may, on receipt of a report from an assigned officer that a child has successfully complied with a diversion order, acquit the child of all charges.

(4) An acquittal may be made in the absence of the child.

*Child Justice Act***Privacy and confidentiality for child in Court**

**48.—**(1) A person shall not be present at a sitting of a Court in a matter relating to a child unless the presence of the person is necessary in connection with the proceedings of the court or unless the judge or magistrate has granted the person permission to be present.

(2) A person shall not publish information which reveals or may reveal the identity of a child or of any witness under the age of eighteen years appearing at any proceedings before a Court.

(3) Subject to subsection (4), a probation officer, judge or magistrate, shall not preclude —

- (a) access to information pertaining to a child if the access would be in the best interest, safety or welfare of the child;
- (b) the publication, in the form of a law report, of —
  - (i) information for the purpose of reporting a question of law relating to the proceedings, or
  - (ii) a decision or ruling given by the Court on the question under subparagraph (i); or
- (c) the publication, in the form of a report of a professional or technical nature, of research results and statistical data pertaining to a child if the publication would be in the best interest, safety or welfare of the child or children in general.

(4) A report under subsection (3)(b) and (c) must not mention —

- (a) the name of the child charged or of the person against whom or in connection with whom the offence in question is alleged to have been committed or of a witness at the proceedings; and
- (b) the place where the offence was alleged to have been committed.

(5) Subject to subsection (6), in relation to proceedings in a Court —

- (a) a newspaper report or radio or television broadcast or a report on the internet, in the social media or by other

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electronic means of the proceedings shall not reveal the name, address or school, or include particulars calculated to lead to the identification of a child as being the person by or against or in respect of whom the proceedings are taken, or as being a witness in the proceedings;

- (b) a picture must not be published in a manner as being, or including a picture of, a child concerned in the proceedings.

(6) The Court may, in a case, if satisfied that it is in the interests of justice or the public to do so, by order dispense with the requirements of this section to the extent as may be specified in the order.

(7) A person who publishes in a newspaper or broadcasts by radio, television, internet, social media or other electronic means any matter or information or reveals the identity of any child, witness or other person in contravention of this section, commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six years or to both.

*Sentencing***Pre-sentence report**

**49.—**(1) The Court shall request a pre-sentence report prepared by a probation officer or any other person prior to the imposition of sentence on a child.

(2) The probation officer or other person shall complete the report under subsection (1) as soon as possible, but no later than one calendar month following the date on which the report was requested.

(3) The Court may dispense with a pre-sentence report if —

- (a) a child is convicted for an offence under Schedule 1;  
or
- (b) requiring the report would cause undue delay in the conclusion of the case to prejudice the child,

but the Court shall not impose a sentence with a residential requirement unless a pre-sentence report is submitted before the Court.



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(4) For the purposes of subsection (3), “a sentence with a residential requirement” includes a sentence where the residential requirement is suspended.

(5) If the Court imposes a sentence involving detention in a secure residential facility, the Court shall certify on the warrant of detention that a pre-sentence report is submitted before the Court prior to the imposition of the sentence.

**Prohibition on sentence**

**50.**—(1) A sentence of life imprisonment, capital punishment or any form of corporal punishment shall not be imposed on a child.

(2) A Court shall not pronounce or record a sentence of capital punishment against a child.

(3) A child who is sentenced to attend a secure residential facility shall not be detained in a correctional facility or in police custody pending designation of the place where the sentence is to be served.

**Imposition of sentence**

**51.**—(1) The Court shall, after a finding of guilt in relation to a child, impose a sentence on the child in accordance with this Part to —

- (a) encourage the child to understand the implications of and be accountable for the harm caused;
- (b) promote an individualized response that is appropriate to the circumstances of the child and proportionate to the circumstances surrounding the offence;
- (c) promote the reintegration of the child into the family and community; and
- (d) ensure that necessary supervision, guidance, treatment or service which form part of the sentence, assist the child in the process of reintegration and rehabilitation.

(2) Without prejudice to subsection (1), the Court may impose a sentence —

- (a) involving a compulsory residential requirement;

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- (b) referring a child to a secure residential facility or correctional facility for an initial period and thereafter a community based sentence;
- (c) referring a child to a family group conference;
- (d) involving correctional supervision.

**Sentence involving a compulsory residential requirement**

**52.—**(1) A sentence involving a compulsory residential requirement shall not be imposed on a child unless the Court is satisfied that the sentence is justified by —

- (a) the seriousness of the offence, the protection of the community and the severity of the impact of the offence on the victim; or
- (b) the previous failure of the child to respond to non-residential alternatives.

(2) If the Court imposes a sentence involving a compulsory residential requirement on a child it shall note the reasons for the sentence on the record and explain the reasons to the child in a language which the child can understand.

(3) A sentence involving a compulsory residential requirement must include referral to a —

- (a) programme with a periodic residence requirement where the duration of the programme does not exceed twelve months, and the portion of the residence requirement does not exceed twenty-one consecutive nights, with a maximum of sixty nights for the duration of the programme;
- (b) secure residential facility under section 53; or
- (c) correctional facility under section 54.

**Referral to secure residential facility**

**53.—**(1) Subject to subsection (2), a sentence to a secure residential facility shall not exceed two years.

(2) A sentence to a secure residential facility may be imposed for a period exceeding two years if the child is under the age of fourteen

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years and he or she would have been sentenced to imprisonment due to the seriousness of the offence were it not for section 54(1)(a).

(3) Subject to subsection (4), a child under subsection (2) may not be required to reside in a secure residential facility beyond the age of eighteen years.

(4) Notwithstanding subsection (3), a child may request permission, in the prescribed form, from the head of the secure residential facility to continue to reside at the secure residential facility for the purposes of completing his or her education in the following circumstances —

- (a) on completion of a sentence at a secure residential facility;  
or
- (b) in the case of a child under subsection (2), on attainment of the age of eighteen years.

**Referral to a correctional facility**

**54.—**(1) A Court shall not impose a sentence to a correctional facility on a child —

- (a) unless the child is over the age of fourteen years at the time of commission of the offence; and
- (b) unless substantial and compelling reasons exist for imposing a sentence to a correctional facility, which may include —
  - (i) conviction of an offence under Schedule 3, or
  - (ii) a previous failure to respond to an alternative sentence, including a sentence with a residential element; or
- (c) in respect of an offence under Schedule 1; or
- (d) as an alternative to another sentence specified in this Act.

(2) If a sentence to a correctional facility is imposed on a child under subsection (1) that sentence shall be for a period not exceeding three years.

**Community based sentence**

**55. —**(1) A community based sentence includes —

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- (a) a level two diversion option under paragraphs (a), (b), (c), (d) or (e) of Schedule 4;
- (b) placement under a supervision and guidance order in the prescribed form for a period not exceeding three years;
- (c) in cases that warrant the specialized intervention, referral to counselling or therapy in conjunction with an option under paragraph (a) for a period of time as the Court considers necessary;
- (d) if the child is over the compulsory school age, and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose, for a period not exceeding twelve months and for no more than thirty-five hours per week;
- (e) performance of community service work under the supervision or control of a specified person or institution identified by the Court for a maximum period of two hundred and fifty hours and which must be completed in twelve months;
- (f) committing the child to the care of a fit person, whether a relative or not, who consents to undertake the care of the child;
- (g) ordering the parent of the child to enter into a recognisance for the good behaviour of the child; and
- (h) any other sentence, subject to section 54, which is appropriate to the circumstances of the child and which, if it includes a period of time, shall not exceed twelve months.

(2) The consent of a person to undertake the care of a child under an order made under subsection (1)(f) shall be provided in a manner the Court determines sufficient.

(3) Before a child from the age of twelve years to fourteen years is sentenced under subsection (1)(e), the Court shall consider the age, development and compulsory school attendance of the child.

**Supervision of a child under a supervision and guidance order**

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**56.—**(1) If a child is placed under the supervision of a person under a supervision and guidance order under section 55(1) (b), that person —

- (a) shall, while the order remains in force, visit, advise and support the child and, when necessary, endeavour to find the child suitable employment; and
- (b) may, if it appears necessary in the child's best interest to do so, at any time while the order remains in force, bring the child before a Court and that Court may, if it thinks it desirable in the child's best interest to do so, commit the child to the care of a fit person, whether a relative or not, who is willing to undertake the care of the child.

(2) If a child is bound by a recognizance or order under the Criminal Code, Cap. 3.01 or under this Act, the attainment by that child of the age of eighteen years does not deprive the Court of jurisdiction to —

- (a) enforce his or her attendance and deal with him or her in any respect for a failure to observe a condition of his or her recognizance, or order; or
- (b) vary or discharge a recognizance or order.

**Summons to inquire of fit person**

**57.—**(1) If a child is convicted of an offence and the Court is satisfied that it is in the best interest and welfare of the child to make an order committing the child to the care of a fit person and ascertains on inquiry that the person is available and consents to undertake the care of the child, the Court shall summon the fit person before it for the purpose of examining him or her as to his or her fitness to be appointed.

(2) The Court, before making an order under this Act committing a child to the care of a fit person, shall ascertain the religious persuasion of the child and shall, wherever possible, in making the order, take into consideration the religious persuasion of the child.

**Family group conference**

**58.—**(1) If the Court makes a determination of guilt with respect to a child, the Court may refer the matter to a family group conference for a written recommendation.

(2) If a matter is referred to a family group conference under subsection (1), an assigned officer shall be appointed by the Court to conduct the family group conference.

(3) Within fourteen days, but not later than twenty-one days after the appointment of an assigned officer, the assigned officer shall convene the family group conference by setting the time and place for the conference, and taking the necessary steps to ensure that persons who are to attend the conference are adequately notified of the time and place of the conference.

(4) The following persons shall attend a family group conference —

- (a) the child and his or her parent or an appropriate adult;
- (b) a person reasonably requested by the child and considered appropriate by the Court;
- (c) the assigned officer;
- (d) a police officer who apprehended the child, issued a summons or notice or another police officer designated by the Commissioner of Police;
- (e) the victim of the alleged offence which the child committed and if the victim is under the age of eighteen years, his or her parent or an appropriate adult;
- (f) the attorney-at-law representing the child, if applicable;
- (g) a member of the community in which the child resides;  
and
- (h) a person authorized by the assigned officer to attend the family group conference.

(5) The persons in a family group conference shall decide the procedure to be followed and may agree to a plan in respect of the child under subsection (6) as they consider necessary.

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(6) A plan under subsection (5) —

(a) may include —

- (i) the application of a diversion option, or
- (ii) another plan appropriate to the child, his or her family and the circumstances, including a plan for restorative justice; and

(b) must —

- (i) specify the objectives for the child and the period within which the objectives are to be achieved,
- (ii) contain the details of the services and the assistance to be provided for the child and for a parent or an appropriate adult,
- (iii) specify the persons or organizations to provide the services,
- (iv) state the responsibility of the child and the parents or an appropriate adult, and
- (v) include other matters relating to the education, recreation and welfare of the child as are relevant.

(7) An assigned officer shall record the details of and reasons for any plan agreed to at the family group conference and shall furnish a copy of the record to the Court.

(8) If a child fails to comply with a condition of the plan agreed to in a family group conference, the assigned officer shall notify the Court in writing of the failure.

(9) The Court on being notified under subsection (8) shall issue a warrant for the apprehension of the child or a written notice to the child to appear before the Court.

(10) If a person of a family group conference fails to agree on a plan, the assigned officer shall end the family group conference and refer the matter to the Court for consideration of another diversion option.

(11) The proceedings of a family group conference shall be confidential and a statement made by a person in the family

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group conference may not be used as evidence in subsequent court proceedings.

**Decision after family group conference**

**59.**—(1) On receipt of the written recommendation from a family group conference, the Court shall —

- (a) confirm the recommendation by making it an order of the Court; or
- (b) substitute or amend the recommendation and make an appropriate order.

(2) If the Court does not agree to the terms of the plan made at a family group conference, and imposes a sentence that is different in a material respect from that agreed to or decided on at the family group conference, the Court shall note the reasons for deviating from the plan on the record of the proceedings.

(3) If a child who is sentenced in accordance with an order arising from a family group conference fails to comply with that order, an assigned officer shall notify the Court of the failure as soon as possible and the Court shall issue a warrant for the apprehension of the child, and if the child appears before the Court under the warrant, the Court shall impose an appropriate sentence on the child.

**Sentence involving correctional supervision**

**60.**—(1) The Court may impose a sentence of correctional supervision for a period not exceeding three years on a child over the age of fourteen years.

(2) The whole or part of a sentence imposed under subsection (1) may be postponed or suspended, with or without conditions under section 61(3).

**Postponement or suspension of imposition of sentence**

**61.**—(1) The imposition of a sentence on a child may be postponed, with or without one or more of the conditions under subsection (3), for a period not exceeding three years.

(2) The whole or a part of a sentence imposed on a child may be suspended, with or without one or more of the conditions under subsection (3), for a period not exceeding five years.



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(3) The conditions under subsections (1) and (2) may be a condition appropriate to the circumstances of the child and which promotes the reintegration of the child into his or her community or society and may include —

- (a) restitution, compensation or symbolic compensation;
- (b) an apology;
- (c) the obligation not to commit a further offence of a similar nature;
- (d) good behaviour;
- (e) regular school attendance for a specified period;
- (f) attendance at a specified time, date and place of a family group conference;
- (g) placement under the supervision of a specified person;
- (h) a requirement that the child shall appear before the Court on a date or dates to be determined by the Court for a periodic progress report; and
- (i) referral to a level one diversion option under Schedule 4(d), (e), (f), (g), (h), (i), (j) or (k).

(4) If the Court has postponed the passing of a sentence under subsection (1) on one or more of the conditions under subsection (3), the Court may request the person under subsection (3)(g) to submit regular reports indicating the compliance of the child with the conditions imposed under this section.

(5) Notwithstanding section 78, the conviction of a child in respect of whom imposition of a sentence is postponed shall be expunged from any record if the child has met all the conditions imposed or at the expiration of the period in question.

**Failure to comply with condition of sentence**

**62.—**(1) If a child fails to comply with a condition of a sentence imposed on him or her, the child may, in the prescribed manner, be brought before the Court for reconsideration of the original sentence which may include a sentence of imprisonment.

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(2) If the Court imposes a sentence of imprisonment under subsection (1), the Court shall announce the term of imprisonment in open Court and the coming into effect of the term of imprisonment shall be antedated by the number of days that the child has spent in a correctional facility prior to the sentence being announced in the Court.

**Penalty in lieu of fine or imprisonment**

**63.** The Court convicting a child of an offence for which a fine or imprisonment is stated by law as the penalty, may impose any one of the following penalties in place of that fine or imprisonment —

- (a) symbolic compensation to a specified person or institution;
- (b) payment of compensation not exceeding five thousand dollars to a specified person or institution if the child or his or her family is able to make that payment;
- (c) an obligation on the child to provide a service or benefit or to pay compensation to a specified organisation identified by the child or by the Court, if there is no identifiable person to whom restitution or compensation could be made; or
- (d) another sentence under this Act, except imprisonment.

**Notice to parent or appropriate adult**

**64.—**(1) If it appears to the Court that finds a child guilty of an offence relating to property or against the person of another, on evidence admitted or submissions made in the case against the child —

- (a) that wilful failure on the part of a parent or an appropriate adult to exercise proper care of, or supervision over, the child was likely to have substantially contributed to the commission of the offence; and
- (b) that compensation may be paid to any person for —
  - (i) loss caused to the person's property whether the loss was an element of the offence charged or happened in the course of the commission of the offence, or
  - (ii) injury suffered by the person, whether as the victim of the offence or otherwise, because of the commission of the offence,

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the Court, on its own initiative or on application by the Director of Public Prosecutions, may decide to call on the parent or an appropriate adult to show cause, as directed by the Court, that compensation should not be paid by the parent or appropriate adult.

(2) If the parent or an appropriate adult is present in Court when the Court decides to call on the parent or an appropriate adult to show cause, the Court may call on the parent to show cause by announcing its decision in Court.

(3) The Court in all cases, instead of acting under subsection (2), may cause the Registrar of the High Court to give written notice to the parent or an appropriate adult to show cause, as directed by the notice, why the parent or an appropriate adult should not pay the compensation.

(4) If the Court calls on the parent or an appropriate adult under subsection (2) or the Registrar of the High Court issues a notice under subsection (3) —

- (a) the Court shall give its reasons for so doing in writing; and
- (b) a copy of the reasons for so doing must be given, in accordance with the direction of the Court, if any, to the parent or an appropriate adult within a reasonable time before the proceedings to show cause.

**Proceedings to show cause**

**65.**—(1) At the proceedings to show cause for the purposes of section 64 (1) —

- (a) evidence and submissions in the case against the child are to be treated as evidence and submissions in the proceedings to show cause;
- (b) further evidence may be given and submissions made;
- (c) the parent or appropriate adult may require a witness whose evidence is admitted under paragraph (a) to be recalled to give evidence; and
- (d) the parent or an appropriate adult may require any fact stated in submissions mentioned in paragraph (a) to be proved.

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(2) Subject to subsection (1) —

- (a) the determination of the issues at the proceedings to show cause shall be by way of fresh hearing on the merits; and
- (b) the Court shall not be bound by a determination made by it under section 64.

(3) If the parent or appropriate adult was called on to show cause on the prosecution's application, the prosecution shall be a party to the proceedings to show cause.

(4) If the parent or an appropriate adult was called on to show cause on the Court's own initiative the Director of Public Prosecutions, may at the proceedings to show cause —

- (a) appear and give the Court the assistance it may require;  
or
- (b) intervene as a party with the permission of the Court.

(5) If on consideration of the evidence and submissions under subsection (1)(a) and (b), a Court is satisfied beyond reasonable doubt of the matters under section 64(1), the Court may make an order requiring the parent to pay compensation.

(6) An order made under subsection (5) must direct that the amount is paid —

- (a) by a time specified in the order or by instalments specified in the order; and
- (b) to the Registrar of the High Court.

(7) In determining the amount to be paid by a parent by way of compensation, the Court shall have regard to the capacity of the parent to pay the amount, which shall include an assessment of the effect any order would have on the capacity of the parent to provide for his or her child.

(8) The Court shall proceed under this section in the absence of the parent if the Court is satisfied that the parent is given notice of the proceedings to show cause under section 65.

*Child Justice Act**General***Power to proceed with case in absence of child**

**66.** If in proceedings in relation to an offence, the Court is satisfied that the attendance before the Court of a child in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.

**Extension of power to take depositions**

**67.—**(1) Subject to subsection (2), if the Court is satisfied by the evidence of a medical practitioner that the attendance before the Court of any child in respect of whom the offence is alleged to have been committed would involve serious danger to his or her life or health, any deposition of the child taken under this Part shall be admitted in evidence either for or against the accused child without further proof if it is signed by the Judge before whom it was taken.

(2) The deposition taken under subsection (1) is not admissible in evidence against the accused person unless it is proven that —

- (a) reasonable notice of the intention to take the deposition is given to him or her; or
- (b) the deposition was taken in the presence of the accused person; and
- (c) his or her attorney-at-law had the opportunity to cross-examine the child making the deposition.

**Determination of age**

**68.—**(1) If a person, whether charged with an offence or not, is brought before a Court otherwise than for the purpose of giving evidence, and it appears to the Court that he or she is a child, the Court shall make due enquiry as to the age of that person, and for that purpose shall take the evidence as may be forthcoming at the hearing of the case.

(2) If in a charge or indictment for an offence it is alleged that the person by or in respect of whom the offence was committed was

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a child or was under or had attained any specified age, and he or she appears to the court to have been at the date of the commission of the alleged offence a child or to have been under or to have attained the specified age he or she shall for the purposes of this Act be presumed at that date to have been a child or to have been under, or to have attained, that age, unless the contrary is proved.

(3) An order or judgment of the Court is not invalidated by subsequent proof that the age of a person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person brought before it shall, for the purposes of this Act be the true age of the person brought before the court and if the person has attained the age of eighteen years that person shall for the purposes of this Act be considered not to be a child.

**Order relating to parent or appropriate adult**

**69.**—(1) The Court may make an order in relation to one or both of the parents or in relation to an appropriate adult of a child who is in conflict with the law.

(2) The Court order, under subsection (1), may require the parents or appropriate adult to —

- (a) attend counselling;
- (b) attend parenting classes;
- (c) comply with a treatment plan;
- (d) take an action as may be necessary to support a probation order or treatment plan.

(3) A parent who contravenes a Court order, made under subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year.

(4) In making an order, under this section, the Court shall take into consideration the recommendations of a magistrate.

(5) When making a recommendation to the Court, under this section, a magistrate shall take into account —

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- (a) the recommendations of the person who provided the counselling or parenting classes;
- (b) the effect on other children of the family;
- (c) the terms of employment of the parents or appropriate adult; and
- (d) other circumstances or conditions relevant to the particular case.

**Appeal**

**70.** An appeal may be made from a decision or order of the Court and the procedure to be followed on the bringing and hearing of the appeal shall be in accordance with the District Courts Act, Cap. 2.02, the Criminal Code, Cap. 3.01 or any other law.

**PART VII****DIVERSION****Diversion**

**71.—(1)** A probation officer, the Director of Public Prosecutions or Court may consider diversion to —

- (a) encourage a child to be accountable for the harm which he or she has caused to another person;
- (b) meet the particular needs of a child;
- (c) promote the reintegration of a child into the family and the community;
- (d) provide an opportunity to persons affected by the harm caused by a child to express views on the impact of the harm;
- (e) encourage the rendering to the victim of some symbolic benefit or the delivery of some object as compensation for the harm caused by a child;
- (f) promote the reconciliation between a child and the person or community affected by the harm caused by the child;

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- (g) prevent stigmatization of a child and other adverse consequences flowing from being subject to the criminal justice system; and
- (h) prevent a child from having a criminal record.

(2) Notwithstanding subsection (1), a child shall be considered for diversion if —

- (a) the child and his or her parent or an appropriate adult, consent to the diversion and the diversion option;
- (b) the child understands his or her right to remain silent and has not been unduly influenced to acknowledge responsibility for an alleged act or omission; and
- (c) there is sufficient evidence to prosecute the child, or
- (d) the penalty for the offence with which the child is charged does not exceed a term of imprisonment of ten years.

**Levels of diversion options**

**72.—**(1) A diversion may be a level one diversion option, level two diversion option or level three diversion option as set out in Schedule 4.

(2) In selecting the level that is appropriate for a child, a probation officer, the Director of Public Prosecutions or the Court shall consider —

- (a) the background of the child;
- (b) the educational level, cognitive ability and the environmental circumstances of the child;
- (c) the proportionality of the option recommended or selected to the circumstances of the child;
- (d) the nature of the offence and the interests of the community or society; and
- (e) the age and developmental needs of the child.

(3) A level three diversion option applies to a child over the age of fourteen years in cases where the law under which the offence is committed imposes a sentence of detention for a period not exceeding six months.



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(4) The offences to which a level one diversion option, level two diversion option or level three diversion option apply are set out in Schedule 5 and a diversion option applies to offences that are similar to those under Schedule 5.

(5) A child shall not be excluded from a diversion option if his or her parent is unable to pay any fee required for the child's participation in the diversion option.

**Development of diversion options**

**73.**—(1) The Minister, after consultation with the Family Court and the Director, may develop other suitable diversion option as contemplated in this Part.

(2) A diversion option presented to the Minister by a government department, an agency or a non-governmental organization, may be approved by the Minister for the purposes of this Act, in the prescribed manner, if it —

- (a) promotes the dignity and well-being of the child, and the development of his or her sense of self worth and ability to contribute to his or her community and society;
- (b) is not exploitative, harmful or hazardous to the physical or mental health of the child;
- (c) is appropriate to the age and maturity of the child;
- (d) does not interfere with the education or schooling of the child;
- (e) has a predetermined content and duration; and
- (f) involves a service to children on a regular basis.

**Designation of assigned officer**

**74.**—(1) If a diversion option is selected by a Court, the the Court shall designate an assigned officer or other person to monitor the compliance of the child with the diversion option.

(2) If a child fails to comply with a condition of the diversion option, the assigned officer or other person shall notify the Court of that failure.

*Child Justice Act***Community service work as diversion**

**75.** A child may be required to perform community service work as an element of diversion, with due consideration to the age and development of the child.

**Register**

**76.** The Director shall keep a register in the prescribed manner of children who have been subjected to diversion.

**PART VIII****MISCELLANEOUS****Obstruction of assigned officer**

**77.—** (1) A person shall not hinder or obstruct an assigned officer in the performance of his or her functions under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

**Expungement of record**

**78. —**(1) A record of a sentence imposed on a child convicted of an offence under Schedule 3 must not be expunged.

(2) In respect of offences other than the offences under Schedule 3, a judge or magistrate shall make an order to expunge the conviction and sentence of the child and shall note the reasons for the decision as to whether the record may be expunged or not where the judge or magistrate imposes the sentence after consideration of a relevant factor, including —

- (a) the nature and circumstances of the offence; and
- (b) the personal circumstances of the child.

(3) If the judge or magistrate makes a decision regarding the expungement of a record of a conviction and sentence under this section, he or she shall explain the decision and give his or her reasons for the decision, including any conditions relating to the expungement of the record, to the child.

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(4) A decision by the judge or magistrate not to expunge a record is subject to appeal.

**Regulations**

**79.**—(1) The Minister may make Regulations for giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Minister may make Regulations —

- (a) regarding a matter which is required by this Act to be prescribed;
- (b) for the procedure to be put in place to monitor and assess the proper application of and compliance with this Act.

**Amendment of Schedules**

**80.** The Minister may, by Order subject to affirmative resolution of Parliament, amend Schedule 1, Schedule 2, Schedule 3, Schedule 4 or Schedule 5.

**Repeal and savings**

**81.**—(1) The Children and Young Persons Act, Cap. 3.09 is repealed.

(2) Notwithstanding the repeal of the Children and Young Persons Act, the rules, orders, and regulations made under that Act continues in force and unless replaced by Rules, Orders and Regulations made under this Act.

(3) Section 27 of the Criminal Code, Cap. 3.01 is repealed.

*Child Justice Act***SCHEDULE 1**

(Sections 9(2), 13(1) and (2)(a),  
49(3)(a) and 54(1)(c))

**OFFENCES FOR WHICH CHILD MAY NOT BE APPREHENDED  
AND BE RELEASED**

1. Assault where grievous bodily harm has not been inflicted.
2. Malicious damage to property where damage does not exceed five thousand dollars.
3. Trespass.
4. An offence under a law in Saint Lucia relating to the possession of a controlled drug (where the quantity involved does not exceed five thousand dollars).
5. Theft, where the value of the property does not exceed five thousand dollars.
6. A statutory offence where the maximum penalty determined by the statute does not exceed five thousand dollars.
7. A conspiracy, incitement or attempt to commit any offence under this Schedule.

*Child Justice Act***SCHEDULE 2**

(Sections 13(2)(b) and 16(4))

**OFFENCES FOR WHICH A CHILD MAY BE RELEASED FROM  
POLICE CUSTODY**

1. Assault, involving the infliction of grievous bodily harm.
2. Arson.
3. Robbery, other than robbery with aggravating circumstances, if the amount involved does not exceed one hundred thousand dollars.
4. Theft, where the amount involved does not exceed one hundred thousand dollars.
5. An offence under a law relating to the possession of a controlled drug where the quantity involved does not exceed one hundred thousand dollars.
6. Forgery or fraud, where the amount concerned does not exceed one hundred thousand dollars.
7. A statutory offence where the penalty concerned does not exceed one hundred thousand dollars.
8. A conspiracy, incitement or attempt to commit an offence under this Schedule.

*Child Justice Act***SCHEDULE 3**

(Sections 16(1)(a), 18, 31(2)(n), 32(3), 46(3),  
54(1)(b)(i), 78(1) and (2))

**OFFENCES FOR WHICH A CHILD MAY NOT BE RELEASED  
FROM POLICE CUSTODY**

1. Murder, child destruction, infanticide.
2. Manslaughter
3. Rape.
4. Treason
5. Burglary
6. Robbery —
  - (a) where there are aggravating circumstances or violence;
  - (b) involving the taking of a motor vehicle.
7. Indecent assault involving the infliction of grievous bodily harm.
8. Indecent assault on a person under the age of eighteen years.
9. Any offence under the Drugs (Prevention of Misuse) Act, Cap. 3.02 if —
  - (a) the value of the controlled drugs in question is more than one hundred thousand dollars ; or
  - (b) the value of the controlled drugs in question is more than one hundred thousand dollars and the offence was committed by a person, group of persons, acting in the execution or furtherance of a common purpose or conspiracy.
10. Any conspiracy or incitement to commit an offence referred to under this Schedule or an attempt to commit any of the offences under Item 1, 2, or 3 of this Schedule.
11. Offences under the Criminal Code, Cap. 3.01 not listed in Schedule I and Schedule II.

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12. Resisting arrest, obstruction, assault on police under the Police Act, Cap. 14.01.
13. Offences under the Motor Vehicles and Road Traffic Act, Cap. 8.01.
14. Summary offences carrying a penalty of five years or under.

*Child Justice Act***SCHEDULE 4**

(Sections 55(1)(a), 61(3)(i) and 72(1))

**LEVELS OF DIVERSION OPTIONS****PART 1**

Level one diversion option includes—

- (a) an oral or written apology to a specified person or institution;
- (b) a formal caution in the prescribed form with or without conditions;
- (c) placement under a supervision and guidance order in the prescribed form for a period not exceeding six months;
- (d) placement under a reporting order in the prescribed form;
- (e) the issue of a compulsory school attendance order in the prescribed form for a period not exceeding six months;
- (f) the issue of a positive peer association order requiring a child to associate with a person whom the assigned officer has reason to believe can contribute to the positive behaviour of the child, in the prescribed manner in respect of a specified person in a specified place for a period not exceeding six months;
- (g) the issue of a family time order, requiring a child to spend a specified number of hours with his or her family, in the prescribed form for a period not exceeding six months;
- (h) the issue of a good behaviour order in the prescribed form;
- (i) the issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place in the prescribed form;
- (j) referral to counselling or therapy for a period not exceeding six months;
- (k) compulsory attendance at a specified place for a specified vocational or educational purpose for a period not



*Child Justice Act*

exceeding five hours each week, for a maximum of six months;

- (l) symbolic compensation to a specified person or an institution; and
- (m) restitution of a specified object to a specified victim of an alleged offence where the object concerned may be returned or restored.

**PART 2**

Level two diversion option includes —

- (a) the options under level one except that the maximum periods under that level shall for the purposes of this subsection be nine months;
- (b) compulsory attendance at a place approved by a Magistrate or the Court for a specified vocational or educational purpose for a period not exceeding eight hours each week, for a maximum of nine months;
- (c) performance of community service work under the supervision or control of an organisation or institution, or a specified person or group identified by an assigned officer effecting the assessment, for a maximum period of fifty hours, and to be completed within a maximum period of nine months;
- (d) provision of some service or benefit to a specified victim in an amount which the family of the child is able to afford;
- (e) where there is no identifiable person to whom restitution or compensation may be made, provision of some service or benefit or payment of compensation to an organization, charity or welfare organization for the benefit of the community.

*Child Justice Act***PART 3**

Level three diversion option includes —

- (a) referral to a programme which does not exceed twelve months and which has a residential element that must not exceed thirty-five days in total and twenty-one consecutive days during the operation of the programme;
- (b) performance of some service without remuneration for the benefit of the community under the supervision and control of an organisation or institution, or a specified group of persons, identified by an assigned officer and for a period of two hundred and fifty hours which shall be completed within twelve months and no more than thirty-five hours per week;
- (c) where the child is not attending formal schooling, compulsory attendance at a specified place for a specified vocational or educational purpose for a period not exceeding twelve months and no more than thirty-five hours per week; and
- (d) referral to counselling or therapeutic intervention in conjunction with any of the options listed in respect of this level.

*Child Justice Act***SCHEDULE 5**

(Section 72(4))

**OFFENCES FOR WHICH DIVERSION OPTIONS APPLY****PART 1****Level 1 Diversion Option - Offences (1<sup>st</sup> Time Offender)**

1. Truancy
2. Run-away
3. Theft
4. Threat of harm
5. Causing harm or wound
6. Trespass
7. Stealing (summary offence)
8. Praedial larceny

**PART 2****Level 2 Diversion Option - Offences**

1. Making use of threatening, violent or obscene language
2. Riotous, indecent, disorderly or insulting behaviour in any public place, Court, police station or place of entertainment
3. Causing grievous harm
4. Threatening injury to property
5. Beyond care and control
6. Assault
7. Truancy
8. Trespass
9. Theft
10. Dishonestly receiving
11. Unlawful possession of goods

*Child Justice Act***PART 3****Level 3 Diversion Option - Offences**

1. Probation violation
2. Curfew violation
3. Unruly or incorrigible behaviour
4. Unlawful possession with intent
5. Theft
6. Assault (summary offence)
7. Aggravated assault
8. Unlawfully carrying a weapon
9. Resisting arrest, obstruction, assault on police
10. Defilement of a female between thirteen and sixteen years of age
11. Housebreaking
12. Possession of instrument for burglary

Passed in the House of Assembly this 20th day of November, 2018.

ANDY G. DANIEL,  
*Speaker of the House of Assembly*

Passed in the Senate this 22nd day of November, 2018.

JEANNINE GIRAUDY-MCINTYRE,  
*President of the Senate.*

*Companies (Amendment) Act***SAINT LUCIA****No. 10 of 2018****ARRANGEMENT OF SECTIONS***Section*

1. Short title
2. Interpretation
3. Insertion of new section 69A
4. Amendment of section 177
5. Amendment of section 190
6. Amendment of section 344
7. Amendment of section 355
8. Amendment of section 377C
9. Amendment of section 377K
10. Amendment of section 551



*Companies (Amendment) Act*

I ASSENT

[L.S.]

NEVILLE CENAC,  
*Governor-General.*

*December 11, 2018.*

## SAINT LUCIA

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**No. 10 of 2018**

**AN ACT** to amend the Companies Act, Cap. 13.01.

[ 12th December, 2018 ]

**BE IT ENACTED** by the Queen's Most Excellent Majesty by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same as follows:

*Companies (Amendment) Act***Short title**

1. This Act may be cited as the Companies (Amendment) Act, 2018.

**Interpretation**

2. In this Act, “principal Act” means the Companies Act, Cap. 13.01.

**Insertion of new section 69A**

3. The principal Act is amended by inserting immediately after section 69, the following new section 69A —

**“Notice of beneficial owners**

**69A.**—(1) Subject to subsection (3), at the time of sending articles of incorporation of a company to the Registrar, the incorporator shall send to the Registrar, a notice of the beneficial owner of the company in the prescribed form.

(2) The Registrar shall file the notice of the beneficial owner under subsection (1).

(3) The requirement for a company to send a notice of the beneficial owner under subsection (1), does not apply to a company that is —

- (a) a public company;
- (b) a multilateral institution;
- (c) a government entity;
- (d) a pension fund that is regulated by the government in the country of origin of the pension fund; and
- (e) licensed and regulated by the Financial Services Regulatory Authority under the Financial Services Regulatory Authority Act, Cap. 12.23.”.

**Amendment of section 177**

4. Section 177 of the principal Act is amended by inserting immediately after subsection (3) the following new subsection (3A) —



*Companies (Amendment) Act*

“(3A) A company shall prepare and maintain a register of its beneficial owners containing —

- (a) the name and address of the beneficial owner of the company;
- (b) the date on which the beneficial owner became or changed his or her status as a beneficial owner of the company;
- (c) the percentage of shares with voting rights that the beneficial owner holds in the company.”.

**Amendment of section 190**

5. Section 190 of the principal Act is amended, under subsection (1), by inserting immediately after the words “legal representatives,” the words “and the competent authority,”.

**Amendment of section 344**

6. Section 344 of the principal Act is amended, under subsection (1) —

- (a) by deleting the full stop at the end of paragraph (m) and by substituting a semicolon; and
- (b) by inserting immediately after paragraph (m) the following new paragraphs (n), (o), (p) —

“(n) the full name and address of each beneficial owner of the company;

(o) the date on which a natural person became or changed his or her status as a beneficial owner;

(p) the percentage of shares with voting rights that the beneficial owner holds in the company.”.

**Amendment of section 355**

7. Section 355 of the principal Act is amended, under subsection (1)(d), by inserting immediately after the word “directors” the words “and beneficial owners”.

*Companies (Amendment) Act***Amendment of section 377C**

**8.** Section 377C of the principal Act is amended under subsection (1) —

- (a) by deleting the full stop at the end of paragraph (m) and by substituting a semicolon; and
- (b) by inserting immediately after paragraph (m) the following new paragraph (n) —

“(n) the full name and address of each beneficial owner of the company.”.

**Amendment of section 377K**

**9.** Section 377K of the principal Act is amended, under subsection (1)(d), by inserting immediately after the word “director” the words “and beneficial owners,”.

**Amendment of section 551**

**10.** Section 551 of the principal Act is amended by inserting the following new definitions in the correct alphabetical sequence —

““beneficial owner” means a natural person —

- (a) who ultimately owns or controls a company;
- (b) who exercises ultimate effective control over a legal person or legal arrangement, such as a senior manager; or
- (c) on whose behalf a transaction or activity is being conducted;

“competent authority” means the competent authority under the Automatic Exchange of Financial Account Information Act, No. 22 of 2016;

“ultimately own or control” means direct or indirect ownership or control of twenty-five per cent or more of shares, voting rights or ownership interest in a company;”.

*Companies (Amendment) Act*

Passed in the House of Assembly this 20th day of November, 2018.

ANDY G. DANIEL,  
*Speaker of the House of Assembly*

Passed in the Senate this 22nd day of November, 2018.

JEANNINE GIRAUDY-MCINTYRE,  
*President of the Senate.*



*Free Zone (Amendment) Act***SAINT LUCIA****No. 11 of 2018****ARRANGEMENT OF SECTIONS***Section*

1. Short title
2. Interpretation
3. Amendment of section 2
4. Amendment of section 7
5. Amendment of section 10
6. Insertion of new section 10A
7. Amendment of section 11
8. Insertion of new section 15A
9. Amendment of section 19
10. Amendment of Schedule 2



*Free Zone (Amendment) Act*

I ASSENT

[L.S.]

NEVILLE CENAC,  
*Governor-General.*

*December 11, 2018.*

## SAINT LUCIA

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**No. 11 of 2018**

**AN ACT** to amend the Free Zone Act, Cap. 15.17.

[ 12th December, 2018 ]

**BE IT ENACTED** by the Queen's Most Excellent Majesty by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same as follows:

*Free Zone (Amendment) Act***Short title**

1. This Act may be cited as the Free Zone (Amendment) Act, 2018.

**Interpretation**

2. In this Act, “principal Act” means the Free Zone Act, Cap. 15.17.

**Amendment of section 2**

3. Section 2 of the principal Act is amended —
  - (a) under the definition of “FZMA”, by inserting immediately after the words “Free Zone Management” the word “Authority”;
  - (b) under the definition of “free zone import”, by deleting the words “Saint Lucia”.

**Amendment of section 7**

4. Section 7 of the principal Act is amended by deleting subsections (3) and (4).

**Amendment of section 10**

5. Section 10 of the principal Act is amended —
  - (a) by deleting subsection (1) and by substituting the following —

“(1) A private party or public party may make an application for a licence to operate a free zone business to the Board in the prescribed form supported by —

    - (a) the prescribed application fee;
    - (b) a letter of compliance; and
    - (c) in the case of a company, a certificate of good standing.”;
  - (b) by inserting immediately after subsection (1), the following new subsections (1A) and (1B) —



*Free Zone (Amendment) Act*

“(1A)Where a proposed free zone business wishes to operate within a free zone area, the application to the Board must include —

- (a) the type of activity;
- (b) the amount and type of expenses and assets;
- (c) the physical plant, premises or office space;
- (d) the number of employees and the required skills and qualifications of full time employees.

(1B) A free zone business shall utilize reasonable resources for the effective management of its business.”;

- (c) under subsection (2)(a), by deleting the words “insurance services,” and “financial services, banking services, or other professional,”.

**Insertion of new section 10A**

**6.** The principal Act is amended by inserting immediately after section 10 the following new section 10A —

**“Licence to operate in a free zone**

**10A.** The Board may, after review and approval of an application under section 10, issue a licence in the prescribed form.”.

**Amendment of section 11**

**7.** Section 11 of the principal Act is amended by —

- (a) deleting subsection (2) and by substituting the following —

“(2) Activities of a free zone business may be conducted —

- (a) entirely within the free zone;
- (b) between a free zone business and a jurisdiction outside of the free zone, including a domestic Saint Lucian business.”;

- (b) deleting subsection (3) and by substituting the following —

*Free Zone (Amendment) Act*

“(3) A free zone business may have business meetings and engage in transportation activities within the national customs territory in order to be operational.”.

**Insertion of new section 15A**

**8.** The principal Act is amended by inserting immediately after section 15 the following new section 15A —

**“Tax audit**

**15A.** A free zone business is subject to the Income Tax Act, Cap. 15.02.”.

**Amendment of section 19**

**9.** Section 19 of the principal Act is amended under subsection (3), by deleting the words “, and any dividends paid by a free zone business shall be exempt from such tax for the first 20 years of its operation”.

**Amendment of Schedule 2**

**10.** Schedule 2 of the principal Act is amended —

- (a) under paragraph (b), by deleting the words “five per cent of taxable income” and by substituting the words “two per cent of taxable income”;
- (b) under paragraph (c), by deleting the words “two per cent of taxable income” and by substituting the words “five per cent of taxable income”.

Passed in the House of Assembly this 20th day of November, 2018.

ANDY G. DANIEL,  
*Speaker of the House of Assembly*

Passed in the Senate this 22nd day of November, 2018.

JEANNINE GIRAUDY-MCINTYRE,  
*President of the Senate.*

*Income Tax (Amendment) Act***SAINT LUCIA****No.12 of 2018****ARRANGEMENT OF SECTIONS***Section*

1. Short title
2. Interpretation
3. Amendment of section 2
4. Amendment of section 8
5. Amendment of section 10
6. Insertion of new section 10A
7. Amendment of section 32
8. Amendment of section 33
9. Amendment of section 76
10. Amendment of section 84



*Income Tax (Amendment) Act*

I ASSENT

[L.S.]

NEVILLE CENAC,  
*Governor-General.*

*December 11, 2018.*

## SAINT LUCIA

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**No. 12 of 2018**

**AN ACT** to amend the Income Tax Act, Cap. 15.02.

[ 12th December, 2018 ]

**BE IT ENACTED** by the Queen's Most Excellent Majesty by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same as follows:

*Income Tax (Amendment) Act***Short title**

1. This Act may be cited as the Income Tax (Amendment) Act, 2018.

**Interpretation**

2. In this Act, “principal Act” means the Income Tax Act, Cap. 15.02.

**Amendment of section 2**

3. Section 2 of the principal Act is amended —

(a) by deleting the definition of “permanent establishment” and by substituting the following —

““permanent establishment” —

(a) means —

(i) a fixed place of business through which the business of an enterprise is wholly or partly carried on,

(ii) a building site or construction or installation project only if it lasts more than twelve months;

(b) includes —

(i) a place of management,

(ii) a branch,

(iii) an office,

(iv) a factory,

(v) a workshop, and

(vi) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;

(c) does not include —

(i) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise,

*Income Tax (Amendment) Act*

- (ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery,
- (iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise,
- (iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (v) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, another activity,
- (vi) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (i) to (v),

if the activity or, in the case of subparagraph (vi), the overall activity of the fixed place of business, is of a preparatory or auxiliary character;”;

- (b) by deleting subsection (4).

**Amendment of section 8****4. Section 8 of the principal Act is amended —**

- (a) under subsection (1)(a), by inserting immediately after the words “subject to subsection (2)” the words “and subsection (3)”;
- (b) by inserting immediately after subsection (2), the following new subsection (3) —

“(3) Where a company is a resident, the assessable income of that company shall not include income accrued from a source outside Saint Lucia in accordance with section 10A.”.

*Income Tax (Amendment) Act***Amendment of section 10****5. Section 10 of the principal Act is amended —**

- (a) under subsection (1) —
  - (i) in paragraph (e), by deleting the words “in Saint Lucia” and by substituting the words “whether in or outside Saint Lucia”,
  - (ii) in paragraph (f), by deleting the full stop and substituting a semi-colon,
  - (iii) by inserting immediately after paragraph (f) the following new paragraph —

“(g) income from carrying on a business in Saint Lucia.”.
- (b) by inserting immediately after subsection (2), the following subsection (3) —

“(3) Income that is not deemed to have accrued from a source out of Saint Lucia in accordance with section 10A shall be deemed to have accrued from a source in Saint Lucia.”.

**Insertion of new section 10A****6. The principal Act is amended by inserting immediately after section 10 the following new section 10A —****“Income deemed to have accrued from a source outside Saint Lucia**

**10A.** Income accrued to a person is deemed to have accrued from a source outside of Saint Lucia in respect of —

- (a) profits derived from —
  - (i) a permanent establishment outside Saint Lucia,
  - (ii) immovable property situated outside Saint Lucia;
- (b) interest that is not specified under section 10(1)(c);
- (c) income derived from investments in securities, such as, mutual funds, stocks and interest bearing instruments, issued by a person outside Saint Lucia;



*Income Tax (Amendment) Act*

- (d) management charges paid by a non-resident from a source outside Saint Lucia where the costs are not attributable to a permanent establishment in Saint Lucia;
- (e) royalty payments received from a non-resident permanent establishment to a resident permanent establishment;
- (f) a source of income which is deemed to accrue from a source outside Saint Lucia pursuant to an international agreement made under section 60.”.

**Amendment of section 32**

7. Section 32 of the principal Act is amended by deleting subsection (2) and by substituting the following —

“(2) Subsection (1) shall not be construed so as to bring within the meaning of assessable income liable to assessment under Part 10 —

- (a) any income which is exempt under Part 4; or
- (b) any amounts accrued to a non-resident, other than from the carrying on of a business or the exercise of employment, which are liable to withholding tax under section 76;
- (c) in the case of a company, income that is deemed to have accrued from a source outside Saint Lucia in accordance with section 10A.”.

**Amendment of section 33**

8. Section 33 of the principal Act is amended, under subsection (4), by inserting immediately after the words “Where a person” the words “other than a company”.

*Income Tax (Amendment) Act*

**Amendment of section 76**

9. Section 76 of the principal Act is amended by deleting subsection (4) and by substituting the following —

“(4) This section and paragraph 1 of Schedule 3 shall not be construed so as to bring within the charge to withholding tax —

- (a) payments of income that are exempt from tax under Part 4;
- (b) payments made towards an expense incurred to generate income from a source outside Saint Lucia.”.

**Amendment of section 84**

10. Section 84(1) of the principal Act is amended —

- (a) in paragraph (b), by deleting immediately after the words “thereon;” the word “and”;
  - (b) in paragraph (c), by deleting the full stop after the words “thereon;” and by substituting a semicolon; and
  - (c) by inserting immediately after paragraph (c), the following new paragraph (d) —
- “(d) disclose income that is deemed to have accrued from a source outside Saint Lucia.”.

Passed in the House of Assembly this 20th day of November, 2018.

ANDY G. DANIEL,  
*Speaker of the House of Assembly*

Passed in the Senate this 22nd day of November, 2018.

JEANNINE GIRAUDY-MCINTYRE,  
*President of the Senate.*

*International Business Companies (Amendment) Act***SAINT LUCIA****No. 13 of 2018****ARRANGEMENT OF SECTIONS***Section*

1. Short title
2. Interpretation
3. Amendment of section 2
4. Amendment of section 3
5. Amendment of section 4
6. Amendment of section 5
7. Insertion of new section 5A
8. Amendment of section 12
9. Amendment of section 18
10. Amendment of section 28
11. Amendment of section 67
12. Amendment of section 109
13. Insertion of new section 109A
14. Amendment of section 113A



*International Business Companies (Amendment) Act*

I ASSENT

[L.S.]

NEVILLE CENAC,  
*Governor-General.*

*December 11, 2018.*

## SAINT LUCIA

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**No. 13 of 2018**

**AN ACT** to amend the International Business Companies Act,  
Cap. 12.14.

[ 12th December, 2018 ]

**BE IT ENACTED** by the Queen's Most Excellent Majesty by  
and with the advice and consent of the House of Assembly and the  
Senate of Saint Lucia, and by the authority of the same as follows:

*International Business Companies (Amendment) Act***Short title**

**1.** This Act may be cited as the International Business Companies (Amendment) Act, 2018.

**Interpretation**

**2.** In this Act, “principal Act” means the International Business Companies Act, Cap. 12.14.

**Amendment of section 2**

**3.** Section 2 of the principal Act is amended —

(a) by inserting the following new definitions in the correct alphabetical sequence —

““beneficial owner” means a natural person —

(a) who ultimately owns or controls an international business company;

(b) who exercises ultimate effective control over a legal person or legal arrangement, such as a senior manager; or

(c) on whose behalf a transaction or activity is being conducted;

“competent authority” means the competent authority under the Automatic Exchange of Financial Account Information Act, No. 22 of 2016;

“Financial Services Regulatory Authority” means the Financial Services Regulatory Authority established under section 3 of the Financial Services Regulatory Authority Act, Cap. 12.23;

“ultimately own or control” means direct or indirect ownership or control of twenty-five per cent or more of shares, voting rights or ownership interest in an international business company;”;

*International Business Companies (Amendment) Act*

- (b) by inserting immediately after subsection the (11) following new subsection (12) —

“(12) Subsection (10) only applies to an international business company incorporated before the 1<sup>st</sup> day of December, 2018 and continues to apply to that company until the 30<sup>th</sup> day of June, 2021.”.

**Amendment of section 3**

- 4.** Section 3 of the principal Act is amended —

- (a) in subsection (1), by deleting the words “Subject to subsection (2)” and by substituting the words “Subject to subsections (2) and (3)”;
- (b) by inserting immediately after subsection (2), the following new subsection (3) —

“(3) An international business company incorporated prior to the 1<sup>st</sup> day of December, 2018 shall not engage in an object or purpose other than the object or purpose for which that company was incorporated.”.

**Amendment of section 4**

- 5.** Section 4 of the principal Act is amended by —

- (a) inserting immediately before the beginning of the paragraph, the designation “(1)”;
- (b) inserting immediately after subsection (1), the following new subsection (2) —

“(2) Subsection (1) does not apply for the period commencing from the 1<sup>st</sup> day of December, 2018 and terminating on the 31<sup>st</sup> day of December, 2018.”.

**Amendment of section 5**

- 6.** Section 5 of the principal Act is amended, under subsections (3), (4) and (5) by deleting the word “Minister” and by substituting the words “Financial Services Regulatory Authority”.

*International Business Companies (Amendment) Act***Insertion of new section 5A**

7. The principal Act is amended by inserting immediately after section 5 the following new section 5A —

**“Companies registered from the 1<sup>st</sup> day of January, 2019**

**5A.**—(1) For tax purposes, a company incorporated as an international business company is a resident as defined under section 2 of the Income Tax Act, Cap. 15.02.

(2) Without limiting the requirements under section 4, a person licensed under the Registered Agent and Trustee Licensing Act, Cap.12.12 shall submit to the Registrar a statutory declaration stating that the registered agent has complied with —

- (a) the Money Laundering (Prevention) Act, Cap. 12.20;
- (b) the Anti-Terrorism Act, Cap. 3.16; and
- (c) the Income Tax Act, Cap. 15.02.

(3) An international business company —

- (a) is subject to the Income Tax Act, Cap.15.02;
- (b) shall —
  - (i) have an adequate number of employees with the necessary level of qualifications and experience,
  - (ii) have an adequate amount of operating expenses,
  - (iii) have an adequate amount of investment and capital that is commensurate with the type and level of activity undertaken by the company,
  - (iv) file annual tax returns based on its annual unaudited financial statements,
  - (v) comply with the monitoring requirements as specify by the guidelines and Regulations made by the competent authority,
  - (vi) provide any other documents required by the competent authority.

(4) This section applies to an international business company incorporated from the 1<sup>st</sup> day of January, 2019.



*International Business Companies (Amendment) Act*

(5) Notwithstanding this Act, section 12(1)(a), (b), (d), (f), (g) and (2); sections 18, 26, 84, 109, 110, 112, 113A and 121 shall not apply to a company incorporated from the 1st day of January, 2019.”.

**Amendment of section 12**

**8.** Section 12 of the principal Act is amended by inserting immediately after subsection (2), the following new subsection (3) —

“(3) Subsections (1) and (2) only apply to a company incorporated prior to the 1st day of December, 2018 and continues to apply to that company until the 30th day of June, 2021.”.

**Amendment of section 18**

**9.** Section 18 of the principal Act is amended by inserting immediately after the word “located” the words “in or”.

**Amendment of section 28**

**10.** Section 28 of the principal Act is amended —

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

**“Share register and register of beneficial owner”;**

(b) by inserting immediately after subsection (1) the following new subsections (1A) and (1B) —

“(1A) Subject to subsection (1B), an international business company shall keep at all times at its registered office a register to be known as the Register of beneficial owner, containing —

- (a) the name and address of the beneficial owner of the international business company;
- (b) the date on which the beneficial owner became or changed his or her status as a beneficial owner of the international business company;
- (c) the percentage of shares with voting rights that the beneficial owner holds in the international business company.

*International Business Companies (Amendment) Act*

(1B) The requirement for an international business company to keep a Register of beneficial owner does not apply to an international business company that is —

- (a) a public company;
  - (b) a multilateral institution;
  - (c) a government entity;
  - (d) a pension fund that is regulated by the government in the country of origin of the pension fund; and
  - (e) licensed and regulated by the Financial Services Regulatory Authority under the Financial Services Regulatory Authority Act, Cap. 12:23.”;
- (c) under subsections (2), (3) and (4), by inserting immediately after the words “share register”, wherever they appear, the words “and a register of beneficial owner”;
- (d) by inserting immediately after subsection (4) the following new subsection (4A) —
- “(4A) An international business company shall give notice of any changes to the register of beneficial ownership within a reasonable time period.”;
- (e) under subsections (6), (7), (8), (9), (10) and (11), by inserting immediately after the words “annual shareholder return”, wherever they appear, the words “and information with respect to its beneficial owner required under this Act”.

**Amendment of section 67**

**11.** Section 67 of the principal Act is amended —

- (a) under subsection (1), by inserting immediately after the words “share register” the words “and register of beneficial owner”;
  - (b) by inserting immediately after subsection (5) the following new subsection (6) —
- “(6) Notwithstanding subsection (1), the competent authority has access to the share register and register of beneficial owner of the international business company, the books, records, minutes and contents kept by the international business company.”.

*International Business Companies (Amendment) Act*

**Amendment of section 109**

**12.** Section 109 of the principal Act is amended by inserting immediately after subsection (8), the following new subsection (9) —

“(9) This section only applies to a company incorporated prior to the 1st day of December, 2018 and continues to apply to that company until the 30th day of June, 2021.”.

**Insertion of new section 109A**

**13.** The principal Act is amended by inserting immediately after section 109, the following new section 109A —

**“Exemption from stamp duty**

**109A.**—(1) Despite the Stamp Duty Act, Cap. 15.11, the following instruments are exempt from stamp duty —

- (a) an instrument relating to transfers of any property to or by an international business company;
- (b) an instrument relating to transactions in respect of the shares, debts obligations or other securities of an international business company;
- (c) an instrument relating in any way to the assets or activities of an international business company,

if the transfer or transaction under paragraph (a) or (b) does not have the legal effect of changing the beneficial ownership or legal ownership of immovable property in Saint Lucia; or

- (2) This section only applies to a company incorporated from the 1<sup>st</sup> day of January, 2019.”.

**Amendment of section 113A**

**14.** Section 113A of the principal Act is amended —

- (a) by inserting immediately after subsection (3), the following new subsection (3A) —

“(3A) A head office company incorporated from the 1<sup>st</sup> day of January, 2019 shall file an annual tax return based on its audited financial statements.”;

*International Business Companies (Amendment) Act*

(b) by inserting immediately after subsection (18) the following new subsection (19) —

“(19) Subsections (2) and (3) only apply to a head office company incorporated prior to the 1<sup>st</sup> day of December, 2018.”.

Passed in the House of Assembly this 20th day of November, 2018.

ANDY G. DANIEL,  
*Speaker of the House of Assembly*

Passed in the Senate this 22nd day of November, 2018.

JEANNINE GIRAUDY-MCINTYRE,  
*President of the Senate.*

*International Partnership (Amendment) Act*

**SAINT LUCIA**

**No. 14 of 2018**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title
2. Interpretation
3. Amendment of section 2
4. Amendment of section 3
5. Amendment of section 7
6. Repeal of sections 9, 14 and 15
7. Amendment of section 24



*International Partnership (Amendment) Act*

I ASSENT

[L.S.]

NEVILLE CENAC,  
*Governor-General.**December 11, 2018.***SAINT LUCIA**  

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**No. 14 of 2018****AN ACT** to amend the International Partnership Act, Cap.  
12.21.

[ 12th December, 2018 ]

**BE IT ENACTED** by the Queen's Most Excellent Majesty by  
and with the advice and consent of the House of Assembly and the  
Senate of Saint Lucia, and by the authority of the same as follows:

*International Partnership (Amendment) Act***Short title**

1. This Act may be cited as the International Partnership (Amendment) Act, 2018.

**Interpretation**

2. In this Act, “principal Act” means the International Partnership Act, Cap. 12:21.

**Amendment of section 2**

3. Section 2 of the principal Act is amended by inserting the following definitions in the correct alphabetical sequence —

““beneficial owner” means a natural person —

- (a) who ultimately owns or controls an international partnership;
- (b) who exercises ultimate effective control over a legal person or legal arrangement, such as a senior manager; or
- (c) on whose behalf a transaction or activity is being conducted;

“ultimately own or control” means direct or indirect ownership or control of twenty-five per cent or more of shares, voting rights or ownership interest in an international partnership;”.

**Amendment of section 3**

4. Section 3 of the principal Act is amended by inserting immediately after subsection (2) the following new subsection (3) —

“(3) Sections 4, 8, 11, 12 and 18 only apply to an international partnership registered prior to the 1<sup>st</sup> day of December, 2018 and continues to apply to that international partnership until the 30<sup>th</sup> day of June, 2021.”.

**Amendment of section 7**

5. Section 7 of the principal Act is amended —

- (a) by inserting immediately after subsection (1) the following new subsection (1A) —



*International Partnership (Amendment) Act*

“(1A) Subject to subsection (4), the Register must contain —

- (a) the name and address of the beneficial owner of the international partnership;
- (b) the date on which the beneficial owner became or changed his or her status as a beneficial owner of the international partnership;
- (c) the percentage of shares with voting rights that the beneficial owner holds in the international partnership.”;

(b) by inserting immediately after subsection (3) the following new subsection (4) —

“(4) The requirement for the Registrar to keep information with respect to a beneficial owner under subsection (1A) does not apply to an international partnership that is —

- (a) a public company;
- (b) a multilateral institution;
- (c) a government entity;
- (d) a pension fund that is regulated by the government in the country of origin of the pension fund; and
- (e) licensed and regulated by the Financial Services Regulatory Authority under the Financial Services Regulatory Authority Act, Cap. 12:23.”.

**Repeal of section 9, 14 and 15**

6. Sections 9, 14 and 15 of the principal Act are repealed.

**Amendment of section 24**

7. Section 24 of the principal Act is amended by —

- (a) inserting immediately at the beginning of the paragraph the designation “(1)”;
- (b) inserting immediately after subsection (1) the following new subsection (2) —

*International Partnership (Amendment) Act*

“(2) An international partnership registered prior to the 1<sup>st</sup> day of December, 2018 shall not engage in any object or purpose other than the object or purpose for which an international partnership was established.”.

Passed in the House of Assembly this 20th day of November, 2018.

ANDY G. DANIEL,  
*Speaker of the House of Assembly*

Passed in the Senate this 22nd day of November, 2018.

JEANNINE GIRAUDY-MCINTYRE,  
*President of the Senate.*

*International Trust(Amendment) Act*

**SAINT LUCIA**

**No. 15 of 2018**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title
2. Interpretation
3. Amendment of section 2
4. Repeal of sections 8 and 9
5. Amendment of section 10
6. Amendment of section 52



*International Trust (Amendment) Act*

I ASSENT

[L.S.]

NEVILLE CENAC,  
*Governor-General.**December 11, 2018.***SAINT LUCIA**

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**No. 15 of 2018****AN ACT** to amend the International Trust Act, Cap. 12.19.

[ 12th December, 2018 ]

**BE IT ENACTED** by the Queen's Most Excellent Majesty by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same as follows:

*International Trust (Amendment) Act***Short title**

1. This Act may be cited as the International Trust (Amendment) Act, 2018.

**Interpretation**

2. In this Act, “principal Act” means the International Trust Act, Cap. 12:19.

**Amendment of section 2**

3. Section 2 of the principal Act is amended by inserting the following new definitions in the correct alphabetical sequence —

““beneficial owner” means —

- (a) a settlor;
- (b) a registered trustee;
- (c) a protector;
- (d) a beneficiary; or
- (e) a natural person who ultimately owns or controls a trust;

“ultimately own or control” means direct or indirect ownership or control of twenty-five per cent or more of shares, voting rights or ownership interest in an international trust;

“competent authority” means the competent authority under the Automatic Exchange of Financial Account Information Act, No. 22 of 2016;”.

**Amendment of section 4**

4. Section 4 of the principal Act is amended by inserting immediately after sub-section(1) the following new sub section (2) to read:

“(2) This Act will continue to apply to entities registered prior to 1<sup>st</sup> December, 2018 until the 30<sup>th</sup> of June, 2021”

**Repeal of sections 8 and 9**

5. Sections 8 and 9 of the principal Act are repealed.

*International Trust (Amendment) Act*

**Amendment of section 10**

6. Section 10 of the principal Act is amended by inserting immediately after subsection (4) the following new subsection (5) —

“(5) An international trust shall not acquire any new asset or engage in a purpose other than the purpose for which it was established from the 1st day of December, 2018.”.

**Amendment of section 52**

7. Section 52 of the principal Act is amended —

(a) under subsection (1)(b) —

(i) in subparagraph (ii), by deleting immediately after the words “international trust;” the word “and”,

(ii) by inserting immediately after subparagraph (iii), the following new subparagraph (iv) —

“(iv) information with respect to the beneficial ownership of an international trust,”;

(b) by inserting immediately after subsection (3) the following new subsection (3A) —

“(3A) Notwithstanding this section, the competent authority may inspect the instrument, file and documents referred to under subsection (1).”.

Passed in the House of Assembly this 20th day of November, 2018.

ANDY G. DANIEL,  
*Speaker of the House of Assembly*

Passed in the Senate this 22nd day of November, 2018.

JEANNINE GIRAUDY-MCINTYRE,  
*President of the Senate.*

