

23rd December, 2005

131

Discharge or
transfer of
children

(1) When the closure of a private reformatory centre or private safety home takes effect, the persons resident shall be, by order of the Board, and upon consultation with the Minister, either discharged or transferred to some other reformatory centre or safety home as the case may be.

(2) Where a reformatory centre or a safety home is temporarily closed by inspectors in accordance with section...¹¹⁷, the Board shall make all necessary arrangements to transfer the persons resident at the centre or home to an alternative suitable location.

(3) The period of stay for which a child was sent to a reformatory centre or a safety home shall not be increased by the transfer of the child to another place.

SECTION 43 [*Review of cases of detained juvenile*]

The Commission recommends retention of this section.

SECTION 44 [*Approved schools and homes lawful places of detention*]

The Commission recommends that this section should be retained. However, since the Commission has earlier on recommended establishment of safety homes as detention places before conclusion of trial, the Commission recommends that this provision should, as a result, be redrafted to cover safety homes as lawful places for detention in addition to reformatory centres.

The section is therefore to read as follows—

Reformatory
centres safety
homes, lawful
places of
detention

A reformatory centre or a safety home shall be a lawful place of detention for children in respect of whom a lawful order has been made or who may lawfully be transferred thereto.

SECTION 45 [*Illness of juveniles detained*]

The section gives power to the manager or any person having control of an approved school or home or any institution created under the provisions of the Act for purposes of keeping children to remove a child to a government hospital in cases of serious illness.

The Commission observed that it is sometimes not practicable to restrict the manager or the person in charge to remove the child to government hospitals only. The Commission therefore recommends that the word “government” in subsection (1) be deleted. It was however noted that if the word “government” is deleted as recommended, there will be need to define the word “hospital” so that children are only sent to reputable hospitals. The definition of the word “hospital” is therefore to replace the definition of the phrase “government hospital” in subsection 3 as follows—

¹¹⁷See provisions on temporary closure of a reformatory centre or safety home.

23rd December, 2005

132

In this section “hospital” means a government hospital and any registered health centre, institution or facility.

Further, the Commission recommends that the phrase “or is committed to the care and custody of any society or institution” in subsection (1) be deleted in line with the earlier recommendation that all matters of child care and protection should be dealt with under that theme.

Additionally, the Commission recommends that the provision should be extended to include “safety homes”

A question arose as to whether the person in-charge should be under duty to inform parents whenever a child falls sick. The Commission concluded that it is only this should be done only in cases of serious or recurring illness.

To that effect, the Commission recommends that a subsection should be created as follows—

The manager or the person having control of the reformatory centre or safety home concerned shall, if the illness is serious or recurrent, inform the parents or the guardian about such illness.

SECTION 46 [*Return when cured*]

The section makes provision for the return to the approved school or home whenever the child is cured. The Commission recommends retention of the section subject to redrafting it appropriately.

It was also observed that in certain circumstances, it will be to the best interests of the child if, after the cure, the child is released whether or not his period of stay at the approved school or approved home has expired. The Commission therefore suggested that the person in charge of the child should seek advice from the doctor as to whether the child is fit to be kept at the institution or not and depending on that advice, to recommend to the Board for the release of the child. The Commission therefore recommends that a provision be inserted to this effect.

Further, the Commission recommends that the marginal note should read “Return after treatment”.

Section 46 is therefore to read as follows—

Return after treatment **(1) If in the opinion of the medical officer, it is no longer necessary that the child should remain in the hospital, the medical officer shall issue a certificate releasing the child from the hospital to the manager or the person having control of the place where the child was detained.**

(2) The manager or the person having control of the place where the child was detained may, upon seeking the advice of the medical officer, recommend to the Board for the release of the child from the place of detention.

23rd December, 2005

133

SECTION 47 [*Duty to prevent escape*]

The Commission recommends that the section be redrafted by adding the word “**reasonable**” immediately before the word “precaution” to avoid use of unreasonable force or other undue means. Additionally, the Commission recommends that the phrase “and it shall be lawful for the said officers to take such measures for preventing the escape of any such juvenile as shall be necessary” be deleted because it is superfluous.

The section is to read as follows—

Duty to prevent escape	Every reasonable precaution shall be taken by medical officers or other officers of a hospital to prevent the child who may at any time be under medical care at the hospital.
------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

SECTION 48 [*Breaches of rules and school discipline*]

The Commission recommends that the provision be retained subject to deleting the words “guilty and punished” and paragraph (b) of subsection (1).

Subsection (1) therefore will read as follows—

(1) A child committed to the care or custody of a reformatory centre or a safety home who wilfully neglects or refuses to conform to the rules of discipline of the centre or home shall be disciplined in accordance with the disciplinary rules of the centre or home made under section...¹¹⁸.

Subsection (2)

Retained.

SECTION 49 [*Penalties for assisting or inducing escape and harbouring or concealing escaped children*]

The Commission recommends that the section be retained but noted that it should be made clear that this provision is not applicable to children who assist their friends to escape. The Commission therefore recommends the addition of the phrase “**not being another child**” immediately after the phrase “any person” in the opening statement. Further, the phrase “to the care or custody” in paragraph (a) should be deleted and the word “person” be replaced with the word “**child**” wherever it appears in this section. The Commission also recommends replacement of the fine of “fifty pounds” with the fine of “Fifty Thousand Kwacha.”

SECTION 50 [*Presumption*]

The section provides that production of a warrant of detention or otherwise duly signed by the person in control of the child shall be *prima face* evidence of the identity and lawful detention and disposal of the child named in that warrant. The Commission recommends that the provision be retained but with slight modifications as follows—

¹¹⁸See the provision on Disciplinary rules.

Presumption
of evidence
of identity

The production of warrant or any other document, in pursuance of which a child is sent to a reformatory centre, safety home or hospital shall in all proceedings relating to the child be sufficient evidence of the identity and of the lawful detention or disposal of the child named in the warrant or document.

SECTION 51 [*Evidence*]

The section provides that a copy of the rules of an approved school or home appointed or established under the Act purporting to be signed by the manager thereof shall be evidence of such rules in legal proceedings. This is in reference to section 36 of the Act, which empowers managers to make rules for the running of the institutions. The Commission has recommended that all places of detention should be managed by uniform rules to be prescribed in a Schedule to the Act. In view of this recommendation, section 51 becomes irrelevant in as far as proof in court proceedings is concerned because the rules will be uniform. However, as far as disciplinary rules are concerned, the section is still relevant because disciplinary rules are context specific and therefore not covered under the proposal in section 36. Consequently there will be need to prove them in legal proceedings. The Commission therefore recommends that the section should be redrafted with specific reference to disciplinary rules. It will read as follows—

Disciplinary
rules

(1) The manager of a reformatory centre or a safety home may make rules not repugnant to, or inconsistent with, this Act for the maintenance of discipline at the centre.

(2) Disciplinary rules under this section shall not be enforced until they have been approved by the Minister.

(3) Rules approved by the Minister shall not be altered without the like approval.

(4) A copy of disciplinary rules of a reformatory centre or a safety home purporting to be signed by the manager of the centre or the home shall be *prima facie* evidence of such rules for purposes of any legal proceedings.

PART VII

EXPENSES AND CONTRIBUTIONS

Expenses and contributions for the maintenance of children in approved schools or approved homes (now reformatory centres) or where a child has been committed to the care of a fit person, are provided for under sections 52 and 53.

23rd December, 2005**135**

Section 52 provides that parents or guardians are under a duty to contribute to the maintenance of children who are being kept at an approved school or home or where the child is under the care or custody of a fit person appointed by the court. The rate of the contribution is determined by the Minister. Section 53 empowers courts to make a contribution order at the time of making an approved school or approved home order or subsequent to that, ordering parents or guardians to contribute to the maintenance of the children.

The Commission recommends that the spirit of the two sections be retained. However the Commission also recommends that the provisions be extended to include safety homes and foster homes to be established as the Commission has recommended. Further, the Commission was of the view that the Minister should consult the Board before coming up with rates of the contributions because the Board is better placed to determine the nature and extent of the contribution. The Commission further noted that the two sections will make more sense if combined subject to minor changes. In addition, the Commission recommends that a new provision should be inserted, which should expressly provide for other sources of funding for public reformatory centres, public safety homes and public foster homes.

The redrafted sections 52 and 53 and the proposed new section are to read as follows—

**Contribution
order**

(1) When a reformatory centre order, a safety home order, a foster home placement order or an order committing a child to the care of a fit person has been made by a child justice court (hereinafter in this section referred to as a committal order) the court may, at the same time or subsequently, make a contribution order requiring a parent or guardian or other person having custody of the child to contribute a weekly, monthly or other periodic sum as may be specified in the order or to make other necessary contributions as the court may consider proper in respect of his maintenance.

(2) A contribution order may be made against the parent or guardian or a person having custody of the child, who having been required to attend before the child justice court, has failed to do so; but no such order shall be made without giving the person to make the contribution an opportunity to be heard.

(3) A contribution order shall remain in force as long as the relevant committal order is in force.

(4) Subject to subsections (4) and (5), no contribution shall be payable under a contribution order in respect of any period during which the person to be maintained is on conditional discharge or release or under the supervision of a probation officer.

(5) A contribution order may be varied, revoked or suspended by the court which made it but shall not be varied as to increase any contribution payable under the order without giving the person making the contribution an opportunity to be heard.

(6) If a person wilfully neglects to comply with a contribution order, the court which made the order may, for every breach of the order, by warrant, direct the amount due to be levied in accordance with the law for levying fines imposed by courts or may sentence the person to imprisonment for fourteen days for each month's contribution remaining un-paid.

NEW PROVISION

Funds for public reformatory centres, public safety homes and public foster homes

Funds for public reformatory centres, public safety homes and public foster homes shall consists of—

(a) such funds as Parliament may appropriate;

(b) contributions ordered by the court under public foster section.;¹¹⁹ and

(c) any donations of funds, materials and other gifts from any person.

PART VIII

GENERAL

SECTION 54 [*Power of Minister to remove a juvenile undergoing imprisonment to an approved school or home*]

The provision gives power to the Minister to direct removal to an approved school or approved home of any juvenile who at the commencement of the Act was in prison. The Commission noted that this is a transitional provision and as such the provision should be retained. The Commission however also noted that power by its nature is discretionary. Since the Commission has earlier on recommended that under no circumstances should a child be sent to prison, the Minister should rather be under a duty to direct the removal of children from prison upon the commencement of the proposed laws. The Commission therefore recommends that the section should be redrafted to reflect this position. Further, the Commission recommends that while retaining the spirit of the provision, more elaborate provisions should be drafted. Among other things, the provisions should cover matters of child care and protection as well as child justice. The transitional provisions should therefore be drafted as follows—

¹¹⁹See provisions of the existing section.53.

23rd December, 2005

137

TRANSITIONAL PROVISIONS

Transfer of
Children

(1) The Minister shall, at the commencement of this Act, by writing under his hand direct—

(a) the transfer to a safety home in accordance with the provisions of this Act, any person on custody, who is a child and is alleged to have committed an offence in respect of which proceedings have not been commenced;

(b) the transfer to a reformatory centre in accordance with the provisions of this Act, any person who is a child and is serving a custodial sentence;

(c) the transfer to a foster home in accordance with the provisions of this Act, any child who is in a reformatory centre for the purposes of care and protection.

Remittance of
a list of
children

(1) A police Officer in-Charge of a police station or a person in charge of prison shall, at the commencement of this Act—

(a) remit to the Board a list of all persons in custody who are children within the meaning of this Act; and

(b) remit to the Board a list of all persons serving sentences in custody who were children at the time the offences were committed.

(2) A person in charge of a reformatory centre shall at the commencement of this Act, and in any case within six months, remit to the Board a list of children being kept at the centre for the purposes of care and protection.

Proceedings
under the
repealed Act

Where, at the commencement of this Act, proceedings have been commenced in respect of a person who is a child or a young person within the meaning of the Children and Young Persons Act (now repealed) and all related matters shall be dealt with as if they had been commenced under this Act and any court dealing with the matter shall continue as if it has jurisdiction under this Act.

SECTION 55 [*Power of juvenile court conferred on other courts dealing with juvenile*]

The Commission recommends that this section be deleted in view of the amended section 6, especially subsection (4) on the jurisdiction of juvenile courts, which states that no charge against a child shall be heard by any court other than a child justice court. The Commission also recalled its recommendation to delete the definition of Traditional Court earlier in the Report.

SECTION 56 [*Saving of powers of High Court*]

This provision serves to retain the power of the High Court. It provides that nothing in the Act shall be held to lessen or affect the powers of judges of the High Court to direct persons confined in the Republic to be brought before the court. It further provides that the High Court can exercise all powers, which may be exercised by juvenile court including power to order children to be detained in prison. The Commission observed that the High Court was already given unlimited jurisdiction under the Constitution¹²⁰. The Commission however thought that even though this is the case, the repetition here is necessary and recommends that the section be retained. Fears were nonetheless raised that if the High Court retains this original jurisdiction, the specialisation and training required for adjudicators dealing with children will be compromised. The concerns were eventually allayed as the Commission envisages that High Court Judges could also benefit from the envisaged training on child adjudication and that all judges will eventually be trained on child adjudication as part of their continual judicial training.

While maintaining the spirit of the provision, the Commission recommends that the section should be redrafted as follows—

Saving of
powers of the
High Court

(1) Nothing in this Act shall preclude the High Court from exercising its ordinary jurisdiction over any matter.

(2) All powers exercised by a child justice court under this Act, may, in like manner be exercised by the High Court.

SECTION 57 [*Duties and powers of persons to whom juvenile is committed*]

Powers and duties of persons to whom a child offender is committed are provided for under this section. They will be responsible for the maintenance of the child and the child shall continue to be under the care of such person notwithstanding that he is being claimed by his parent or any other person. They are also under a duty to make periodic reports to the court on the condition, education and health of the child. The Commission recommends that the section be retained subject to adding the phrase “**unless the court orders otherwise**” at the end of subsection (1) and to replace “half yearly” with “**quarter yearly**” in subsection (2) paragraph (a).

SECTION 58 [*Duties arising from a probation order*]

The Commission recommends that the section be retained subject to splitting subsection (1) into two subsections as follows—

(1) Where a court has made a probation order under section..., the parents or guardians of the child shall continue to be responsible for the care and maintenance of the child but shall allow the probation officer or other persons appointed for the purpose by the court (hereinafter referred to as the supervisor) to have access at any time to the place where the child is living.

¹²⁰Section 108.

23rd December, 2005

139

(2) The parents of the child shall give all such information relating to the condition, education and health of the child as the supervisor may require and shall, in the best interests of the child, consider any advise relating to the upkeep and education of the child which may be given by the Supervisor.

(3) Retain subsection (2) of the existing Act.

SECTION 59 [*Offence*]

The Commission recommends that the section should be retained subject to adding the phrase “**guilty of an offence and be**” immediately before the word “liable” in paragraph (d) and to substitute the fine of “fifty pounds” with “**Fifty Thousand Kwacha**”. Additionally, the Commission recommends that the phrase “**not being a child**” should be added immediately after the words “any person” in order to emphasize that children shall not be liable to imprisonment.

SECTION 60 [*Mistake as to age*]

The Commission observed that this section prevents magistrates from being answerable if they make a mistake as to the age of the child, even if this mistake is detrimental to the best interests of the child as long as they can show that the mistake was made in good faith. The Commission was of the view that such a provision could encourage laxity in age determination procedures and that it leaves the child to suffer the inconvenience of the mistake without being given an opportunity to have the mistake reversed. In view of this, the Commission recommends that a provision be drafted that will empower the court that made the mistake or any other court of co-ordinate jurisdiction to review the decision. In making these recommendations, the Commission was mindful that ordinarily rules of procedure demand that a higher court and not a court of co-ordinate jurisdiction should review cases of lower courts. However, the Commission noted that this is not a matter of review but simply taking action to correct a mistake of fact that if left unchanged will be detrimental to the best interests of the child. The Commission was comfortable with this position even though there is no precedent to support the recommendation because it is the only way to guarantee the best interests of the child in such matters.

The Commission therefore recommends that the section be redrafted as follows—

Mistake as
to age

(1) Subject to subsection (2), no action and no order made in the purported exercise of any power conferred by this Act shall be deemed illegal by reason only that it afterwards appears or is discovered that a mistake has been made regarding the age of a person.

(2) Where a mistake is made as to the age of a child, an order of the court made against the child on the basis of the mistake as to age shall be invalid to the extent of the

adverse effect as against the child, and the court which made the order or any court of co-ordinate jurisdiction shall have power to make a declaration to that effect.

SECTION 61 [*Regulations and Rules*]

This provision empowers the Minister to make regulations for the general administration of the Act and management of approved schools. The Commission recommends that the section be retained but noted that section 21 of the General Interpretation Act, Cap. 1:01 provides for a maximum fine of One Thousand Kwacha and a maximum term of imprisonment of three months for breaches of regulations made under any Act. This position is consistent with section 58 (2) of the Constitution which highlights the danger of giving too much power to un-elected members of the executive branch of government to impose harsh penalties and take away liberty of individuals for a considerable period of time. The Commission therefore was of the view that section 21 of the General Interpretation Act is sufficient for purposes of the level of penalties for breach of regulation under this Act. On the rules for the regulation of approved schools (now public reformatory centres), the Commission noted that a similar provision was already recommended earlier on. The Commission therefore recommends that the section should be redrafted as follows—

The Minister may, on the recommendation of the Board, make regulations for carrying this Act into effect.

SECTION 62 [*Court Rules*]

The provision provides that the Chief Justice shall be responsible for making rules regulating the procedure and practice in a juvenile court. The Commission recommends that the section be retained but redrafted to reflect the changed terminology to child justice court as follows—

The Chief Justice may make rules regulating the procedure and practice in a child justice court.

SECTION 63 [*Designation of Traditional Courts*]

The provision gives power to the Minister responsible for Traditional Courts to designate any Traditional or Local Courts to exercise jurisdiction under this Act. The Commission recommends the deletion of the whole section in view of the Commission's earlier recommendation to delete references to traditional courts.

CONSEQUENTIAL AMENDMENTS

(i) *The Courts Act (Cap. 3:02)*

Bearing in mind that all matters concerning children shall be under the jurisdiction of the proposed child justice court, the Commission observed that section 39 (2) (d) of the Courts Act is inconsistent to this recommendation.

23rd December, 2005**141**

The section makes provision that matters of guardianship and custody of children shall not be heard by subordinate courts. The Commission therefore recommends that the Courts Act (Cap 3:02) be amended by deleting section 39 (2) (d).

(ii) *Births and Deaths Registration Act (Cap. 24:01)*

The Act makes provision that “no person shall be bound as father to register the birth of an illegitimate child, and no person shall be entered in the register as the father of such child except at his own request and upon acknowledging himself to be the father of the child and signing, or affixing his mark to the birth report as such¹²¹”.

Recalling its earlier recommendation that children should not be discriminated against on the basis of their birth status or otherwise, the Commission is of the view that this provision runs against this recommendation as well as the provisions of section 23 of the Constitution on equal status of children regardless of the condition of their birth and the UN Convention on the Rights of a Child.

The Commission therefore recommends that the Births and Deaths Registration Act be amended by repealing section 6.

RE-ARRANGEMENT OF PARTS

The Commission recommends that the Act be re-arranged as follows—

PART I PRELIMINARY

PART II GENERAL PRINCIPLES

PART III CHILDREN SUSPECTED TO HAVE COMMITTED OFFENCES

Chapter I: Methods of bringing a child offender before a court or other inquiry

Chapter II: Detention before a finding against a child

Chapter III: Preliminary Inquiry

Chapter IV: Diversion

PART IV DETERMINATION OF AGE OF A CHLD

PART V LEGAL REPRESENTATION

PART VI CHILD JUSTICE COURT: ESTABLISHMENT, JURISDICTION, COMPOSITION, PROCEDURE AND POWERS

PART VII CHILD CASE REVIEW BOARD

PART VIII REFORMATORY CENTRES AND SAFETY HOMES

¹²¹Section 6.

PART IX CHILD CARE AND PROTECTION

- Chapter I: Child care and protection by the family
- Chapter II: Children in need of care and protection
- Chapter III: Guardianship
- Chapter IV: Fosterage
- Chapter V: Support for children by local authorities
- Chapter VI: Protection of children from undesirable practices

PART X EXPENSES AND CONTRIBUTIONS

PART XI TRANSITIONAL PROVISIONS

PART XII GENERAL

SCHEDULES

In view of the Commission's recommendations the following schedules shall be part of the new Act—

FIRST SCHEDULE

Section ...

GUIDING PRINCIPLES IN MATTERS CONCERNING CHILDREN

- | | |
|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Welfare principle | 1. Whenever the state, a court, a local authority or any person determines any question with respect to— <ul style="list-style-type: none">(a) the upbringing of a child or;(b) the administration of property of a child or the application of any income arising from it, the welfare of the child shall be of the paramount consideration. |
| Time being of the essence | 2. In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the general principle that delay in determining the questions is likely to be prejudicial to the welfare of the child. |
| Criteria for decision | 3. In determining any question relating to circumstances set in paragraphs (a) and (b) of paragraph (1), the court or any other person shall have regard in particular to— <ul style="list-style-type: none">(a) the ascertainable wishes and feelings of the child concerned considered in the light of his age and understanding;(b) the physical, emotional and educational needs of the child;(c) the likely effects of any changes in the child's circumstances;(d) the age, sex, background of the child and any other circumstances relevant in the matter; |

23rd December, 2005

143

(e) any harm that the child has suffered or is at the risk of suffering;

(f) where relevant, the capacity of the parents, guardians or other people involved in the care of the child in meeting the needs of the child.

Rights of a child

4. A child shall have the right—

(a) to leisure which is not morally harmful, right to participate in sports and positive cultural and artistic activities;

(b) to a just call on any social amenities or other resources available in any situation of armed conflict or natural or man-made disasters;

(c) to exercise, in addition to all rights stated in this Schedule and this Act, all the rights set out in the United Nations Convention on the Rights of the Child and the Organization of African Union Charter on the Rights and Welfare of the African Child with appropriate modifications to suit the circumstances in Malawi that are not specifically mentioned in this Act.

SECOND SCHEDULE

CHILD (CARE, PROTECTION AND JUSTICE) ACT

SECTION ...¹²²

Children charged with the following offences shall not be considered for diversion.

Offences

1. Rape
2. Attempted rape
3. Abduction
4. Defilement of a girl under 13 years and attempted defilement
5. Defilement of an idiot or imbecile
6. Manslaughter
7. Murder
8. Attempted murder
9. Infanticide
10. Killing an unborn child
11. Disabling in order to commit a felony or misdemeanour
12. Stupefying by overpowering drug or thing with intent to commit a felony or misdemeanour

¹²²See provisions on diversion.

13. Robbery with violence
14. Attempted robbery with violence
15. House breaking and burglary
16. Arson
17. Offences against Aircraft
18. Offences against motor vehicles, trains, etc
19. Conspiracy to murder
20. Aiding suicide
21. Acts intended to cause grievous harm or prevent arrest
22. Preventing escape from a wreck
23. Maliciously administering poison with intent to harm
24. Intentionally endangering safety of persons travelling by railway
25. Accessory after the fact to murder

THIRD SCHEDULE

CHILD (CARE, PROTECTION AND JUSTICE) ACT

Section ...¹²³

DIVERSION OPTIONS

CATEGORY A

Category A diversion options are—

- (1) An oral or written apology to the victim or victims of the offence or to any other specified person or institution;
- (2) A formal caution with or without conditions;
- (3) Placement under a supervision and guidance order placing the child under the supervision and guidance of a mentor or peer role model for a period not exceeding three months in order to monitor and guide the child's behaviour;
- (4) Placement under a reporting order requiring a child to report to a specified person at a time or at times specified in such order so as to enable such person to monitor the child's behaviour for a period not exceeding three months;
- (5) The issue of compulsory school attendance order for a period not exceeding three months requiring the child to attend school everyday for a specified period of time, which attendance shall be monitored by a specified person;

¹²³ See provisions on diversion.

23rd December, 2005

145

- (6) The issue of a family time order requiring the child to spend a number of hours with his family for a period not exceeding three months;
- (7) The issue of a positive peer association order requiring a child to associate with persons who can contribute to the child's positive behaviour for a period not exceeding three months;
- (8) The issue of a good behaviour order requiring a child to abide by an agreement made between the child and his family to comply with certain standards of behaviour;
- (9) The issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place;
- (10) Referral to counselling or therapy for a period not exceeding three months;
- (11) Compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a period not exceeding five hours each week, for a maximum of three months;
- (12) Symbolic restitution of an object owned, made or bought by a child to a specified person, persons, group or institution;
- (13) Restitution of a specified object to a specified victim or victims of the alleged offence where the object concerned can be returned or restored; and
- (14) Any order removing the child from undesirable environment for a specified period.

CATEGORY B

Category B diversion options are—

- (1) Any of the options under Category A provided that where a maximum period has been imposed under paragraphs (3), (4), (5), (6), (7), (8), (9), and (10), the maximum period shall not exceed six months;
- (2) Compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a period not exceeding eight hours each week, for a maximum of six months;
- (3) Performance without remuneration of some service for the benefit of the community under the supervision or control of an organization or institution, or a specified person or group identified by the probation officer for a maximum period of fifty hours, and to be completed within a maximum period of six months;
- (4) Provision of some service or benefit to a specified victim or victims which the child or the family can afford;

- (5) Payment of compensation to a maximum of K10,000 to a specified person, persons, group or institution where the child or his family is able to afford this;
- (6) Where there is no identifiable person or persons to whom restitution or compensation could be made, provision of some service or benefit or payment of compensation to a community organization, charity or welfare organization;
- (7) Referral to appear at a victim-offender mediation or other restorative justice involving family members at a specified place and time; and
- (8) Any two of the options listed used in combination.

CATEGORY C

Category C diversion options are—

- (1) Referral to a programme with a residential requirement, where the duration of the programme does not exceed six months, and no portion of the residence requirement exceeds a maximum of thirty-five nights during the operation of the programme;
- (2) Performance without remuneration of some service for the benefit of the community under the supervision and control of an organization or institution, or a specified person or group identified by the probation officer for a maximum period of two hundred fifty hours, to be completed within a maximum period of twelve months;
- (3) Where a child is and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a maximum period of not more than thirty-five hours per week, to be completed within a maximum period of six months;
- (4) Referral to counselling or therapeutic intervention, which shall be in conjunction with any of the options listed in this category.

FOURTH SCHEDULE

CHILD (CARE, PROTECTION AND JUSTICE) ACT

*Section ...*¹²⁴

Child offenders charged with the following offences shall be detained in accordance with section ...

Offences

1. Offences punishable by death
2. Attempting to murder
3. Attempting to murder by convict

¹²⁴ See provisions on punishment of certain grave crimes.

23rd December, 2005

147

4. Accessory after the fact to murder
5. Written threats to murder
6. Conspiracy to murder
7. Aiding suicide
8. Disabling in order to commit felony or misdemeanour
9. Stupefying in order to commit felony or misdemeanour
10. Acts intended to cause grievous harm or prevent arrest
11. Preventing escape from wreck
12. Intentionally endangering safety of persons travelling by railway
13. Attempting to injure by explosive substance
14. Maliciously administering poison with intent to harm
15. Infanticide
16. Manslaughter

FIFTH SCHEDULE

CHILD (CARE, PROTECTION AND JUSTICE) ACT

Section ...¹²⁵

REFORMATORY CENTRE AND SAFETY HOME ORDER

In Child Justice Court Sitting at

Child Case Number

.....
 (hereinafter called the child) who appears to the court to be a child having been born as far as can be ascertained, in or about theday of 20..... has this day *been found to be responsible for Or having been charged with the following offences

.....
 or * having been found to be in need of care, control and protection .

IS HEREBY ORDERED to be sent FORTHWITH (or on the day of 20.....) to a reformatory centre/safety home to be kept there until the child has been released on the recommendation of the Board Or until the child has been discharged/released on bail/acquitted.

AND it is further ordered that the Police officers of the Republic or shall be responsible for conveying the child to such reformatory centre/safety home as may be specified by the Board.

¹²⁵ See provisions on reformatory centre and safety home orders.

148

23rd December, 2005

*AND it is further ordered that residing at being the parent or guardian or other person hitherto having custody of the child shall pay to the weekly (monthly) sum of until the child ceases to be subject to this order.

* AND it is further ordered that until the child is sent to the said reformatory centre/safety home in pursuance of this order he or she shall be kept in or is committed to the custody of

Dated this Day of 20

.....
Magistrate/Chairman

*Delete if inappropriate

SIXTH SCHEDULE

CHILD (CARE, PROTECTION AND JUSTICE) ACT

Section ...¹²⁶

REFORMATORY CENTRE AND SAFETY HOMES (MANAGEMENT) RULES

Citation 1. These Rules may be cited as Reformatory Centre and Safety Homes (Management) Rules.

Minimum Standards and services of reformatory centres and safety homes 2. Reformatory centres, and safety homes designated under this Act shall provide for the following minimum conditions—
(a) education, recreation and health care;
(b) parent/child interaction centre;
(c) counselling services;
(d) proper hygiene and sanitation;
(e) adequate nutrition, proper clothing and bedding;
(f) communication materials.

Other services 3. In addition to the services mentioned in rule 2, reformatory centres, and safety homes may, where circumstances do require, facilitate any other services by allowing service providers access to the centre or home or by allowing children to have access to the services.

Records 4. The officer-in-charge of a reformatory centre, or safety home shall keep a register in which details of each child shall be recorded.

Inspection of the Register by the Board 5. Details of the register shall be examined by the Board.

¹²⁶ See provisions on reformatory centre and safety home rules.

23rd December, 2005

149

[Subsidiary]

Child Justice Courts Designation Notice

SUBSIDIARY LEGISLATION

CHILD JUSTICE COURT DESIGNION NOTICE

DESIGNATION NOTICE

Under section ...

The Chief Justice has designated the following courts to exercise jurisdiction under the Act—

SEVENTH SCHEDULE...

Under section ...

PRESCRIBED FORM OF ACCOUNT OF A CHILD’S ESTATE

I of do solemnly and sincerely declare that the estate of (name of child/children) is as follows—

Description of property.....

Income (monthly, quarterly, yearly).....

Bank Details (account number, balance etc).....

AND I MAKE this solemn declaration, conscientiously believing the same to be true [and by virtue of the Oaths, Affirmations and Declarations Act].

Declared at this

Day of 20.....

Before me

.....
[Commissioner for Oaths]

150

23rd December, 2005

EIGHTH SCHEDULE
FOSTER-CARE PLACEMENTS

Section ...

FORM 1

APPLICATION TO FOSTER A CHILD

Name of applicant.....

Married/Singleage.....

Address

.....

..... Tel. No.

Number of children age

Employment of applicant

Employment of husband

Employment of wife

Other sources of income (e.g. farm)

Have you ever fostered a child/children before? (If so give particulars).....

.....

.....

Reason for foster.....

Are you willing to undertake short term fostering?

Names of referees and their addresses (one shall be your local or village chief)

.....

1

.....

.....

.....

2.

.....

.....

Age range sex of child you wish to foster.....

.....

Date

.....
Applicant signature

23rd December, 2005

151

FOSTER-CARE PLACEMENTS

Section ...

FORM 2

FORM OF UNDERTAKING

(To be filled in Triplicate)

I/We (names of foster parents)

Who received (name of child).....

Into my/our home on (date)

From (name of District Social Welfare Office)

Undertake that—

1. I/we will care for (name of Child)
as though he/she were my/our own child.
2. I/we will bring him/her up in accordance with the
3. I/we will look after his/her health and allow him/her to be medically
examined as required by the District Social Welfare Office.
4. I/we will allow an Officer of the District Social Welfare Office or
representative of the Ministry to visit my/our home, and to see the child
at any time.
5. I/we will inform the District Social Welfare Office immediately if the child
is seriously ill, or is missing, or is involved in an accident, or is in any
kind or trouble.
6. I/we will inform the District Social Welfare Office immediately if I /we plan
to change residence and address.
7. I/we understand that an Officer of the District Social Welfare Office has the
right to remove the child from my/our home in certain circumstances.
8. I/we will ensure that the child is not transferred to another country without
leave of the court.

.....
(Signed, Foster Father)

.....
(Signed Foster Mother)

.....
(Address of Foster Parent)

.....
(Signed, Manager of Foster Home)

.....
(Address of Foster Home)

152

23rd December, 2005

CERTIFICATE

I(Title)
Certify that I have explained the foregoing undertaking in the
..... language to
..... and
foster parent(s).

Signed.....
(District Social Welfare Officer)

Signed.....
(Witness)

.....
(Address of Witness)

.....
(Address of District Social Welfare Office)

Date:.....

154

23rd December, 2005

Is there or has there been any serious illness/infection in the family? (If any, give details).

.....
.....
.....

State the income and wealth of the prospective foster Parents. Give details of business and land owned by the family/person.

Description of the home

.....

Number of rooms Type of toilet

Type of water supply.....

Will the family/person need material support in order to start fostering? If the answer is "yes" state what will be needed?

.....
.....
.....

Why does this family/person wish to foster children?

.....
.....
.....

Do they understand the temporary nature of fostering?

Has the person/any member of the family had a serious conviction (if YES), give details and dates and state whether in your opinion it is of such seriousness as to prevent the family/person from taking on a foster placement?

.....
.....
.....

23rd December, 2005

155

Assessment of the suitability of that family/ person to foster children

.....
.....
.....

Recommendation.....

What type of foster child would best benefit from this family/person? (baby, child, male, female, etc).

Details of Foster Child/Children already placed with foster parents.

Name of Foster	Sex	Date of placement	Age at date of placement	Date of termination	Why terminated
----------------	-----	-------------------	--------------------------	---------------------	----------------

.....
.....
.....

Details of parents and siblings of foster children if known.

.....
.....
.....

Name of Foster Child	Names of Parents	Names of brothers/ sisters of foster child	Sex	Age	Religion	Address
----------------------	------------------	--------------------------------------------	-----	-----	----------	---------

.....
.....
.....

Name of Supervising Officer

Signature

Address

Date

156

23rd December, 2005

FOSTER-CARE PLACEMENTS

Section ...

FORM 4

FOSTER CHILD CASE REORD

Name of child (surname first).....

Date of Birth Age.....

District of Origin.....

Sex..... Religion.....

Name of Foster Parents.....

Foster Parent's Home Address

Change of Address

T/A

Village

District

Natural Father's Name Alive/Dead/Unknown

Natural Mother's Name Alive/Dead/Unknown

*Natural Father or
Guardians Address*

*Natural Mother or
Guardians Address*

T/A

Village

District

Details of Foster Child brothers, sisters and relative.

Name

Addresses

Alive/Dead

.....

.....

.....

Where was the child living immediately prior to this foster placement? (Please give names and addresses of carers or institution).

.....

.....

.....

23rd December, 2005

157

CASE HISTORY OF THE CHILD AND HIS/HER FAMILY

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

State what efforts have been made to trace the parents or relatives and to return the child to his/her family.

.....
.....
.....

Details of medical history including immunization.

.....
.....
.....

Give details of education

School class

Name of supervising officer.....

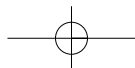
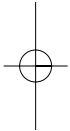
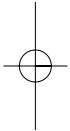
Address

Date.....

.....
Supervisor's Signature

APPENDICES

CHILD (CARE, PROTECTION AND JUSTICE) BILL



23rd December, 2005

161

CHILD (CARE, PROTECTION AND JUSTICE) BILL, 20..

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title
2. Interpretation

PART II—GENERAL PRINCIPLES

3. Mode of pronouncing a finding against a child
4. Non-effect of a finding against a child
5. General consideration

Part III—CHILDREN SUSPECTED TO HAVE COMMITTED AN OFFENCE

*Chapter I—Methods of Bringing a Child Offender Before
a Court or Other Inquiry*

6. Arrest of a child
7. Guidelines on arrest of children
8. Summons
9. Arrest of a child by a private person
10. Reference to a probation officer
11. Police powers to caution and release

Chapter II—Detention Before a Finding Against a Child

12. Restriction on detention before a finding against a child
13. Places of detention before a finding against a child
14. Child not to associate with adult offender
15. Bail of children

Chapter III—Preliminary Inquiry

16. Nature and objectives of a preliminary inquiry
17. Persons who shall attend a preliminary inquiry
18. Persons who may attend a preliminary inquiry

SECTION

19. Procedure relating to holding a preliminary inquiry
20. General powers and duties of inquiry
21. Release or detention of a child by inquiry magistrate
22. Evidentiary matters
23. Separation and joinder of proceedings of a preliminary inquiry
24. Adjourning a preliminary inquiry
25. Failure to comply with conditions pursuant to adjournment of a preliminary inquiry
26. Failure to appear at a preliminary inquiry
27. Decisions regarding diversion, withdrawal, prosecution of charges or transfer to a child justice court
28. Procedure upon referral of matter to court

Chapter IV—Diversion

29. Diversion to occur in certain circumstances
30. Diversion options
31. Minimum standards applicable to diversion
32. Registration of diversion programmes
33. Establishment of child panels
34. Procedure of child panels
35. Victim-offender, mediation or other restorative justice
36. Failure to comply with diversion orders
37. Monitoring programmes of diversion
38. Keeping of records.

PART IV—DETERMINATION OF AGE OF A CHILD

39. Application of this Part
40. Age estimation by a probation officer
41. Age determination at a preliminary inquiry
42. Age assessment and determination by an officer presiding in a criminal court other than a child justice court

PART V—LEGAL PRESENTATION

43. Access by a child to legal representation
44. Child to be provided with legal representation at State expense
45. Requirements to be complied with by legal representatives

23rd December, 2005

163

SECTION

46. Mode of seeking legal representation at State expense
47. Child may not waive legal representation in some circumstances
48. Legal assistance

PART VI—CHILD JUSTICE COURT: ESTABLISHMENT, JURISDICTION,
COMPOSITION, PROCEDURE AND POWERS

49. Establishment of child justice court
50. Composition of a child justice court
51. Jurisdiction of a child justice court
52. Parent or guardian may be allowed to attend court
53. Separation and joinder of trials involving children and adults
54. Jury trials in children matters
55. Places of sitting of child justice court
56. Restriction on media reports of proceedings in a child justice court.
57. Restrictions on punishment of children
58. Punishment of certain grave crimes.
59. Power to order parent or guardian to pay fine etc. instead of child
60. Power of other courts to remit children to a child justice court
61. Criminal procedure in child justice court
62. Proceedings of a child justice court to be informal
63. Power of child justice court on proof of offence
64. Reformatory centre orders and other orders for detention
65. Escape from custody and breach of condition
66. Appeals and review

PART VII—CHILD CASE REVIEW BOARD

67. Establishment of Child Case Review Board
68. Tenure of office for members of the Board
69. Proceedings of the Board
70. Functions of the Board
71. Powers of the Board
72. Secretariat of the Board
73. Funding for the Board

PART VIII—REFORMATORY CENTRE AND SAFETY HOMES

SECTION

74. Public reformatory centres and public safety homes
75. Minister may appoint private reformatory centres and private safety homes
76. Reformatory centres and safety home (Management) rules
77. Manager shall send monthly reports to the Board and allow inspection
78. Inspection of reformatory centres and safety homes
79. Powers of a Minister to direct closure of reformatory centres or safety home
80. Application to review Minister's decision on closure of a Reformatory centres or safety home
81. Manager, proprietor, his executor, administrator etc may apply for closure
82. Liabilities to receive children
83. Effect of closure notice and cancellation of certificate
84. Discharge or transfer of children
85. Review of cases of detained children
86. Reformatory centres, safety homes lawful places of detention
87. Illness of children detained
88. Return after treatment
89. Duty to prevent escape
90. Breaches of rules of discipline
91. Penalties for assisting or inducing escape and for harbouring or concealing escaped children
92. Presumption of evidence of identity
93. Disciplinary rules

PART IX—CHILD CARE AND PROTECTION

Chapter I—Child Care and Protection by the Family

94. Parents duties and responsibilities
95. Child duties and responsibilities
96. Parentage
97. Evidence of parentage
98. Determination of parentage
99. Custody and access

23rd December, 2005

165

SECTION

100. Application for maintenance
101. Consideration for maintenance
102. Request for social inquiry report
103. Maintenance order
104. Attachment order
105. Persons entitled to receive maintenance funds
106. Duration of maintenance order
107. Continuation of maintenance orders
108. Variation or discharge of orders
109. Enforcement of maintenance orders
110. Joint responsibility to maintain a child
111. Maintenance during matrimonial proceedings
112. Power to make maintenance funds to be paid to a person other than the applicant
113. Offences

Chapter II—Children in need of care and protection

114. Determination of children in need of care and protection
115. Taking a child into place of safety
116. Determination before child justice court
117. Child in need of medical examination
118. Medical examination and treatment
119. Hospitalization
120. Control over hospitalised children
121. Authorization of medical treatment
122. Steps to be taken after medical examination or treatment
123. No liability incurred for giving authorization
124. Duty of a Health worker
125. Duty of members of the family
126. Duty of child care provider
127. Duty of members of the community
128. Functions of child justice courts in cases of children in need of care

Chapter III—Guardianship

SECTION

129. Appointment of guardian
130. Appointment of a testamentary guardian
131. Application for the appointment of guardian by a child or family member
132. Application for the appointment of a guardian by other persons other than a child or a family member
133. Extension of guardianship beyond a child's eighteenth birthday
134. Power to revoke, modify or vary a guardianship order
135. Disputes between guardianships
136. Offences by guardians

Chapter IV—Fosterage

137. Interpretation
138. Public foster homes
139. Private foster homes
140. Management of foster homes
141. Foster home placement
142. Responsibilities of a Manager or Warden of a foster home
143. Commitment of a child to a foster parent
144. Application to foster a child
145. Responsibilities of foster parents
146. Persons qualified to foster children
147. Procedure before placement
148. Religion
149. Cultural background
150. Undertaking by foster parents
151. Medical arrangements
152. Supervising officer
153. Visits during placement
154. Marriages
155. Termination of placement
156. Surrendering a foster child
157. Illness
158. Death
159. Records
160. Application for adoption
161. Offences

23rd December, 2005

167

Chapter V—Support for Children by Local Authorities

SECTION

162. General functions of local government assemblies
163. Secretary for children affairs
164. Registration of children with disabilities
165. Duty to provide accommodation to children in need
166. Tracing of parents or guardians
167. Duty to report infringement of a child's rights
168. Registration of births and deaths of children
169. Registration of children suffering from HIV/AIDS

Chapter VI—Protection of Children from Undesirable Practices

170. Child abduction
171. Child trafficking
172. Harmful cultural practices
173. Forced marriage or betrothal
174. Pledge of a child as security
175. Offence
176. Inquiries and placements
177. Child recovery order

PART X—EXPENSES AND CONTRIBUTIONS

178. Contribution order
179. Funds for public reformatory centres and public safety homes

PART XI—TRANSITIONAL PROVISIONS

180. Transfer of children
181. Remittance of a list of children
182. Proceedings under the repealed Act (Cap 26:03)

PART XII—GENERAL

183. Saving of powers of the High Court
184. Duties and powers of a person to whom a child is committed
185. Duties arising from a probation order
186. General offences
187. Mistake as to age
188. Extension of application of the Act
189. Regulations and rules
190. Court rules
191. Amendments and repeals

A BILL

entitled

An Act to consolidate the law relating to children by making provision for child Justice and for child care and protection; and for matters of social development of the child and for connected matters.

PART I—PRELIMINARY

Short title **1.** This Act may be cited as the Child (Care, Protection and Justice) Act, 20... and shall come into operation on such date as the Minister shall appoint by notice in the *Gazette*.

Interpretation **2.** In this Act, unless the context otherwise requires—
“appropriate adult” means an adult relative or any adult who knows the child or is known to the child or any person appointed by the court, but shall not include—

(a) a police officer, investigator, prosecutor or any person working with the police in relation to the case;

(b) victim of the offence;

(c) a witness in the case whether for or against the child;

“Board” means the Child Case Review Board established under Part X ;

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

“child” used in relation to proceedings before age determination shall, if the age is unknown, include a person who appears to be below eighteen years of age.

“child justice court” means a subordinate court established under section 49;

“child panel” means a child panel established under section 33.

“court” in relation to proceedings relating to a child, includes any tribunal;

“diversion” means the referral of cases of child offenders away from formal court proceedings with or without conditions;

“diversion option” means a plan or a programme of diversion of a prescribed order and content and of specified duration;

“guardian” means a person who has lawful or legitimate custody, care or control of a child in place of a parent;

“parent” includes an adoptive parent, foster parent or any person acting in whatever way as parent;

23rd December, 2005

169

“parent, guardian, or appropriate adult” used in relation to a child means a parent, guardian or appropriate adult of the child;

“place of detention” means a place of detention as provided under this Act;

“place of safety” means an appropriate place where a child in need of care and protection can be kept temporarily and includes a safety home or a foster home;

“probation officer” means a person appointed as such under section 15 of the Probation of Offenders Act (Cap 9:01) or any other qualified person whom the Minister may appoint to perform probation duties for the purposes of this Act;

“public reformatory centre” means a reformatory centre established under section 74;

“public safety home” means a safety home established under section 74;

“private reformatory centre” means a reformatory centre established under section 75;

“private safety home” means a safety home established under section 75;

“medical officer” means any person duly authorized to perform duties of a medical personnel and includes a health worker;

“reformatory centre” means a home or institution or part thereof established for the purposes of:

(a) reception, education and vocational training;

(b) counselling of children in accordance with this Act.

“restorative justice” means the promotion of reconciliation, reconstruction and sense of responsibility in respect of the offence committed by a child;

“serious offence” in relation to a child means any of the offences listed in the Fourth Schedule;

“safety home” means a place or part thereof for the purposes of reception, education, counseling and safety of children before conclusion of trial or in circumstances requiring placement of a child for care and protection.

“vocational training” means training in some branch of useful industry, including agriculture.

PART II—GENERAL PRINCIPLES

Mode of pronouncing a finding against a child

3. The words “finding of guilty” “conviction” and “sentence” shall pronouncing not be used in respect of any child in proceedings in a child justice court against or any other court but in pronouncing the conviction against the child, the court shall record that the child is found to be responsible for the offence charged and, instead of sentencing the child, the court shall proceed to make an order upon such a finding in accordance with this Act.

Non-effect of finding against a child

4. Save as provided in section 22 a finding of responsibility for an offence against a child shall have no effect whatsoever against the child for the purposes of any law except in respect only of the offence for which the child is found responsible and in respect of such offence, the finding shall elapse upon the child serving the order.

General consideration

5. A court, when dealing with a child who is brought before such consideration court either as an offender or in need of care or protection, shall—

(a) in a proper case, take steps for removing him or her from undesirable surroundings and for securing that proper provision is made for his or her nutrition, education, and training;

(b) give primary consideration to the rights of the child as recognized by the Convention on the Rights of the Child set out in the First Schedule.

PART III—CHILDREN SUSPECTED TO HAVE COMMITTED OFFENCES

Chapter I—Methods of bringing a child offender before a court or other inquiry

Arrest of a child

6. In addition to the provisions of the Criminal Procedure and Evidence Code or of any other law relating to the arrest of a child, a police officer or any person arresting the child or the person who appears to be a child shall—

(a) have due regard to the observance of the principle of the best interests of the child as well as the general welfare of the child; and

(b) make the arrest in accordance with the guidelines set out under this Chapter.

Guidelines on arrest of children

7. A police officer or any person effecting the arrest of a child shall ensure that—

(a) the child has been informed of his rights in relation to the arrest or detention and the reasons for the arrest in a manner appropriate to the age and understanding of the child;

23rd December, 2005

171

- (b) there is no harassment or physical abuse of the child;
- (c) the child is provided with medical attention where necessary;
- (d) there is no use of handcuffs except if the child is handcuffed to the arresting police officer or the person effecting the arrest;
- (e) the child is not mixed with adults;
- (f) the child is provided with nutritious food;
- (g) the child is accompanied by a parent, guardian or appropriate adult as far as it is practicable to do so;
- (h) a parent, guardian or appropriate adult is informed immediately after the arrest if such parent, guardian or appropriate adult was not present at the time of the arrest;
- (i) in serious offences, the person is provided with legal representation;
- (j) the child has been provided with counselling services where possible.

8. Where summons have been used for the purposes of bringing a child before a court, the summons shall—

Summons

- (a) be issued by a court of competent jurisdiction;
- (b) be served on the child, or parent, guardian or the child's next of kin; and
- (c) be served on a day and time that ensures due consideration of the child's best interests.

9. Where an arrest of a child is made by a private person, that person shall present the child to a police officer or to the nearest police station or court as soon as it is practicable to do so, but no later than twenty-four hours after the arrest.

Arrest of a child by a private person

10.—(1) Where a child is arrested or summoned, the officer-in-charge of the police station shall as soon as it is practicable, refer the child to a probation officer.

Reference to a probation officer

(2) Where a Police Officer has reason to believe that a child suspected of having committed an offence is below the age of ten years, he or she shall not arrest the child, but shall refer such child to a probation officer for the estimation of age.

(3) Where a child has been referred to a probation officer under subsection (1) the probation officer shall assess the child for the purposes of—

- (a) establishing the possibility of diverting the case;
- (b) determining whether the child is in need of care and protection;
- (c) age estimation, if the age is not known;
- (d) formulating recommendations regarding—
 - (i) release of the child with or without bail;
 - (ii) release into the care of a parent, guardian or an appropriate adult; or
 - (iii) detention pending a preliminary inquiry.

(4) The probation officer shall submit the assessment report containing the recommendations in respect of the child to the prosecutor handling the matter.

(5) The prosecutor may, upon consideration of the recommendations—

- (a) release the child with or without bail,
- (b) release the child into the care of a parent, guardian or an appropriate adult or
- (c) detain the child.

(6) Where the charges have not been withdrawn, the prosecutor shall make arrangements for a preliminary inquiry.

(7) Where the probation officer estimates that the age of the child is below ten years, he or she shall recommend that the child be released for want of criminal responsibility.

(8) Where it is not possible to refer the child to a probation officer or where the reference may cause unnecessary delays, the prosecutor handling the matter may—

- (a) take the child to a safety home and arrange for a preliminary inquiry within forty-eight hours;
- (b) release the child in accordance with section 15.

Police powers
to caution and
release

11.—(1) A police officer of the rank of sub-inspector and above may caution a child offender against the repetition of the crime and release the child with or without conditions if—

- (a) the offence alleged to have been committed is not a serious offence;
- (b) there is enough evidence to warrant prosecution in the case; and

23rd December, 2005

173

(c) the child voluntarily admits responsibility for the offence.

(2) A Police officer imposing a condition under this section shall take into account the best interests of the child and the condition shall not be penal in nature.

(3) The caution and release of a child shall be administered in the presence of a parent or guardian, or an appropriate adult or a probation officer unless the police officer considers it to be in the best interests of the child to dispense with this requirement.

(4) A police officer shall, when cautioning and releasing a child, take into account—

(a) the circumstances in which the offence was committed;

(b) the views of the victim or complainant;

(c) personal conditions of the arrested child including age, physical or mental infirmity, his general character and family circumstances; and

(d) the views of the parent, guardian or appropriate adult of the child.

(5) The Chief Justice may, unless satisfied that the rules made under section 32 of the Criminal Procedure and Evidence Code are sufficient for the purposes of this Act, make rules prescribing guidelines for the police on the exercise of powers referred to in this section.

CHAPTER II

DETENTION BEFORE A FINDING AGAINST A CHILD

12.—(1) No child under the age of fourteen years shall be detained before a finding against him unless the Director of Public Prosecution, in writing or upon hearing, satisfies the inquiry magistrate or court that—

Restriction
on detention
before a
finding
against a
child

(a) the prosecutor wishes to charge the child with a serious offence in respect of which there is sufficient evidence to prosecute;

(b) it is necessary in the interest of such child to remove him from undesirable circumstance; or

(c) the prosecutor has reason to believe that the release of such child would defeat the ends of justice.

(2) Where a child is detained pending a preliminary inquiry, he shall as soon as it is reasonably possible, but not later than forty-eight hours after the arrest, or if the period of forty-eight hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry, be brought before an inquiry magistrate for purposes of conducting a preliminary inquiry, failing which he shall, subject to section 15, be released.

Places of
detention
before a
finding
against a
child

13.—(1) Where a decision has been made to detain a child before a finding against the child, the child shall, subject to subsection (1), be detained in a safety home.

(2) Where a decision has been made to detain a child in accordance with subsection (1) and the officer in charge of a police station responsible for the child or the prosecutor is of the opinion that—

(a) it is impracticable to do so;

(b) the child is of unruly or depraved character that he cannot be safely so detained;

(c) by reason of the child's state of health or of his or mental or physical condition it is not advisable so to detain the child or;

(d) the detention is not otherwise in the best interests of the child,

the officer in-charge or prosecutor shall immediately apply to the inquiry magistrate, child justice court or any other court that made the order for any necessary alternative order.

(3) When making the alternative order under subsection (2), the inquiry magistrate or the court shall consider the following options—

(a) parenting order;

(b) hospital order;

(c) home confinement order;

(d) reformatory centre order.

(4) An order made under this section may be varied or revoked by any court and if so revoked the provisions of this section shall apply.

23rd December, 2005

175

14. No child, while in detention in a safety home or reformatory centre or while being conveyed to or from any court or while awaiting before or after attending a criminal court, shall be permitted to associate with an adult (not being a relative) who is charged with an offence other than the offence with which the child is jointly charged with the adult.

Child not to associate with adult offenders

15.—(1) Where a child or a person who appears to be a child is apprehended with or without a warrant and cannot be brought forthwith before an inquiry magistrate, the Officer-In-charge of the police station to which such person is brought shall, unless—

Bail of Children

(a) the charge is one of homicide or any offence punishable with imprisonment for a term exceeding seven years;

(b) it is necessary in the interest of such person to remove the person from undesirable circumstances; or

(c) the officer has reason to believe that the release of the person shall defeat the ends of justice,

release the person on a recognizance being entered into by the person or by his parent, guardian or appropriate adult with or without sureties to secure the attendance of the person upon the hearing of the charge.

(2) Where a child or a person who appears to be a child is released on bail under subsection (1), no monetary payments shall be attached or ordered as a condition for granting the bail.

(3) The provisions of the Bail (Guidelines) Act shall, in so far as they are consistent with the provisions of this Act, apply when granting bail under this section.

CHAPTER III

PRELIMINARY INQUIRY

16.—(1) A preliminary inquiry shall be held in respect of a child suspected to be responsible for an offence prior to plea unless the child has been released on caution or the charge has been withdrawn.

Nature and objectives of a preliminary inquiry

(2) A magistrate of the second grade or above may preside over a preliminary inquiry and while so presiding shall be called an “inquiry magistrate” for the purposes of this Act.

(3) A child’s appearance before a preliminary inquiry shall be regarded as his or her first court appearance for the purposes of this Act.

(4) The objectives of a preliminary inquiry are to—

(a) ascertain whether a probation officer has made a social inquiry of the child and, if not, whether compelling reasons exist for not making such an inquiry;

(b) establish whether the matter can be diverted before plea;

(c) identify a suitable diversion option if the matter is to be diverted;

(d) ensure that all available information relevant to the child, his or her circumstances and the offence is considered in order to make a decision on diversion and placement of the child;

(e) establish whether the matter should be referred to the child justice court to be dealt with in accordance with the provisions of this Act;

(f) provide an opportunity for the prosecutor to assess whether there are sufficient grounds for the matter to proceed to trial;

(g) encourage participation of the child and his or her parent, guardian, or appropriate adult in decisions concerning the child;

(h) to ensure that views of persons concerned and present are considered before a decision is taken;

(i) determine release or placement of the child in accordance with the provisions of this Act pending conclusion of the preliminary inquiry or appearance of the child in a court; and

(j) take such other measures as may be necessary for the final disposition of the case.

(5) A preliminary inquiry shall be held in camera at any suitable place that the inquiry magistrate shall deem fit.

(6) The inquiry magistrate shall conduct the proceedings in an informal manner.

Persons who shall attend a preliminary inquiry

17.—(1) Subject to subsection (2), persons who shall attend a preliminary inquiry are—

(a) the inquiry magistrate;

(b) the prosecutor;

(c) the child;

(d) the child's parent or guardian if available;

(e) the probation officer;

(f) any other person served with a subpoena or requested by the inquiry magistrate to attend the preliminary inquiry; and

(g) an appropriate adult in the absence of a parent or guardian.

23rd December, 2005

177

(2) In exceptional circumstances as determined by the inquiry magistrate, a preliminary inquiry may proceed in the absence of any of the persons referred to in subsection (1) (d), (e) and (f).

(3) Where a preliminary inquiry proceeds in the absence of a probation officer, the officer's social report must be available at the preliminary inquiry unless assessment has been dispensed with in accordance with section 20 (3).

(4) An inquiry magistrate may, if he considers to be in the best interests of the child, exclude the persons referred to in subsection 1(d) from attending a preliminary inquiry.

18. Persons who may attend a preliminary inquiry are—

- (a) the child's legal representative if one has been appointed;
- (b) the arresting police officer, the investigating police officer or any other police officer;
- (c) an appropriate adult whether a parent is present or not; and
- (d) any other persons permitted to attend the preliminary inquiry by the inquiry magistrate.

Persons who may attend a preliminary inquiry

19.—(1) At the start of the preliminary inquiry, the inquiry relating to magistrate shall—

- (a) explain the purposes of the preliminary inquiry and the role of each person present in an official capacity ;
- (b) inform the child the nature of the allegations;
- (c) inform the child of his or her rights in a manner appropriate to the age and understanding of the child; and
- (d) explain to the child the immediate procedures to be followed in accordance with the provisions of this Act.

Procedure relating to holding a preliminary inquiry

(2) At the start of the preliminary inquiry, the prosecutor shall ensure that the inquiry magistrate has the probation officer's social inquiry report and a completed age estimation form with all relevant documents attached.

(3) Where a child does not admit responsibility for the alleged offence, no further questions regarding the offence shall be put to the child and the inquiry magistrate shall set the matter down for plea and trial in a child justice court and the preliminary inquiry shall be closed.

(4) A record shall be kept of the proceedings of the preliminary inquiry.

(5) No decision taken at a preliminary inquiry is subject to appeal,

save for a decision by the inquiry magistrate to detain a child in a safety home.

General powers
and duties of
inquiry
magistrate

20.—(1) The inquiry magistrate may—

(a) cause a subpoena to be served on any person whose presence magistrate is necessary for the conclusion of the preliminary inquiry;

(b) request or permit the attendance of any other person who may be able to contribute to the proceedings;

(c) request any further documentation or information which is relevant or necessary to the proceedings;

(d) make a determination of age in accordance with section 41;

(e) after consideration of the information contained in the social report, elicit any information from the persons attending the inquiry to supplement or clarify the information in the social report;

(f) take necessary steps to establish the truth of any statement or the correctness of any submission provided that such steps shall not unduly influence the child to accept responsibility of the alleged offence; and

(g) perform any other duties necessary for the final disposition of the case.

(2) The inquiry magistrate may, where the conduct of the proceedings of the preliminary inquiry or any aspect is in dispute, rule on the conduct of the proceedings in a manner consistent with the provisions of this Act.

(3) If it is ascertained that a social inquiry has not yet been conducted, the inquiry magistrate may adjourn the preliminary inquiry in accordance with section 24 (1) (f) pending such social inquiry or may dispense with the social inquiry if it is in the best interests of the child to do so.

(4) The inquiry magistrate shall ensure that the persons present at the inquiry know of the recommendations in the probation officers social inquiry report.

(5) Where the probation officer is present at a preliminary inquiry, the inquiry magistrate may request the probation officer to explain, elaborate upon or justify any recommendation or statement made in the social inquiry report, or provide additional information.

(6) The inquiry magistrate shall permit any person present to challenge the correctness of any statement made in the probation officer's social report.

23rd December, 2005

179

(7) The inquiry magistrate shall ensure that the persons present at the preliminary inquiry are informed of diversion options available in the District or area.

(8) The inquiry magistrate shall consider reports regarding arrest and detention of the child.

21. The inquiry magistrate may make an order regarding the release or detention of the child pending further appearance of the child at a preliminary inquiry or court where—

Release or
detention of a
child by
inquiry
magistrate

(a) the preliminary inquiry is adjourned ;

(b) the matter is to be set down for plea and trial in a child justice court or in any other court.

22.—(1) Where a child has admitted responsibility for the offence, information regarding a previous diversion or finding of a previous responsibility may be furnished at the preliminary inquiry by any person for the purpose only of assisting the inquiry magistrate to reach a proper decision regarding diversion.

Evidentiary
matters

(2) No self-incriminating information furnished at a preliminary inquiry by the child shall be admissible in any subsequent court proceedings.

23.—(1) Subject to section 17 (1) (f), if a child in respect of whom a preliminary inquiry is held, is co-accused with an adult, the adult shall be excluded from the preliminary inquiry.

Separation
and joinder of
proceedings
of a prelimi-
nary inquiry

(2) If a child in respect of whom the holding of a preliminary inquiry is contemplated is a co-accused with one or more other children, a joint preliminary inquiry may be held.

(3) Where a joint preliminary inquiry is held, different decisions may be made in respect of each accused child.

24.—(1) The inquiry magistrate may on his own motion or upon request, adjourn the proceedings of a preliminary inquiry for a period of inquiry of not exceeding seven days for the purposes of—

Adjourning a
preliminary
inquiry

(a) securing the attendance of a person necessary for the conclusion of the inquiry;

(b) obtaining information necessary for the conclusion of the inquiry;

(c) establishing the attitude of the victim to diversion or a diversion option;

(d) planning a diversion option;

(e) finding alternatives to pre-trial residential detention;

(f) conducting of a social inquiry of the child , where no social inquiry has previously been undertaken and it is found that such inquiry should not be dispensed with;

(g) conducting a further social inquiry of the child where the inquiry magistrate is satisfied that there are exceptional circumstances warranting the inquiry;

(h) holding an identification parade;

(i) any other reason considered to be necessary by the inquiry magistrate.

(2) Where the preliminary inquiry is adjourned for the purposes of holding an identification parade, the inquiry magistrate shall inform the child of the need to have a parent, a guardian, an appropriate adult or legal representation during such proceedings.

(3) If the matter upon which the adjournment was granted has not been concluded upon the expiry of the period of seven days the preliminary inquiry shall be re-convened and section 27 shall apply.

Failure to comply with conditions pursuant to adjournment of a preliminary inquiry

25. A child or his parent, guardian or an appropriate adult who fails to comply with the conditions of the release of the child pursuant to an adjournment of a preliminary inquiry shall be liable to arrest upon a warrant issued by the court for such person to be brought before the court to show cause for failure to comply and the court shall make a necessary order.

Failure to appear at a preliminary inquiry

26. Where a child or his parent, guardian, or appropriate adult has been notified to appear at a preliminary inquiry by a police officer or by a probation officer and such child, parent, guardian or appropriate adult fails to attend, such person shall be compelled to attend as if he had been summoned by the inquiry magistrate.

Decisions regarding diversion, withdrawal, prosecution of charges or transfer to a child justice court

27.—(1) After consideration of—

(a) the social inquiry report, unless the report has been dispensed with;

(b) the views of the persons at the preliminary inquiry;

(c) any further information provided by any person present at the preliminary inquiry;

(d) any further information requested or elicited;

(e) the willingness of the child to admit responsibility for the offence,

the inquiry magistrate shall ascertain from the prosecutor whether the matter can be diverted.

23rd December, 2005

181

(2) Where the prosecutor decides that the matter should be diverted, he or she shall withdraw the charge or charges against the child with or without conditions.

(3) Where the prosecutor decides that the matter be diverted, the inquiry magistrate shall—

(a) make an order regarding—

(i) an appropriate diversion option or options as set out in the Fifth Schedule ; and

(ii) implementation of the diversion option or options, or

(b) refer the matter to a child panel.

(4) In addition to the diversion options set out in the Third Schedule, the inquiry magistrate may, after consultation with the persons present at the preliminary inquiry, develop an individual diversion option that meets the purposes and standards applicable to diversion set out under Chapter IV and the implementation thereof.

(5) Where the inquiry magistrate has reason to believe that the child is in need of care and protection, he may order that the preliminary inquiry be closed and the matter be dealt with in accordance with the provisions on care and protection under this Act.

(6) Where the prosecutor decides to proceed with the prosecution of the child, he shall inform the inquiry magistrate and the preliminary inquiry shall be closed and the matter shall be set down for plea and trial in a child justice court, or any other court of competent jurisdiction within fourteen days after conclusion of the preliminary inquiry.

(7) The prosecutor may withdraw the charge at any time during the preliminary inquiry.

28.—(1) Where the matter has been referred to court and the child has no legal representation, the inquiry magistrate shall explain to the child, parent, guardian or an appropriate adult the provisions on legal representation under this Act.

Procedure upon referral of mater to court

(2) Where the child, or any of the persons referred to in subsection (1) indicates an intention to apply for legal representation at State expense in accordance with section 44, the inquiry magistrate shall assist the child, as far as is reasonably possible to make an application for legal aid at State expense.

(3) Where the child is in a safety home, the inquiry magistrate shall—

(a) inform the child, his parent, guardian, or appropriate adult to attend such proceedings at the time and place as advised by the court or prosecutor; and

(b) direct the person in charge of the safety home to bring the child to court at the specified time and place, or may—

(i) direct the release of the child on bail;

(ii) make any other order in accordance with the provisions of this Act.

(4) Where the child is not in detention, the inquiry magistrate shall warn the child, his parent, guardian or the appropriate adult to appear in court at a specified place and time and may—

(a) alter or extend any conditions imposed before or during the preliminary inquiry ;

(b) where necessary, order that the child be detained.

(5) Where the matter has been set down for plea and trial the prosecutor shall inform the child, parent, guardian or appropriate adult of the place and time.

(6) The inquiry magistrate who presides over a preliminary inquiry, shall not preside over any subsequent trial emanating from that inquiry.

Chapter IV—Diversion

Diversion to occur in certain circumstances

29. A child suspected of being responsible for an offence shall be considered for diversion if—

(a) such child admits responsibility for the alleged offence without undue influence;

(b) the child understands his right to remain silent;

(c) there is sufficient evidence to prosecute the child;

(d) the diversion process and options have been explained to the child, his parent, guardian or appropriate adult and such child or his parent, guardian or appropriate adult, if such person is available, consents to the diversion process; and

(e) the offence is not one of the offences specified in the Second Schedule.

Diversion options

30.—(1) For the purposes of this Chapter categories and the range of diversion options are set out in the Third Schedule.

(2) In selecting a specific diversion option for a particular child at a preliminary inquiry or in a court, consideration shall be given to—

23rd December, 2005

183

- (a) the selection of a diversion option from an appropriate category in accordance with the Third Schedule;
- (b) the child's cultural, religious and linguistic background;
- (c) the child's educational level, cognitive ability, domestic and environmental circumstances;
- (d) the proportionality to the offence of the option recommended or selected;
- (e) the interest of society;
- (f) the child's age and developmental needs;
- (g) whether the child is a repeat offender; and
- (h) any other peculiar circumstances relating to the child;

(3) The Minister may, on the recommendation of the Board, prescribe additional suitable diversion options consistent with the provisions of this Chapter.

31.—(1) No child shall be excluded from a diversion option on account of inability to pay a fee or charge required for such programme.

Minimum standards applicable to diversion

(2) A child below the age of fourteen years shall not be required to perform community service or any other service other than service done in homes, vocational technical schools or other training institutions, as an element of diversion.

(3) Diversion options shall—

- (a) promote the dignity and well-being of the child, and the development of his or her sense of self-worth and ability to contribute to society;
- (b) not be exploitative, harmful or hazardous to the physical, mental, spiritual and social development of the child;
- (c) be appropriate to the age and maturity of the child; and
- (d) not interfere with the education of the child.

(4) Diversion options shall, where reasonably possible—

- (a) impart useful skills;
- (b) include restorative justice element which aims to heal relationships, including the relationship with the victim;
- (c) include an element which seeks to ensure that the child understands the impact of his behaviour on others, including the victims of the offence, and may include compensation or restoration; and

(d) be provided in a location reasonably accessible to the child, and a child who cannot afford transport in order to attend a selected diversion programme should, as far as is reasonably possible, be provided with the means to do so by an authority or person identified at a preliminary inquiry or identified by a child panel.

Registration of diversion programmes

32.—(1) Every institution that provides for diversion options in a predetermined and regular basis shall be registered with the Minister.

(2) For the purposes of subsection (1), every such institution shall specify the particulars of the diversion option provided at the institution and any variations of the option or any additional option shall be notified to the Minister for registration.

Establishment of child panels

33.—(1) There shall be a child panel within the jurisdiction of each second grade magistrate court which shall be responsible for—

(a) devising diversion option or diversion options; and

(b) implementing the diversion option or the diversion options, for child offenders in that area.

(2) A child panel shall be composed of persons nominated by the probation officer from amongst individuals in the community representing the following—

(a) the faith community;

(b) the local Government;

(c) chiefs;

(d) teachers; and

(e) health workers.

(3) If an area is served by a chief, the probation officer shall consult the chief before nominating members of the child panel.

(4) Members of a child panel shall perform the functions on voluntary basis and shall hold the position for a period of three years subject to re-nomination.

(5) A person nominated to fill a vacancy on a child panel shall serve for the remainder of the term and shall be eligible for re-nomination.

(6) The probation officer shall act as secretary during the proceedings of a child panel.

(7) A child panel may co-opt any reputable person to assist in the proceedings.

23rd December, 2005

185

34.—(1) Subject to this section, a child panel shall regulate its own procedure and shall make diversionary plans as it deems fit. Procedure of
child panel

(2) Where a child has been referred to a child panel, a probation officer shall be notified in writing of such referral by the inquiry magistrate or court responsible for the referral of the child.

(3) Upon receipt of the notice, the probation officer or a person designated by him shall convene a child panel within fourteen days after such receipt by—

- (a) setting the time and place of the panel; and
- (b) notifying all members of the child panel.

(4) Failure to notify any person under subsection (3) shall not affect the validity of the proceedings of the child panel unless the failure is likely to materially affect the outcome of the proceedings.

(5) Where proceedings of a child panel fail to take place, the probation officer shall arrange for an alternative date and shall notify all members of the child panel.

(6) The plan made by the child panel may include—

- (a) the application of any diversion option contained in the Fifth Schedule ; and
- (b) any other resolution appropriate to the child, his family and to the local circumstances which is consistent with the principles contained in this Act.

(7) A plan made by a child panel shall—

- (a) specify the objectives of the plan and the period within which they are to be delivered;
- (b) contain details of the services and assistance to be provided for the child and for a parent or a guardian;
- (c) specify the persons or organizations to be provided with such services and assistance;
- (d) state the responsibilities of the child and of the child's parent or guardian; and
- (e) include such other matters relating to education, employment, recreation and welfare of the child, as may be relevant.

(8) The probation officer shall record, with reasons, any plan formulated at a child panel and shall furnish a copy of such record to—

(a) the child, parent, guardian or appropriate adult; and

(b) any person entrusted to monitor the implementation of the selected diversion option.

(9) A probation officer shall, within seven days, submit a record of the child panel proceedings to the inquiry magistrate or the court which referred the child to the panel.

(10) If no agreement on the plan is reached, the proceedings shall be closed and the probation officer shall, within forty-eight hours, refer the matter back to the inquiry magistrate or the court for further consideration.

(11) The proceedings of a child panel shall be confidential and statements made by any person shall not be used as evidence in any subsequent proceedings before any court.

Victim-offender mediation or other restorative justice

35.—(1) Where a victim-offender mediation or restorative justice process has been selected as a diversion option, a probation officer shall convene the mediation and shall regulate its procedure as he deems fit.

(2) If the process fails whether for the reason that the victim has not accepted the mediation or for any other reason, the probation officer shall refer the matter back to the preliminary inquiry, the court or the child panel as the case may be, for an alternative diversion option.

Failure to comply with diversion orders

36.—(1) If a child who has been referred to diversion fails to comply with any order relating to the diversion, the inquiry magistrate may, upon being notified in writing of the failure by the person entrusted to monitor the child or by a probation officer, issue a warrant of arrest or a written notice in respect of the child to appear before the inquiry magistrate or the court.

(2) When a child appears before an inquiry magistrate or court pursuant to a warrant of arrest or a written notice to appear issued under subsection (1), the inquiry magistrate or court shall inquire as to the reasons for the child's failure to comply with the diversion order.

(3) The inquiry magistrate may, after consideration of the views of any person present at the inquiry—

(a) apply the same option with altered conditions;

(b) apply any other diversion option as described in the Fifth Schedule;

(c) make an appropriate order which shall assist the child or his or her parents, guardian or appropriate adult to comply with the diversion option initially applied; and

23rd December, 2005

187

(d) recommend to the prosecutor that the matter be taken to trial, in which case the matter shall be set down for plea.

(4) The execution of a warrant of arrest under this section may be suspended by the inquiry magistrate or the court and the police officer required to execute the warrant may, instead of arresting a child, invite him with a written notice to appear before him for an assessment.

37. Upon the selection of a diversion option in accordance with this section, an inquiry magistrate, a court or a child panel shall identify a probation officer or any suitable person to monitor the implementation of the selected diversion option. Monitoring programmes of diversion

38. The Board shall keep and maintain a register of children diverted from prosecution Keeping of records

PART IV—DETERMINATION OF AGE OF A CHILD

39. The provisions of this Part shall apply to the determination of age for the purposes of criminal responsibility under section 14 of the Penal Code and for the purposes of this Act. Application of this part

40.—(1) If the age of a child brought before a probation officer is not known, the probation officer shall make an estimation of that child's age. Age estimation by a probation officer

(2) For the purposes of subsection (1), a probation officer shall obtain any relevant information as regards the age of the child concerned and complete an age estimation form.

(3) In making such an estimation, information available shall be considered in the following order of cogency—

- (a) a birth certificate;
- (b) a previous determination of age under this Act;
- (c) statements from a parent, guardian, or person likely to have direct knowledge of the age of the person;
- (d) a baptismal certificate or other religious records, school registration forms, school reports, under five clinic cards and other information or document of a similar nature if relevant to establishing a probable age;
- (e) an estimation of age by a medical practitioner; and
- (f) a statement by the person who is claiming to be a child.

(4) The form referred to in subsection (2) shall be available at the child's appearance at a preliminary inquiry for purposes of age determination by the inquiry magistrate in accordance with section 41.

Age
determination
at a
preliminary
inquiry

41.—(1) An inquiry magistrate shall, on all the available information and with due regard to the provision of section 40 (3), make a determination, which shall be recorded as the age of the person.

(2) For the purposes of age determination, an inquiry magistrate may require any documentation, information or statements relevant to age determination from any person, body or institution to be furnished.

(3) If an inquiry magistrate determines that a person was, at the time of the alleged commission of the offence with which the person is being charged, over the age of eighteen years, he shall close the preliminary inquiry and direct that the matter be transferred to another court other than a child justice court.

(4) The age determined by the inquiry magistrate under this section shall be considered as the age of the person unless contrary information is placed before the inquiry magistrate or court.

Age
assessment
and
determination
by an officer
presiding in a
criminal court
other than a
child justice
court

42.—(1) Where a person appearing in a criminal court other than a child justice court alleges, at any stage before sentence, that he was, at the time of the alleged commission of the offence with which he is being charged, below the age of eighteen years, or where it appears to the court that the person may be below the age of eighteen years, the person shall be referred, in the prescribed manner to a probation officer for estimation of age under section 40 which age estimation shall be submitted to the presiding officer of the court.

(2) A presiding officer referred to in subsection (1) shall make a determination of age on the same basis as an inquiry magistrate under section 41.

(3) If the age of the person referred to in subsection (1) is found to be below the age of eighteen years and the trial has not yet commenced, the presiding officer shall transfer the matter to child justice court.

(4) If the age of the person referred to in subsection (1) is found to be below the age of eighteen years and the trial has commenced, the proceedings shall continue to be conducted before the presiding officer, but the remainder of the proceedings shall be conducted in accordance with the provisions of this Act.

(5) The presiding officer concluding a trial in accordance with subsection (4) may, after a finding of responsibility, refer the matter to a child justice court for an order, if to do so is in the best interests of the child.

23rd December, 2005

189

(6) Where proceedings have started in accordance with the provisions of this Act in respect of a person who is alleged to have been below the age of eighteen years at the time of the alleged commission of the offence with which such person is being charged, and evidence is produced proving that such person was eighteen years of age or older at such time, the inquiry magistrate or court shall—

(a) if such person is appearing at a preliminary inquiry, close the inquiry and refer the matter to the prosecutor for arrangements to be made for that person to be tried as an adult;

(b) if a trial has not yet commenced, refer the matter to the prosecutor for arrangements to be made for that person to be tried as an adult;

(c) if a trial has commenced, adjourn the trial and proceed in an open court or transfer the matter to an appropriate court;

(d) if the trial has commenced and the offence is otherwise triable by jury, terminate the trial and re-commence the trial as an adult;

(e) if the person has been convicted, transfer the matter to an appropriate court for that person to be sentenced as an adult.

PART V—LEGAL REPRESENTATION

43.—(1) A child has the right to legal representation.

(2) A child, parent, guardian or appropriate adult may appoint a legal representative of their choice to provide legal representation to the child.

(3) A person providing legal representation for a child shall be a person who is entitled to practice as a legal practitioner or any other person lawfully allowed to provide legal representation under written law.

(4) Where a legal representative for a child is appointed in accordance with subsection (2), liability for payment of fees for the legal representation rests on the parents, guardian, or the appropriate adult or where the interests of justice so require, on the State.

(5) A child, parent, guardian, or appropriate adult has the right to give instructions to a legal representative in the language of their choice, and, where necessary, with the assistance of an interpreter.

44.—(1) Where a child is subject to proceedings under this Act and no legal representative has been appointed, legal representation conclusion of a preliminary inquiry, be provided at State expense in accordance with the Legal Aid Act if—

Access by a child to legal representation

Child to be provided with legal representation at State expense

(a) the child is remanded in detention pending a plea and trial in court;

(b) it is likely that an order involving a residential requirement may be imposed;

(c) in the opinion of the inquiry magistrate, it is in the best interest of the child,

and the child, parent, guardian or the appropriate adult cannot afford to engage a legal representative.

(2) Where a child is subjected to care and protection proceedings under this Act, and no legal representative has been appointed, legal representation shall be provided at State expense in accordance with the Legal Aid Act if in the opinion of the court, it is in the best interests of the child, and the child, parent, guardian or appropriate adult cannot afford to engage the services of a legal representative.

(3) Where a child is charged with an offence contemplated in subsection (1) (b), a plea may not be taken until a legal representative has been appointed.

(4) If the parent or guardian of a child who is granted legal representation at State expense under this Act is ineligible for legal representation at State expense due to the fact that the income of the parent or guardian exceeds the means test applied by the Legal Aid Act, the legal aid office may recover from the parent or guardian the whole or part of the costs of the legal representation afforded to the child.

Requirements to be complied with by legal representatives

45.—(1) A legal representative representing a child shall—

(a) explain the rights and responsibilities of the child in relation to any proceedings under this Act in a manner appropriate to the age and intellectual development of the child;

(b) allow the child, if capable of doing so, to give the legal representative independent instructions concerning the case;

(c) in matters of criminal proceedings, promote diversion where appropriate, whilst ensuring that the child is not unduly influenced to admit responsibility of the crime;

(d) ensure that all trials are concluded speedily.

Mode of seeking legal representation at State expense

46.—(1) Where a child requires legal representation at State expense, the inquiry magistrate or the court, shall immediately request the legal aid office to appoint a legal representative to represent the child.

(2) Where a child is remanded in detention, the legal representative shall, before the next court date, consult with the child at the place where the child is being detained.

23rd December, 2005

191

47.—(1) A child in need of legal representation in accordance with the provisions of section 44 shall not waive the right to legal representation.

Child may not wave legal representation in some circumstances

(2) Where a child referred to in section 44 declines to give instructions to the legal representative, the probation officer shall bring this factor to the attention of the inquiry magistrate or the court, and the inquiry magistrate or the court, shall question the child to ascertain the reasons for so declining and the inquiry magistrate or the court shall note the reasons on the record of the proceedings.

(3) If, after questioning the child under subsection (2), the inquiry magistrate or the court is of the opinion that the reason for declining relates to the legal representative, the court or the inquiry magistrate may request the legal aid office to appoint another legal representative.

48.—(1) If after questioning the child under subsection (2) the child continues to decline the legal representation, the inquiry magistrate or the court may request the legal aid office to assist the child at State expense.

Legal assistance

(2) A person legally assisting the child shall—

- (a) attend all hearings pertaining to the case;
- (b) address the court on the merits of the case;
- (c) give notice of intention to appeal against a finding of the court or against an order following such finding; and
- (d) have access to the affidavits, statements and any other materials of evidence relating to the case.

(3) A person assisting a child in accordance with this section may —

- (a) cross-examine any witness;
- (b) raise objections to the introduction of evidence.

PART VI—CHILD JUSTICE COURT: ESTABLISHMENT, JURISDICTION, COMPOSITION, PROCEDURE AND POWERS

49. There shall be established child justice courts, which shall be subordinate to the High Court and shall exercise jurisdiction conferred on them by this Act or any other written law.

Establishment of child justice court

50.—(1) A child justice court shall be presided over by a professional magistrate or a magistrate of the first grade.

Composition of child justice court

(2) The Chief Justice, having been satisfied as to the competence of the presiding officer, may designate a court of magistrates of any grade to be a child justice court and shall publish a notice of the designation in the *Gazette*.

(3) A presiding magistrate shall, before commencement of proceedings in a child justice court, ensure that a probation officer of sufficient competence relevant to the requirements of this Act is present throughout the proceedings.

Jurisdiction
of a child
justice court

51.—(1) Subject to subsection (2), a child justice court shall have jurisdiction over children matters.

(2) Where a matter involving a child is otherwise liable to be heard by the High Court, it shall be heard by the High Court, but the High Court shall comply with the requirements of this Act in respect of the child.

Parent or
guardian may
be allowed to
attend court

52.—(1) Where a child is brought before a child justice court, as an accused person or for care and protection proceedings, his parent or guardian may in any case, and, if such parent or guardian can be found and resides within a reasonable distance, shall be required to attend all stages of the proceedings, unless the child justice court is satisfied that—

(a) it is unreasonable or unnecessary to require the attendance of such parent or guardian; or

(b) it is in the best interests of the child that the parent or guardian should not attend the proceedings.

(2) Where it is unreasonable or unnecessary to require the attendance of a parent or guardian or where the attendance of a parent or guardian will be prejudicial to the fair disposal of the case, taking into account all preliminary findings of the case, the court shall appoint an appropriate adult for purposes of subsection (1) to attend the proceedings in place of the parent or guardian .

Separation
and joinder of
trials involving
children and
adult

53.—(1) Where a child and an adult are jointly charged of an offence, the child shall be tried separately from the adult, unless there are compelling reasons for joinder of the trials.

(2) An application for such joinder shall be directed to the court after notice to the child, parent, guardian or the appropriate adult and the legal representative of the child if available.

(3) If the court grants an application for joinder of trials, the matter shall be transferred to the court, in which the adult is to appear.

(4) The court to which the matter has been transferred shall afford the child concerned all the benefits conferred upon a child by this Act .

23rd December, 2005

193

54.—(1) A child below the age of fourteen years shall not be tried by in children jury except where the child is jointly charged with an adult.

Jury trials
in children
matters

(2) The court may, on application or on its own motion, order trial by jury if it considers that trial by jury is necessary taking into account the circumstances and facts of the case, and shall institute all measures necessary to protect the best interests of the child.

(3) Where a child who is below the age of fourteen years is charged with an offence which is otherwise triable by jury and that he shall be tried without a jury in accordance with subsection (1), the child shall be tried in camera by a High Court Judge sitting without a jury.

55.—(1) A child justice court shall sit as often as is necessary for the purpose of exercising any jurisdiction conferred on it by or under this Act or under any other written law.

Places of
sitting of
child justice
court and
persons who
may attend
the
proceedings

(2) A child justice court shall, save as otherwise provided in this section, sit either in a different building or room from that in which sittings of courts other than child justice courts are held, or on different days from those which sittings of such other courts are held.

(3) Where a child justice court sits in the same room, and on the same day as other courts, child cases shall take precedence.

(4) No person shall be present at any sitting of a child justice court, except—

(a) members and officers of the court;

(b) parties to the case before the court and their legal representatives and witnesses;

(c) probation officers, teachers and community leaders that are directly concerned in the matter;

(d) properly accredited reporters of newspapers and other media agencies as authorized by the court with or without conditions; and

(e) such other persons as the court may specially authorize to be present.

56.—(1) Subject to subsection (2), no media report of any proceedings in a child justice court shall reveal the name, address or school, or include any particulars calculated to lead to the identification of parties to the proceedings, or witnesses and no picture shall be published in any media report as being or including a picture of the child concerned in such proceedings.

Restriction on
media reports
of proceed-
ings in a child
justice court

(2) A court may, if satisfied that it is in the interests of justice so to do, by order dispense with the requirements of this section to such extent as may be specified in the order.

(3) Any person who reports any matter in contravention of this section commits an offence and is liable to—

(a) In the case of a company or organization, a fine of K100,000;

(b) if such person is a reporter, a fine of K20,000 and imprisonment for six months.

(4) A court may in addition to ordering the company or organization to pay a fine, also order payment of compensation to the child who has been injured by the report.

(5) A complaint under this section may be lodged with the police or directly with the court by the injured child, or his parents, guardian, community representatives or any other person on behalf of the child.

Restrictions
on punishment
of children

57. No child shall be imprisoned for any offence.

Punishment of
certain grave
crimes

58.—(1) Where a child is found responsible for offences listed in the Fourth Schedule, the court shall order him to be detained at a reformatory centre for such period as may be specified in the order.

(2) Where the court makes an order under subsection (1) the child shall, during that period, notwithstanding any other provisions of this Act, be liable to be detained under such conditions as the Board may generally and specially determine.

(3) A person detained in pursuance of the directions of the Board under this section shall, while so detained, be deemed to be in legal custody.

(4) A child detained in accordance with this section may be discharged by the order of the President unconditionally or on such conditions as the President, upon recommendations of the Board, may direct.

(5) Where the child is discharged with conditions, such order of discharge may, upon recommendations of the Board, be varied or revoked by the President if the child is in breach of the conditions.

(6) Where an order of discharge has been revoked, by the President the person to whom the order related shall proceed to such place as the Board may direct and if he fails to do so, may be apprehended without warrant and taken to that place.

23rd December, 2005

195

(7) Where a person detained under this section attains the age of eighteen years while still in detention, he shall be separated from the rest of the children or sent to another place of detention other than a prison until the expiry of the remaining period of his detention.

59.—(1) Where a child is charged before a child justice court with the commission of an offence for which a fine may be imposed and compensation, damages and costs or any or all of them may be awarded, and the child justice court is of the opinion that justice would be best served by the imposition of all or any of those penalties, whether with or without any other punishment, the child justice court may order that the fine imposed and compensation, damages or costs awarded be paid by the parent or guardian of the child, unless the child justice court is satisfied that the parent or guardian cannot be found or does not have the means to meet the award, in which case the court may make such alternative order as the court may see fit.

Power to order parent or guardian to pay fine imposed etc. instead of child

(2) Where a child is charged with an offence, a child justice court may release the child and order his parent or guardian to give security for the child's good behavior.

(3) Where a child justice court thinks that a charge against a child is proved, the court may make an order against a parent or guardian for the payment of compensation, damages or costs or may make an order requiring the parent or guardian to give security for the good behavior of the child without proceeding to record a finding of guilty against the child.

(4) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but otherwise, no such order shall be made without giving the parent an opportunity to be heard.

(5) Any sum imposed and ordered to be paid by a parent, or guardian, or on forfeiture of any security given by a parent or guardian under this section, may be recovered from the parent or guardian in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.

60.—(1) Any court other than the High Court before which a child offender is found to be responsible for an offence shall, unless the best interests of the child require otherwise, remit the case to a child justice court.

Power of other courts to remit children to a child justice court

(2) The child justice court to which the case of a child is remitted under subsection (1) shall deal with the child as if he had been tried and found to be responsible for the offence by that child justice court.

(3) No appeal shall be made against an order of remission made under this section, but nothing in this subsection shall affect any right of appeal against the verdict or finding on which such an order is founded, and a person aggrieved by the order of the child justice court to which the case is remitted may appeal therefrom to the High Court as if the child concerned had been tried by, or had pleaded guilty before that child justice court.

(4) A court making an order remitting a case of the child to a child justice court under this section may—

(a) direct that the child be detained in a reformatory centre or be released on bail until he can be brought before a child justice court;

(b) transmit to the child justice court to which the case has been remitted a certificate setting out the nature of the offence and stating that the case has been remitted for the purpose of being dealt with under this section; or

(c) make an order as the child justice court may make under section 59.

Criminal
procedure in
child justice
court

61.—(1) Where a child is brought before a child justice court charged with any offence it shall be the duty of the court as soon as possible to explain to the child in simple language suitable to his age and understanding the substance of the alleged offence.

(2) After explaining the substance of the alleged offence, the court shall ask the child whether he admits or does not admit the facts constituting the offence.

(3) If the child does not admit the facts constituting the offence the court shall then hear the evidence of witnesses in support thereof and at the close of the evidence in chief of each witness, the witness may be cross-examined by or on behalf of the child.

(4) The court shall, except in any case where the child has legal representation, allow the parents or guardian or, in their absence, any relative or other responsible person to assist the child in conducting his defence.

(5) If in any case where the child is not represented or assisted in his defence as provided in subsection (4), the child, instead of asking questions by way of cross-examination, makes assertions, the court shall then put to the witness such questions as it thinks necessary on behalf of the child and may for this purpose question the child in order to bring out or clear up any point arising out of such questions.

23rd December, 2005

197

(6) If, when the evidence against the child has been heard, the court is of the opinion that a case is made out against the child sufficiently to require him to make a defence in respect of the offence charged or some other offence which the court is competent to try, they shall consider the charge against the child and decide whether it is sufficient and, if necessary, amend the charge.

(7) If the charge is amended the substance of the offence alleged in it as amended shall then be explained by the court to the child in simple language suitable to his age and understanding, and he shall be asked whether or not he admits the truth of the charge.

(8) If the child does not admit the truth of the charge as amended or if no amendment is made, the court shall explain to the child the substance of the evidence against him and, in particular, any points which are specifically against him or which require explanation and the court shall thereupon inform the child that he is required to give evidence and the child shall be asked whether he has any witness to examine or other evidence to adduce in his defence.

(9) The child shall give his evidence upon oath or affirmation if he is of an age to understand the nature and consequences of the oath or affirmation, and shall answer any question or produce anything lawfully put to or required of him by the court or in cross-examination.

(10) If the child refuses or neglects to—

- (a) be sworn or affirmed, as the case may be;
- (b) give evidence;
- (c) answer any question lawfully put to him by the court or in cross-examination; or
- (d) produce any document or thing which he is required to produce,

such refusal or neglect may be taken into account by the court in reaching its decisions.

(11) Where the child elects to call witnesses other than himself evidence shall be taken before that of such other witnesses.

(12) After the child, and his witnesses, if any, have given their evidence and after their examination, cross-examination and re-examination, if any, the court shall give its judgment.

(13) If the child admits the offence or the court is satisfied that it is proved that the child is responsible for the offence, the child and his parent, guardian or appropriate adult, if present, shall then be

asked if he, and such parent, guardian, or appropriate adult, desires to say anything in extenuation or mitigation of the penalty or otherwise and before deciding how to deal with the child, the court shall obtain such information as to general conduct, character, home surroundings, school record and medical history, as may enable the court to deal with the case in the best interests of the child, and may put to the child any question arising out of such information which may include any written report of a probation officer or registered medical practitioner or other appropriate person which may be received and considered by the court without being read aloud.

(14) For the purpose of obtaining the information required under subsection (13), or for special medical examination or observation, the court may from time to time remand the child on bail or to a place of detention.

(15) Where the court has received and considered a written report of a probation officer, a registered medical practitioner or other appropriate person—

(a) the child shall be told the substance of any part of the report bearing on his character or conduct which the court considers to be material to the manner in which he should be dealt with;

(b) the parent, guardian, or appropriate adult, if present, shall be told the substance of any part of the report which the court considers to be material and which has reference to the character, conduct, home surroundings or health of the child; and

(c) if the child or the parent or guardian having been told the substance of any part of a report, desires to produce evidence with reference thereto, the court, if it thinks the evidence is material, shall adjourn the proceedings for the production of further evidence, and shall, if necessary, require the attendance at the adjourned hearing of the person who made the report.

62. The proceedings of a child justice court shall be informal and in particular, the presiding officer shall ensure that—

(a) technical language is not used during hearing;

(b) no person puts on official uniform or professional robes or dress save only if it is strictly required to do so for the child to make an identification or for purposes of evidence as the court may authorize;

(c) there are regular breaks with such necessary provisions for the child as the Minister may prescribe by regulations;

(d) children with disabilities are accorded assistance to meet their special needs where necessary.

Proceedings
of a child
justice court
to be informal

23rd December, 2005

199

63.—(1) Where a child admits the facts constituting the offence child justice or where a child justice court is satisfied that an offence has been proved, proof of the court shall, in addition to any other powers exercisable by virtue of this Act or any other written law, in so far as such law is consistent with this Act, have power—

Power of
child justice
court on
proof of
offence

(a) to discharge the child unconditionally;

(b) to discharge the child upon his entering into a bond to be of good behaviour and to comply with such conditions as the court may direct to be inserted in the bond;

(c) to commit the child to the care of a relative or other fit person willing to undertake the care of the child;

(d) to order the parent or guardian to execute a bond to exercise proper care and guardianship;

(e) to order the child to pay a fine, compensation, damages or costs;

(f) without making any other order, or in addition to an order under paragraphs (b), (c), (d) or (e), to make a probation order placing the child under the supervision of a probation officer or some person appointed for the purpose by the court, for a period of not less than one year and not more than three years from the date of the order as may be specified in the order, and to require the probation officer or the appointed person as the case may be to submit regular reports to the court on the development of the behaviour of the child;

(g) to commit the child to the High Court for an order where appropriate;

(h) to make a reformatory centre order;

(i) to commit the child to a diversion programme.

(2) A court shall not make a reformatory centre order in relation to a child under the age of fourteen years, unless—

(a) there is no fit person willing to undertake the care of the child; or

(b) the court is satisfied that the child cannot suitably be dealt with otherwise.

(3) In arriving at its decision under this section, the court shall have regard to section 5 of this Act.

Reformatory centres orders and other orders for detention

64.—(1) A reformatory centre order or any other order of detention centre relating to a child shall be sufficient authority for the detention and rehabilitation of the child in a reformatory centre in accordance with this Act.

(2) The Board may at any time during the authorized period of detention exercise any of its powers in relation to the child under section 71.

(3) A reformatory centre order shall be in the form in the Fifth Schedule .

(4) The Chief Justice may by notice in the *Gazette* amend the Fifth Schedule.

(5) A reformatory centre order or a warrant in pursuance of which a child is detained under this Act shall be delivered with the child to the person in charge of a reformatory centre and a copy of the order shall be delivered to the Registrar of the High Court for transmission to the Chairman of the Board.

(6) The manager of a reformatory centre shall assess the progress of each child under his control and shall submit the monthly assessment reports for each child to the Board for purposes of section 70.

Escape from custody or care and breach of court condition

65.—(1) A child in the custody and care of any person pursuant to an order of a court under this Act, while being conveyed between breach of the court and a reformatory centre or safety home on remand or otherwise, or while being transferred by direction of the Board shall be deemed to be in lawful custody and if such child escapes he may be apprehended without warrant and brought back to the appropriate place but the escape shall not constitute a criminal offence.

(2) Where a court has committed a child to the care of any person under section 63 (1) (c) and it is reported to the court that the child has escaped from the care of the person or that the person is unable or no longer willing to continue to undertake the care of the child, the court may, upon the child being brought before it, make such other order in replacement of its previous order as it could have made at the time of its previous order.

(3) Where a child has committed a breach of any condition upon which the child has been released by order of court or by the Board, the Chairman of the Board may direct any person, without warrant, to apprehend that child and to convey him to a reformatory centre for detention, and the provision of subsection (1) shall apply.

23rd December, 2005

201

66.—(1) Any child, his parent, guardian or appropriate adult dissatisfied with any judgment or order of a child justice court, may appeal to the High Court against such judgment or order in accordance with the provisions of any written law regulating appeals to the High Court from a subordinate court. Appeals and review

(2) Where a reformatory centre order or any other order for detention has been made by the child justice court under this Act, a copy of the order together with the proceedings, including the information obtained under section 61 (13) and the reasons of the court for making the order, shall be sent within seven days to the High Court which may confirm or set the order aside and substitute any other order which the child justice court might have made.

PART VII—CHILD CASE REVIEW BOARD

67.—(1) A Child Case Review Board is hereby established. Establishment of Child case Review

(2) The Board shall consist of members appointed by the Minister as follows—

(a) a chairperson of the Board who shall be a judge of the High Court, nominated by the Chief Justice;

(b) a deputy chairperson who shall be a Resident Magistrate appointed by the Chief Justice.

(c) other members nominated by the relevant authority or organization each to represent—

(i) the Secretary for Health;

(ii) the Secretary for Education;

(iii) the Secretary for Labour;

(iv) the Secretary for the Ministry responsible for Children Affairs;

(v) the Secretary for Justice;

(vi) the Secretary for the Ministry responsible for Youth;

(vii) the Secretary for Home Affairs;

(viii) the Malawi Human Rights Commission;

(ix) a non-governmental organization that is directly concerned with children matters;

(x) the Malawi Police;

(xi) reformatory centres; and

(xii) religious organization.

(2) The nominating authority of a member under subsection 1(c) may subject to the approval of the Minister designate any duly qualified officer or other person to act for that member during the member's temporary inability to act by reason of sickness, absence or other causes.

(3) Members of the Board shall not, by reason of their appointment, be deemed to be officers in the public service.

(4) Members of the Board appointed under this section shall be paid such allowances for refundable costs and sundries out of the funds of the Board as the Minister may prescribe.

Ternure of
office of
members
of the Board

68.—(1) Members of the Board shall hold office for a period of three years subject to re-appointment.

(2) A person appointed to fill a vacancy on the Board shall serve for the remainder of the term and shall be eligible for re-appointment.

(3) The Chairperson and Deputy Chairperson of the Board may, resign their appointment and the other members of the Board or their alternates may resign their appointments by giving notice in writing to the Chairperson, but no such resignation shall take effect until seven days after the receipt of the notice by the Chief Justice or the Chairperson, as the case may be.

Proceedings of
the Board

69.—(1) The Chairperson of the Board shall preside at meetings of the Board and in his absence, the deputy Chairperson shall preside.

(2) In the absence of both the Chairperson and the Deputy Chairperson of the Board, and if the issue to be disposed of is urgent and non-judicial in nature, members of the Board present and forming a quorum shall elect one of their number to preside at that meeting.

(3) The quorum of the Board shall be formed by a simple majority of the members of the Board.

(4) Decisions of the Board shall be in accordance with the vote of the majority of members present and voting, but in the event of an equality of votes, the Chairperson or the person performing the functions of the Chairperson at the meeting concerned, shall, have a casting vote in addition to his deliberative vote.

(5) Meetings of the Board shall be held as often and at such times and places as the Chairperson shall determine but not less than four times in a calendar year.

23rd December, 2005

203

(6) The Board shall determine its own procedure subject to the provisions of this Act.

70. The functions of the Board shall be—

Functions of
the Board

(a) to consult with and advise on the administrators of reformatory centres, safety homes and foster homes;

(b) to undertake visits and to monitor reformatory centres, safety homes and foster homes to ensure compliance with this Act;

(c) to keep a register of detained children;

(d) to review cases of child offenders and matters of children kept for the purposes of care and protection;

(e) to facilitate the designing and implementation of rehabilitation programmes and curriculum for the proper re-integration of children into society;

(f) to coordinate with civil society organizations and other organizations dealing with children;

(g) to facilitate relations between communities and places of detention;

(h) to facilitate and supervise recruitment of staff in reformatory centres, safety homes and foster homes;

(i) to carry out any other duties imposed upon it under this Act; and

(j) to do all the functions that are necessary in order to promote the development of children.

71.—(1) The Board shall have the power—

Powers of the
Board

(a) to specify the reformatory centre to which any child in respect of whom a reformatory centre order has been made is to be sent;

(b) to specify the foster home to which any child in respect of whom a foster home placement order has been made is to be sent;

(c) at any time to cancel a reformatory centre order or safety home order and order the absolute or conditional discharge of any child from any reformatory centre or safety home or any other place of detention;

(d) to order any child to be transferred from one reformatory centre or safety home to another reformatory centre or safety home or to any other place of detention;

(e) to order any child to be released from any reformatory centre or safety home on condition that the child shall live under the charge of, and be supervised by, any fit person including a probation officer named in the order of release willing to receive, take charge of, supervise, educate and keep the child employed in some trade, occupation or calling as the Board may recommend from time to time;

(f) to attach such conditions as it thinks fit to any order discharging a child from a reformatory centre and to cancel the order of discharge if any such condition is not observed.

(2) Where the Board is satisfied, on the representations of the manager of a reformatory centre or safety home, that a child ordered to be detained in such reformatory centre or safety home is of unruly character that he is not a fit person to be detained, or is of depraved character that he is not a fit person to be so detained, the Board may upon assessing the child, order the child to be transferred to and be detained in another reformatory centre or safety home, which the Board considers more suitable for the child.

(3) Where a child having been transferred to another reformatory centre, safety home or any place of detention is again brought before the Board on the representations of the manager of the reformatory centre or safety home as being of unruly or depraved character, the Board shall make any necessary order as it thinks fit and proper.

(4) Any person who considers himself aggrieved by any order made by the Board under this section may appeal to the High Court.

(5) Any person, not being a child, who wilfully disobeys, obstructs, or fails to comply with any order made by the Board under this section commits an offence and shall be liable to a fine of Twenty Thousand Kwacha.

Secretariat of
the Board

72.—(1) An officer shall be appointed in the public service to act as Secretary to the Board.

(2) The Secretary shall—

(a) maintain records for the Board;

(b) perform administrative duties;

(c) prepare budgets;

(d) act as liaison officer for the Board; and

(e) perform such other duties as the Board may assign to him,

and shall be subject to the general and special direction of the Chairperson and the Board.

23rd December, 2005

205

(3) In addition to the Secretary to the Board, there may be appointed in the public service other officers in the service of the Board subordinate to the Secretary.

73.—(1) The funds of the Board shall consist of such sums as Parliament shall appropriate for the purposes of the duties and functions of the board. Funding for the Board

(2) In addition to any sums appropriated under subsection (1) the Board may receive donations of funds, materials and other forms of assistance from any person, body or organization.

PART VIII—REFORMATORY CENTRES AND SAFETY HOMES

74.—(1) The Minister shall establish places or institutions as public reformatory centres or public safety homes for the purposes of this Act. Public reformatory centres and public safety homes

(2) All institutions which at commencement of this Act are operating as public reformatory centres shall be deemed to have been established under this Act.

(3) All public reformatory centres and safety homes shall be managed by a person appointed by the Minister.

(4) The establishment of public reformatory centres and public safety homes under this section shall be published in the *Gazette*.

(5) The publication shall state whether the public reformatory centre or public safety home is for female or male children or for both and shall specify the number of children to be detained in that centre.

75.—(1) The manager or proprietor of a home or institution may apply to the Minister to appoint the home or the institution to be a private reformatory centre or private safety home. Minister may appoint private reformatory centres and private safety homes

(2) The Minister, upon being satisfied that the application meets the necessary requirements in accordance with this Act, may designate the institution as a private reformatory centre or a private safety home and shall issue a certificate to that effect to the manager or proprietor of the institution.

(3) The issue of the certificate by the Minister shall be notified in the *Gazette*.

(4) The certificate issued by the Minister shall state the number of children authorized to be kept at the centre or home at any one time and shall state whether the centre or home is for male children or female children or for both.

Reformatory centre and safety home [Management] rules

76.—(1) A reformatory centre and a safety home shall be regulated and managed in accordance with the Reformatory Centre and Safety Home (Management) Rules as set out in the Sixth Schedule .

(2) The Minister may, by order published in the *Gazette*, amend the Sixth Schedule.

Managers shall send monthly reports to the Board and allow inspection

77.—(1) The Manager of a reformatory centre or a safety home shall send reports to the Board in the prescribed form containing such particulars as are required by the Reformatory Centre and Safety Home (Management) Rules at monthly intervals and such other intervals as the Board may direct.

(2) The Manager of a reformatory centre or a safety home shall at all reasonable times allow the centre or home to be inspected by any person or persons appointed by the Board in accordance with this Act.

Inspection of reformatory centres and safety homes

78.—(1) The Board may from time to time appoint a team of reformatory qualified persons for the purposes of—

(a) inspecting reformatory centres and safety homes;

(b) reporting to the Board on the management and state of condition, appearance and training of children detained at a centre or a home.

(2) The persons so appointed shall have authority to enter and inspect the premises and the detained children and to make all reasonable inquiries about the management of the centre or home and to promptly report the findings to the Board.

(3) If, in the opinion of the Board, the centre or home requires to be closed, it shall send the inspectors report together with its recommendation to the Minister.

(4) Where inspectors consider it necessary for the welfare and safety of the children held at a reformatory centre or safety home, they may direct immediate and temporary closure of the centre or home and shall include such decision in the report send to the Board and the Board shall forward the report and the recommendations to the Minister for final decision.

(5) The manager of a reformatory centre or a safety home may make submissions to the Minister in writing showing cause why the centre or home should not be permanently closed pending the Minister's final determination.

23rd December, 2005

207

79.—(1) In all other circumstances not requiring immediate and temporary closure of a reformatory centre or safety home, the Minister, upon considering the report of inspectors and the Board's recommendations may, direct the closure of the centre or home by notice in writing.

Powers of a Minister to direct closure of reformatory centres or safety home

(2) The Minister shall not close a reformatory centre or a safety home without giving the manager of the centre or the home an opportunity to be heard.

(3) Notice of the closure of a reformatory centre or a safety home shall be given to the manager of the centre or home and the centre or home shall cease to be a reformatory centre or a safety home from the time specified in the notice.

(4) The Minister shall publish the notice of the closure of a reformatory centre or safety home in the *Gazette*.

80. The manager of a reformatory centre or a safety home may apply to the Minister to review a decision to close the centre or home and the Minister may, upon considering the application, re-issue the certificate.

Application to review Minister's decision on closure of a Reformatory or centres safety home

81.—(1) The manager or proprietor of a private reformatory proprietor, centre or a private safety home intending to close the centre or the home, may, upon giving notice of the intention to the Minister of not less than one month and not more than six months in writing, apply for the closure of the centre or the home.

Manager, proprietor, his executor or administrator etc, may apply for closure

(2) The executors or administrators of a deceased proprietor intending to close a private reformatory centre or a private safety home may, upon giving one month's notice in writing of their intention, apply for the closure of the centre or home.

(3) At the expiry of the period of the notice given under subsections (1) or (2), unless the notice has been withdrawn, the Minister may proceed with the closure and notification of such closure shall be published in the *Gazette*.

(4) A notice of the intention to close a reformatory centre or a safety home given under subsection (1) or (2) may be withdrawn before the close of the centre or home.

(5) Notwithstanding subsection (4), the Minister may, proceed with the closure if the condition of the centre or home requires that the centre or home be closed, but the Minister shall not so proceed unless he has been given the proprietor, executor, manager, or the administrator an opportunity to be heard.

Liabilities to receive children

82. The manager of a private reformatory centre or a private safety home shall, if there is a vacancy in the number of children authorized to be detained at the centre or home, be liable to receive any child sent to the centre or home under this Act, and shall undertake to educate, clothe, lodge and feed the child during the whole period for which the child is liable to be detained at the centre or home.

Effect of closure notice

83. If a reformatory centre or a safety home has been closed under the provisions of this Act, no child shall be received into such centre or home under any of the provisions of this Act after the date of the receipt by the manager of the centre or home of the notice of the closure or after the date specified in the notice of the closure.

Discharge or transfer of children

84.—(1) When the closure of a private reformatory centre or private safety home takes effect, the persons resident shall be, by order of the Board and upon consultation with the Minister, either discharged or transferred to some other reformatory centre or safety home as the case may be.

(2) Where a reformatory centre or a safety home is temporarily closed by inspectors in accordance with section 78 (4) the Board shall make all necessary arrangements to transfer the children resident at the centre or home to an alternative suitable place.

(3) The period of stay for which any child was sent to a reformatory centre or a safety home shall not be increased by the transfer of such child to another place.

Review of cases of detained children

85. The manager of a reformatory centre or a safety home shall review all cases of children detained for twelve months, and may, after such review, recommend to the Board the conditional discharge of such children.

Reformatory centres, safety homes lawful places of detention

86. A reformatory centre or a safety home shall be a lawful place of detention for children in respect of whom a lawful order has been made or who may lawfully be transferred thereto.

Illness of children detained

87.—(1) In the case of serious illness of any child who is detained in a reformatory centre or a safety home under the provision of this Act, in which there is no suitable provision for the care of such illness, the manager or the person having control of the place where such child is detained may, on the certificate of a medical officer, make an order for the removal of the child to a hospital.

(2) So long as any child who shall have been removed to a hospital under the provisions of subsection (1) shall remain in the hospital, the medical officer in charge of the hospital shall, at the

23rd December, 2005

209

end of every month, transmit to the manager or the person having control of the place where such child was detained a certificate signed by the medical officer that it is in the medical officer's opinion necessary that the child should remain in the hospital.

(3) The manager or the person having control of the reformatory centre or safety home concerned shall, if the illness is serious or recurrent, inform the parents or the guardian about such illness.

(4) In this section, "hospital" means a government hospital and any registered health centre, institution or facility.

88.—(1) If, in the opinion of the medical officer, it is no longer necessary that the child should remain in the hospital, the medical officer shall issue a certificate to that effect to the manager or person having control of the place where the child was detained.

Return after treatment

(2) The manager or the person having control of the place where the child was detained may, upon seeking the advice of the medical officer, recommend to the Board for the release of the child from the place of detention.

89. Every reasonable precaution shall be taken by medical officers or other officers of a hospital to prevent the escape of a child who may at any time be under medical care at the hospital.

Duty to prevent escape

90.—(1) A child committed to the care or custody of a reformatory centre or a safety home who wilfully neglects or refuses to conform to the rules of discipline of the centre or home shall be disciplined in accordance with the disciplinary rules of the centre or home made under section 93 .

Breaches of rules of discipline

(2) Where a child who has been committed to a reformatory centre or a safety home proves, in the opinion of the manager of such place, to be of so unruly or depraved a character as to render his retention in the reformatory centre or the safety home undesirable, the manager may make a report of the circumstances of the case in writing to the Board.

91. Any person, not being another child, who—

(a) knowingly assists, directly or indirectly, or induces any child legally detained in a reformatory centre or a safety home or detained in a hospital to escape from such place;

(b) knowing that a child ordered to be detained or committed at a reformatory centre, safety home or hospital has escaped from the centre or home, or hospital, harbours or conceals, or assists in harbouring or concealing the child, or causes or induces the child not to return to centre, home, or hospital, commits an offence and shall be liable to imprisonment for six months and a fine of Fifty Thousand Kwacha.

Penalties for assisting for inducing escape and for harbouring of concealing escaped children

Presumption
evidence of
identity

92. The production of the warrant or any other document, in pursuance of which a child is sent to a reformatory centre, safety home or hospital shall in all proceedings relating to the child be sufficient evidence of the identity and of the lawful detention or disposal of the child named in the warrant or document.

Disciplinary
rules

93.—(1) The Manager of a reformatory centre or a safety home may make rules not repugnant to, or inconsistent with, this Act for the maintenance of discipline at the centre or home.

(2) Disciplinary rules under this section shall not be enforced until they have been approved by the Minister.

(3) Rules approved by the Minister shall not be altered without the like approval.

(4) A copy of the disciplinary rules of a reformatory centre or safety home purporting to be signed by the manager of the centre or home shall be *prima facie* evidence of such rules for purposes of any legal proceedings.

PART IX—CHILD CARE AND PROTECTION

Chapter I—Child Care and Protection by the Family

Parents
Duties and
responsibilities
of parents

94.—(1) A parent or guardian shall not deprive a child of his welfare.

(2) A parent or guardian have responsibilities whether imposed by law or otherwise towards the child which include the responsibility to—

(a) protect the child from neglect, discrimination, violence, abuse, exploitation, oppression and exposure to physical, mental, social and moral hazards;

(b) provide proper guidance, care, assistance and maintenance for the child to ensure his or her survival and development, including in particular adequate diet, clothing, shelter and medical attention;

(c) ensure that during their temporary absence, the child shall be cared for by a competent person;

(d) exercise joint primary responsibility for raising their children,

except where the parent or guardian has forfeited or surrendered his or her rights and responsibilities in accordance with the law.

(3) A parent or guardian shall be responsible for the registration of the birth of his children.

23rd December, 2005

211

(4) The fact that a parent or guardian has parental responsibility for a child shall not entitle him to act in any way which would be incompatible with any court order made in respect of the child.

(5) Subject to this Act, a person who does not have parental responsibility for a particular child but has care of the child may do what is reasonable in all the circumstances of the case for the purposes of safeguarding or promoting the child's welfare.

(6) Where it is more than one person that have parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; but nothing in this Chapter shall affect the operation of any law which requires the consent of more than one person in a matter affecting the child.

95. In the application of the provisions of this Act, and in any matter concerning a child, due regard shall be had to duties and responsibilities of the child to—

Duties and responsibilities of children

(a) respect the parents, guardians, superiors and elders at all times and depending on the age of the child assist them in cases of need;

(b) serve the community by placing his or her physical and intellectual abilities at its service;

(c) preserve and strengthen social and national unity and character of Malawi;

(d) uphold the positive values of the community; and

(e) contribute towards the child's own development into being a useful member of the society,

but due regard shall be paid to the age and ability of the child and to such limitations as are contained in this Act.

96.—(1) Where parents are not known or where parentage is disputed, the following persons may apply to a child justice court for an order to determine the parentage of a child—

Parentage

(a) the child;

(b) the parent of the child;

(c) the guardian of the child;

(d) a probation officer;

(e) a social welfare officer,

or any other interested person as the child justice court may deem fit.

23rd December, 2005

212

(2) The application for parentage may be made—

(a) before the child is born; or

(b) before a child is eighteen years of age or after the child has attained that age but with special leave of a child justice court or High Court.

(3) For the purposes of succession and inheritance, the application for parentage shall be made within three years after the death of the father or mother of a child.

Evidence of parentage

97.—(1) The following shall be considered by a child justice of court as evidence of parentage—

(a) the name of the parent entered in the register of births;

(b) performance of a customary ceremony towards the child by the purported father of the child;

(c) refusal by the purported father to submit to medical test;

(d) public knowledge of parentage; and

(e) any other matter that the child justice court may consider relevant.

(2) The child justice court may order the putative father to submit to a medical test.

Determination of parentage

98. The child justice court shall, on the basis of the evidence under section 97 determine whether or not the alleged parent is the parent of the child.

Custody and access

99.—(1) A parent, a family member or any other appropriate person may apply to a child justice court for custody of a child.

(2) A family member or any other appropriate person may apply to a child justice court for periodic access to the child.

(3) The child justice court shall consider the best interests of the child and the importance of the child, on account of age, being with his mother when making an order for custody or access.

(4) In addition to the matters under subsection (3), a child justice court shall consider—

(a) the views of the child;

(b) that it is desirable to keep siblings together; and

(c) any other matter the child justice court may consider relevant.

23rd December, 2005

213

(5) Upon application for custody or access under this section, the child justice court may make an order granting the applicant custody or the access to the child and may attach such conditions as the court may consider appropriate.

100.—(1) Where a parent or any other person who is legally liable to maintain a child or to contribute towards the maintenance of the child, neglects to maintain the child, or to make the contribution, the following persons may apply against such person to the child justice court for a maintenance order of the child—

Application
for
maintenance

- (a) the child;
- (b) the parent of the child;
- (c) the guardian of the child;
- (d) relatives of the child;
- (e) a social welfare officer;
- (f) a police officer;
- (g) a teacher;
- (h) a health officer; and
- (i) any other appropriate person.

101. A child justice court shall consider the following when making a maintenance order—

Consideration
for
maintenance

- (a) the income and wealth of both parents of the child or of the person legally liable to maintain the child;
- (b) any impairment in the earning capacity of the person with a duty to maintain the child;
- (c) the financial responsibility of the person with respect to the maintenance of other children;
- (d) the cost of living in the area where the child resides;
- (e) the rights of the child under this Act; and
- (f) any other matter, which the child justice court may consider relevant.

102. A child justice court may request that a Social Welfare Officer prepare a social inquiry report on the issue of maintenance and submit the report to the child justice court for consideration before the child justice court makes the maintenance order.

Request for
social inquiry
report

103. A child justice court may award maintenance to the child and the maintenance order may include the following—

Maintenance
order

- (a) periodic expenses for the child;
- (b) a periodic allowance for the maintenance of the child; and

(c) the payment of a reasonable sum to be determined by the child justice court for the education of the child.

Attachment order

104—(1) Where periodic payment or lump sum payment for the maintenance of a child has been ordered, the child justice court may order that the earnings, salary or property of the person liable, be attached.

(2) The attachment order shall be applicable in all cases of failure to pay maintenance.

(3) The attachment order may be directed to the employer to deduct the sum of the maintenance funds every time payment of the salary is made.

(4) If the maintenance order is made before the birth of the child or within two months after the birth of the child, such payment may, if the court thinks fit, be calculated from the birth of the child.

Persons entitled to receive maintenance funds

105.—(1) A person who has custody of a child who is the subject of a maintenance order under the Act is under a duty to receive and administer the funds on behalf of the child.

(2) A copy of the maintenance order shall be served on the public officer or the local government officer responsible for children welfare in the area.

(3) The public officer or the local government officer shall make quarterly reports to the child justice court that made the order on the way funds are being administered.

Duration of maintenance order

106.—(1) A maintenance order made in pursuance of this Act, shall, except for purposes only of recovering money previously due under such order, cease to be of any force or validity—

(a) after the death of the child;

(b) after the marriage of the child;

(c) after the child has attained the age of eighteen years.

(2) A maintenance order may lapse before the child attains the age of eighteen years if before that age the child is gainfully and permanently employed.

Continuation of maintenance orders

107.—(1) Notwithstanding the provisions of section 106 a child justice court may continue or order a resumption of a maintenance order after the child has attained the age of eighteen years if the child is engaged in education or training after that age, up to obtaining his or her first university qualification where applicable.

23rd December, 2005

215

(2) An application under this section may be brought by the child a parent or guardian, or any other person who has custody of the child.

108. A child justice court may, if satisfied that the interests of the child will be better protected or will not be adversely affected, vary or discharge, as the case may be, a maintenance order on the application of the child, a parent, guardian, the person having custody of the child or any other person legally liable to maintain the child.

Variation or discharge of orders

109. Maintenance orders shall be enforced thirty days after the order is made, but a child justice court may in appropriate circumstances, make an order for a longer period.

Enforcement of maintenance orders

110. Unless the child justice court orders otherwise, the responsibility to maintain a child as between parents and guardians shall be joint and several.

Joint responsibility to maintain a child

111. The child justice court or High Court shall have power to make a maintenance order against either parent or both parents where proceedings, for nullity judicial separation, divorce or any other matrimonial proceedings are filed by either parent and such order may be made during such proceedings or after a final decree is made in such proceedings.

Maintenance during matrimonial proceedings

112. Whenever a maintenance order is made under this Act, the child justice court may, at the time of making the order, or from time to time thereafter, on being satisfied that the person having custody of the child—

Power to make maintenance funds to be paid to a person other than the applicant

(a) is not or has ceased to be a fit and proper person to receive any maintenance funds specified in the order in respect of the child;

(b) has left the jurisdiction of the child justice court for an indefinite period;

(c) is dead or is incapacitated or has become of unsound mind;

(d) has been imprisoned or has been declared insolvent;

(e) has misappropriated, misapplied or mismanaged any maintenance funds paid to him for the benefit of the child;

(f) has otherwise committed an offence under this Act,

appoint any other person it considers fit and responsible to receive and administer any maintenance funds required to be paid under a maintenance order, or order the person required to make a payment of the maintenance funds to invest the funds in whole or in part in trust for the benefit of the child.

23rd December, 2005

216

Offences

113.—(1) A person who, being liable to maintain a child under a maintenance order, fails to maintain the child in respect of food, clothing, health, basic education and reasonable shelter, commits an offence and—

(a) on first conviction, shall be liable to pay the maintenance order;

(b) on the second or every subsequent conviction for continuous failure to maintain the child, shall be liable to imprisonment for one year.

(2) A person who misapplies funds paid under a maintenance order commits an offence and shall be liable to a fine of Fifty Thousand Kwacha and to imprisonment for one year.

Chapter II—Children in need of Care and Protection

Determination
of children in
need of care
and protection

114.—(1) A child is in need of care and protection if—

(a) the child has been or there is substantial risk that the child will be physically, psychologically or emotionally injured or sexually abused by the parent or guardian or a member of the family or any other person;

(b) the child has been or there is substantial risk that the child will be physically injured or emotionally injured or sexually abused and the parent or guardian or any other person, knowing of such injury, risk or abuse, has not protected or is unlikely to protect the child from such injury, risk or abuse;

(c) the parent or guardian of the child is unfit or has neglected, or is unable, to exercise proper supervision and control over the child and the child is falling into undesirable association;

(d) the parent or guardian of the child has neglected or is unwilling to provide for the child's adequate care, food, clothing, shelter, education and health;

(e) the child—

(i) has no parent or guardian; or

(ii) has been abandoned by the parents or guardians and after reasonable inquiries the parents or guardians cannot be found, and no other suitable person is willing and able to care for the child;

(f) the child needs to be examined, investigated or treated for the purposes of restoring or preserving the child's health and if the parents or guardians neglects or refuse to have the child so examined, investigated or treated;

23rd December, 2005

217

(g) the child behaves in a manner that is, or is likely to be, harmful to the child or to any other person and the parents or guardians are unable or unwilling to take necessary measures to remedy the situation or the remedial measures taken by the parents or guardians have failed and as a result the child cannot be controlled by his parents or guardians;

(h) there is such a conflict between the child and the parent(s) or guardians, or between the parents or guardians, that family relationships are seriously disrupted, thereby causing the child emotional injury;

(i) the child is in the custody of a person who has been convicted of committing an offence in connection with that child;

(j) the child frequents the company of immoral, vicious, or otherwise undesirable person or persons or is living in circumstances calculated to cause or induce the child's seduction, corruption or prostitution;

(k) the child is allowed to be on a street, premises or any place for the purpose of—

(i) begging or receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for sale and as a result the child becomes a habitual beggar;

(ii) carrying out illegal hawking, illegal lotteries, gambling or other illegal activities detrimental to the health and welfare or retard the educational advancement of the child;

(l) the child cannot be controlled by his parent or guardian or the person in custody of the child;

(m) if the child is assessed by the Social Welfare Officer to be in need of care and protection.

(2) For the purposes of this Chapter, a child is—

(a) physically injured if there is injury to any part of the child's body as a result of the non-accidental application of force or agent to the child's body that is evidenced by, among other things, a laceration, a concussion, an abrasion, a scar, a fracture or other bone injury, a dislocation, a sprain, a haemorrhaging, a rupture, a burn, a scald, loss or alteration of consciousness or loss of hair or teeth;

(b) emotionally and psychologically injured if there is impairment of the child's mental or emotional functioning that is evidenced by, amongst other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development;

(c) sexually abused if the child has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of—

(i) any pornographic or indecent material, photograph, recording, film, videotape or performance; or

(ii) sexual exploitation by any person sexual gratification or for commercial gain.

Take a child into place of safety

115. A police officer, social welfare officer, a chief or any member of the community, if satisfied on reasonable grounds that a child is in need of care and protection, may take the child and place him into his temporary custody or a place of safety.

Presentation before child justice court

116.—(1) Subject to section 117, a child who is taken into a place of safety under section 115 shall be brought before a child justice court within forty-eight hours.

(2) If it is not possible to bring a child before a child justice court within the time specified under subsection (1), the child shall be brought before any magistrate who may direct that the child be placed in—

(a) a place of safety; or

(b) the care of a fit and proper person,

until such time as the child can be brought before a child justice court.

(3) Where a child in need of care and protection is brought before a child justice court, the court shall, if the age of the child is not known, refer him to a probation officer for age estimation.

(4) If a child is in a place of safety or in the care of a fit and proper person under subsection (2)—

(a) the person in charge of the place of safety or such fit and proper person shall have the like control over, and responsibility for the maintenance of, the child as the parent or guardian of the child would have had; and

(b) the child shall continue to be in the care of the person referred to in paragraph (a) notwithstanding that the child is claimed by the parent or guardian or any other person.

(5) A social welfare officer, police officer, chief or any member of the community who takes a child to a place of safety under this section shall, immediately upon such taking, cause the parent or guardian of the child to be notified of such taking if the parents are known and if it is practicable to do so.

23rd December, 2005

219

(6) A police officer, chief or any member of the community who takes a child into temporary custody under this section shall, immediately upon such taking, notify the social welfare officer of such taking.

117.—(1) If a social welfare officer, police officer, chief or any member of the community is of the opinion that a child is in need of medical examination or treatment he may, instead of bringing the child before a child justice court present the child for medical care.

Child in need of medical examination

(2) If a social welfare officer, police officer or chief is satisfied on reasonable grounds that the child is in need of medical examination or treatment, he may direct either in writing or orally that the person keeping the child for the time being immediately present the child for medical care.

(3) If the person referred to under subsection (2) fails to comply within forty-eight hours with a direction made under that subsection, the social welfare officer, police officer or chief may take the child into temporary custody for the purpose of taking the child for the medical care.

118.—(1) A medical officer before whom a child is presented under section 117 shall provide or cause to be provided such examination or treatment as the medical officer thinks necessary.

Medical examination and treatment

(2) The child who is presented before a medical officer under subsection (1) shall be exempted from medical fees with the authority of a District Social Welfare Officer.

(3) The medical officer shall upon completing the treatment present a report to the person who brought the child for the medical care.

119. If the medical officer is of the opinion that hospitalization of the child is necessary, he shall cause the child to be so hospitalized.

Hospitalization

120. If a child is hospitalized under section 119, the social welfare officer shall have the same control and responsibility over the maintenance of the child as the person in charge of a place of safety would have had if the child had been placed in a place of safety.

Control over hospitalized children

121.—(1) If, in the opinion of the medical officer, the child referred to under section 119 is suffering from a minor illness, injury or condition, the treatment may be authorized by a social welfare officer.

Authorization of medical treatment

(2) If, in the opinion of the medical officer, the child referred to in section 119 is suffering from a serious illness, injury or condition or requires surgery or psychiatric examination or treatment, a social welfare officer or police officer—

(a) shall immediately notify or take reasonable steps to notify and consult the parent or guardian of the child or any person having authority to consent to such examination or treatment; and

(b) may, with the written consent of the parents or guardians or such other appropriate person, authorize such medical or surgical or psychiatric examination or treatment as may be considered necessary by the health worker.

(3) If a medical officer has certified in writing that there is immediate risk to the health of a child, a social welfare officer or police officer may authorize, without obtaining the consent referred to in subsection (2), such medical or surgical or psychiatric examination or treatment as may be considered necessary by the medical officer but only under any of the following circumstances—

(a) that the parent or guardian of the child or any person having authority to consent to such examination or treatment has unreasonably refused to give, or abstained from giving, consent to such treatment;

(b) that the parent or guardian or the person having authority to consent to such examination or treatment is not available or cannot be found within a reasonable time; or

(c) the social welfare officer or the police officer believes on reasonable grounds that the parent or guardian or the person having authority to consent to such examination or treatment has ill-treated, neglected, abandoned, or exposed or sexually abused, the child.

Steps to be taken after medical examination or treatment

122.—(1) A child who is placed in a place of safety and is medically examined or treated shall be brought before a child justice court within forty-eight hours—

(a) of the completion of such examination or treatment; or

(b) if the child is hospitalized, of his discharge from the hospital.

(2) If it is not possible to bring the child before the child justice court within the time specified in subsection (1), the child shall be brought before any magistrate who may direct that the child be placed in—

(a) a place of safety; or

(b) the care of a fit and proper person,

until such time as the child can be brought before child justice court.

(3) A child who—

23rd December, 2005

221

(a) is taken into custody under section 115; and

(b) subsequently undergoes medical examination or treatment, may be returned to the person from whose care the child was taken upon the completion of such examination or treatment or if the child is hospitalized, upon discharge from the hospital.

123.—(1) If a child is examined or treated pursuant to sections 118—

No liability incurred for giving authorization

(a) the social welfare officer or police officer who authorizes such examination or treatment;

(b) the medical officer who examines or treats the child; and

(c) all persons acting in aid of the medical officer,

shall not incur any civil or criminal liability at law by reason only that a child is examined or treated pursuant to that section.

(2) Nothing contained in subsection (1) relieves a medical officer from liability in respect of any negligent medical examination or treatment of a child.

124.—(1) A medical officer shall, if he believes on reasonable grounds that a child being examined or treated is physically, psychologically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, immediately inform a social welfare officer or police officer.

Duty of a medical officer

(2) A medical officer who fails to comply with subsection (1) commits an offence and shall be liable to a fine of Twenty Thousand Kwacha and to imprisonment for six months.

125.—(1) If any member of the family of a child believes on reasonable grounds that the child is physically, psychologically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall immediately inform a social welfare officer or a police officer.

Duty of members of the family

(2) A member of the family who fails to comply with subsection (1) commits an offence and shall be released on a binding agreement on conditions to be determined by the court.

126.—(1) If a child care provider believes on reasonable grounds that a child is physically, psychologically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall inform a social welfare officer or a police officer.

Duty of child care provider

(2) If a child care provider fails to comply with subsection (1) commits an offence and shall be liable to a fine of Ten Thousand Kwacha and imprisonment for three months.

Duty of members of the community

127.—(1) If a member of the community believes on reasonable grounds that a child is physically, psychologically or emotionally injured, abandoned, or exposed, or is sexually abused, he shall immediately inform a chief, a police officer or a social welfare officer.

(2) A member of the community who fails to comply with subsection (1) commits an offence and shall be liable to a fine of Ten Thousand Kwacha and to imprisonment for three months.

Functions of child justice courts in cases of children in need of care

128.—(1) If a child justice court is satisfied that any child brought before it under this Chapter is a child in need of care and protection, the court may—

(a) order the parents or guardians to enter into a binding agreement to exercise proper care and guardianship for a period specified by a child justice court;

(b) make an order placing the child in the custody of a fit and proper person for a period specified by the child justice court.

(c) without any other order or in addition to an order made under paragraph (a) or (b), make an order placing the child under the supervision of—

(i) a social welfare officer; or

(ii) some other person appointed for the purpose by the child justice court,

for a period specified by the child justice court.

Chapter III—Guardianship

Appointment of guardian

129.—(1) A guardian may be appointed by—

(a) the testamentary will or choice of a parent;

(b) an order of the court;

(d) the family of the child.

(2) A guardian may be appointed in respect of any child who is resident in Malawi.

(3) A guardian appointed under this Act shall be a person resident in Malawi.

(4) Where a guardian is appointed only in respect of the estate of the child, he need not have actual custody of the child but shall, with the authority of the child justice court and with the assistance of a legal representative as the court may provide for the child, have—

23rd December, 2005

223

(a) power and responsibility to administer the estate of the child, and in particular to receive or recover and invest the property of the child in his own name for the benefit of the child;

(b) the duty to take all reasonable steps to safeguard the estate of the child from loss or damage;

(c) the duty to produce and avail accounts or a written report to the child justice court in the prescribed form in the Seventh Schedule.

130.—(1) A parent of a child may by will or deed appoint any person to be a guardian of the child after that parent's death.

Appointment of a testamentary guardian

(2) A guardian of a child may by will appoint another individual to take his place as the guardian of the child in the event of his death.

131.—(1) If a child, or any member of the family, considers that a surviving parent is unfit to have legal custody of the child, he may apply to the child justice court for the appointment of a guardian.

Application for the appointment of guardian by a child or a family member

(2) The court, after considering the application, may—

(a) appoint the guardian;

(b) make an order that the guardian shall act jointly with the parent; or

(c) make any other order which the court considers appropriate in the circumstances.

(3) Where the child justice court makes an order that the guardian is the only guardian of the child, it may order the parent to pay the guardian a financial provision towards the maintenance of the child, having regard to the means of the parent as the court may consider reasonable.

(4) A guardian who has been appointed to act jointly with the surviving parent under subsection (2), shall continue to act as a guardian after the death of the parent, but if the parent appointed a guardian by will, before his death the guardian appointed by the child justice court shall act jointly with the guardian appointed by the parent.

132.—(1) A child justice court may, in the best interest of a child, appoint a guardian on the application made by any person where—

Application for the appointment of a guardian by other persons other than a child or a family member

(a) the child's parents are no longer living;

(b) the parents cannot be found;

(c) the child has no guardian and there is no other person having parental responsibility for the child;

(d) where the parents of the child are no longer living together and it is necessary in the best interests of the child that a guardian be appointed for the child.

Extension of guardianship beyond a child's eighteenth birthday

133.—(1) An appointment for guardianship shall determine upon the child attaining the age of eighteen years, unless exceptional circumstances exist that require a child justice court to grant an order that the appointment be extended.

(2) An application for extension of guardianship shall be made within six months before or after the child's eighteenth birthday.

(3) A child justice court making an order under this section shall specify the duration of the order and the order may contain such conditions and directions as the court may see fit.

Power to revoke, modify or vary a guardianship order

134.—(1) A child justice court may, on application by the child, parent, guardian, a family member or a social welfare officer, vary, modify or revoke a guardianship order.

Disputes between guardianship

135. Where two or more persons act as joint guardians to a child or where the surviving parent and a guardian act jointly and are unable to agree on any question affecting the welfare of the child, any of them may apply to a child justice court for its direction, and the child justice court may make orders regarding the differences as it may think proper.

Offences by guardians

136. A guardian of the estate of a child who—

(a) refuses or neglects to provide sufficient food, clothes and other necessities for the child; or

(b) misapplies, misplaces, neglects to recover or to safeguard any asset forming part of the estate of the child, resulting in the loss or damage of such estate; or

(c) fails to produce to the child justice court or the parent or guardian of the child any account or inventory required by the child justice court; or

(d) produces any such inventory or account which is false, commits an offence and shall be liable to a fine of One Hundred Thousand Kwacha and to imprisonment for two years and in addition shall on that account be liable to make good any loss or damage occasioned to the estate.

Chapter IV—Fosterage

Interpretation

137. In this Chapter, unless the context otherwise requires—
“foster care” means the placement of a child in a foster home or with a foster parent;

23rd December, 2005

225

“foster child” means a child placed in a foster home or with a foster parent;

“foster parent” means a person with whom a child is placed for foster care and protection under this Act;

“foster home” means a home approved by the Minister under section 138 or 139.

138.—(1) The Minister shall establish places or institutions as foster homes for the purposes of foster care placement. Public foster homes

(2) All institutions which at the commencement of this Act are operating as public foster homes shall be deemed to have been established under this Act.

(3) Public foster homes shall be managed by a person appointed by the Minister.

(4) The establishment of public foster homes under this section shall be published in the *Gazette*.

(5) The publication shall state whether the foster home is for female or male children or for both and shall specify the number of children to be kept in that home.

139.—(1) A person or an organization may apply to the Minister to appoint a home or place of that person or organization to be a foster home. Private foster homes

(2) The Minister, upon being satisfied that the application meets the necessary requirements in accordance with this Act, may designate the home or place as a private foster home for the purposes of foster-care placements.

(3) The establishment of a private foster home under this section shall be published in the *Gazette*.

(4) The publication shall state whether the home is for female or male children or for both and shall specify the number of children to be kept in that home.

140. The provisions on management, inspection and closure of reformatory centres and safety homes shall apply to *mutatis mutandis*. Management of foster homes

141. A child justice court may, if satisfied that a child before it is in need of foster-care and protection, commit the child to a foster home for a period of time as the court sees fit. Foster home placement

Responsibilities of a Manager of a foster home **142.** A manager of a foster home in whose care a child is placed shall have the same rights and responsibilities in respect of the child as the parent of the child while the child remains in the foster home.

Commitment of a child to a foster parent **143.**—(1) Where a child has been committed to a foster home under this Act, the District Social Welfare Officer, in conjunction with the manager of the foster home may place the child with a foster parent who is willing and has applied to take the care and maintenance of the child for a period not exceeding five years.

(2) A foster parent may, at the expiry of the period specified in subsection (1), apply to the District Social Welfare Officer for the extension of the period.

Application to foster child **144.** An application to foster a child shall be made to the District Social Welfare Officer by completing the prescribed Form I in the Eighth Schedule except that a relative of a child without a parent or guardian may foster the child without first applying to the District Social Welfare Officer.

Responsibilities of parents of foster children **145.** A foster parent in whose care a child is committed shall, while the child remains in his care, have the same responsibilities in respect of the maintenance of the child as if such foster parent were the parent of the child.

Persons qualified to foster children **146.**—(1) The following persons may apply to be foster parents—

(a) a husband and wife but if a man has more than one wife, the name of the wife who is to be the foster mother shall be clearly stated;

(b) a single person not below the age of twenty-five years.

(2) A single person shall not foster a child of the opposite sex unless a District Social Welfare Officer certifies to the court that it is in the best interest of the child that the person fosters the child.

(3) A non-Malawian citizen residing in Malawi is qualified to apply to be a foster parent subject to subsections (1) and (2).

Procedure before placement **147.**—(1) A child shall not be placed with a foster parent who is not a relative of the child, unless—

(a) a social welfare officer has interviewed the prospective foster parent and assessed that he or she is a suitable person to foster a child;

(b) a social welfare officer has visited the home of the prospective foster parent and has confirmed in writing that it is likely to meet the requirements of the particular child and that the conditions in it are satisfactory;

23rd December, 2005

227

(c) two reputable persons who know the prospective foster parent have confirmed on his or her good character and suitability to care for the child;

(d) it has been established by a social welfare officer that no person in the household of the prospective foster parent is suffering from any physical or mental illness likely to affect the child adversely;

(e) it has been established from the officer In-charge of a police station in the area that no person in the home has been convicted of a serious criminal offence rendering it undesirable for the child to associate with that person; and

(f) the wishes of the child so far as can be ascertained concerning the proposed fostering have been ascertained and have, so far as practicable, been taken into account.

(2) The social welfare officer concerned with the fostering shall make a written report which shall contain the following—

(a) the information required in section (1);

(b) details of the name, approximate age, religion and employment of the prospective foster parents; and

(c) the number and approximate ages of other persons living in the household of the prospective foster parent.

(3) The report shall be in Form 3 in the Eighth Schedule.

148.—(1) Where the religion of the child is known, the child shall be placed with a foster parent who is of the same religion as the foster child but where that is not possible, the foster parent shall undertake to bring up the child in accordance with the religious denomination of the child. Religion

(2) Where a child's religion is not known, the child shall be placed with a foster parent who shall undertake to bring up the child in accordance with the religious denomination of the foster parent, but the child's choice of any other established religion shall be respected.

149. Wherever possible, a child shall be placed with a foster parent who has the same cultural background as the child's parents and who originates from the same area in Malawi as the parents of the child. Cultural background

150.—(1) Each foster parent shall, on the day on which the child is placed with him, sign the undertaking specified in Form 2 in the Eighth Schedule in the presence of a witness. Undertaking by foster parents

(2) Where the prospective foster parent cannot read the English language sufficiently to understand the nature of the undertaking, the social welfare officer concerned shall cause the undertaking to be explained to the prospective foster parent in a language which he understands and shall certify to that effect as prescribed in Form 2 in the Eighth Schedule.

(3) Each foster parent shall be given a copy of the undertaking signed by him.

(4) A copy of the undertaking shall be sent to the District Social Welfare Officer and to the District Commissioner.

Medical
arrangements

151.—(1) Except in the case of an emergency, a child shall not be placed with a foster parent unless the child has been examined by a medical officer, child has reported to the District Social Welfare Officer in writing on the physical and mental condition of the child.

(2) In the case of an emergency, the examination report required under subsection (1) shall be made within four weeks after the placement.

(3) A District Social Welfare Officer shall submit to the foster parent a list of immunizations carried out in respect of the child and indicate to the foster parent the list of other immunizations required to be effected in respect of the child in accordance with the Ministry of Health rules of immunizations and the foster parent shall ensure that those immunizations are carried out.

(4) The foster parent and the District Social Welfare Officer shall at all times keep a record of the immunizations in respect of the child.

(5) Where a child placed with a foster parent is under five years of age, the child shall be medically examined by a medical officer—

(a) within one month after the date of placement;

(b) thereafter once every six months until the child attains the age of five years,

and the District Social Welfare Officer shall, so far as possible, assist the foster parent in ensuring the carrying out of the requirements of this provision.

(6) Where a child placed with a foster parent is above the age of five years, the child shall be medically examined by a medical officer once in every year.

23rd December, 2005

229

(7) The medical officer who examines a child under subsection (5) or (6), shall report in writing to the District Social Welfare Officer by whom the child was placed, on the physical, mental and emotional condition of the child as found by such medical officer.

152. The District Social Welfare Officer shall be responsible for overseeing all aspects of the fostering and for ensuring that the provisions of this Act are complied with. Supervising officer

153.—(1) The District Social Welfare Officer shall visit the foster family and see the child— Visits during placement

(a) within two weeks after the date of placement of the child with the foster family where the child is under two years of age, and thereafter once every three months;

(b) within one month after the date of placement of the child with the foster family, where the child is above two years of age, and thereafter once every three months;

(c) within one month after receiving notification from a foster parent that he or she has changed his or her residence;

(d) immediately, and in any case not later than one week, after receipt of any information from the child, a foster parent or any other person which indicates the need for the District Social Welfare Officer to visit the child.

(2) The District Social Welfare Officer shall, after carrying out the visit under subsection (1) make a written report to be placed in the child's case record stating in detail his observations as to the child's welfare, progress and conduct or any changes which have occurred in the circumstances of the foster family.

(3) The report made under subsection (2) shall also include the child's views and feelings concerning placement and where there are any problems, they shall be discussed and resolved openly within the foster family.

154.—No foster parent shall marry a child he is fostering and any such purported marriage shall be void. Marriages

155.—(1) A child shall not be allowed to remain with a foster parent where it appears that the placement is no longer in the best interests of the child, except that— Termination of placement

(a) the foster parent may appeal to the District Social Welfare Officer if it is sought to remove a child who has been in the care of the foster parent for more than twelve months; and

(b) the District Social Welfare Officer on any such appeal may prohibit or authorize the removal subject to such conditions as he thinks fit.

(2) A child shall not be required to remain in the care of a foster parent after the child has attained the age of eighteen years.

Surrendering
a foster child

156. If at any time a foster parent intends to return a foster child, he or she shall bring the child before the District Social Welfare Officer and the District Social Welfare Officer shall place the child in a foster home.

Illness

157. If a foster child is seriously ill, the foster parent shall as soon as possible give notice to the District Social Welfare Officer who shall in turn notify the parents or guardian of the illness.

Death

158.—(1) If the foster child dies, the foster parent shall make every effort to obtain a medical certificate of death and post-mortem report and shall, within forty-eight hours, after the death notify the social welfare officer who shall, in turn notify the parents of the death.

(2) If the foster parent dies, in the case where a child is placed with a single foster parent, the child shall be returned to the social welfare office or to the manager of the foster home from which the child was received.

Records

159.—(1) The District Social Welfare Officer shall maintain a register of foster parents, in which shall be stated a record set out in Form 3 in the Eighth Schedule.

(2) The register referred to in subsection (1) shall, in addition, contain—

(a) a statement of the name, sex, age, religion and address of each parent of the foster child if known; and

(b) the date of placement, the date of termination and the reason for termination.

(3) The District Social Welfare Officer shall also, in respect of each child placed by him in a foster home, maintain a foster child case record in the form set out in Form 4 in the Eighth Schedule.

(4) The District Social Welfare Officer shall also keep with the foster child case record the following—

(a) a copy of the application form completed by the foster parent and a copy of the undertaking required by section 150; and

(b) reports made under section 153.

23rd December, 2005

231

(5) The register prescribed by subsection (1) and the foster child case record made under subsection (3) may be inspected at any reasonable time by the Board.

(6) Every foster child case record made under this section shall be preserved for at least seven years after the child to whom it relates has attained the age of eighteen years or has died or has returned to the care of his or her parents.

(7) The District Social Welfare Officer shall report to the Board within one month after each fostering effected by him, the fact of the fostering and stating the information in Form 3 in the Eighth Schedule.

(8) The District Social Welfare Officer shall also notify the Board within twenty-one days after its occurrence of any change in the information referred to in subsection (7).

160. A foster parent may at any time apply to adopt a foster child in accordance with the Adoption of Children Act.

Application for adoption

161. A person who—

Offences

(a) refuses to allow a foster child to be visited by a persons authorized by either the District Social Welfare Office or the child justice court;

(b) fails, without reasonable excuse, to comply with any requirement under the Act;

(c) accommodates a foster child in undesirable premises;

(d) runs a foster home without the approval of the Minister, commits an offence and shall be liable to a fine of Fifty Thousand Kwacha and imprisonment for one year.

Chapter V—Support for Children by Local Government

162.—(1) It is the general duty of every local government authority within its area of jurisdiction to—

General functions of local government authorities

(a) safeguard and promote the welfare of children;

(b) mediate in any situation where the rights of a child are infringed, especially the child's right to succeed to property of his parents and all the rights accorded to the child by this Act;

(c) provide and maintain sufficient and appropriate recreational facilities;

(d) conduct inspection of child care facilities to ensure maintenance of standards;

(e) inspect structures, places and activities that impose potential or actual harm to children.

(2) The power conferred by subsection (1) on a local government authority to protect the right of a child to succeed to property of his parents shall not be construed to authorize the authority to distribute such property.

Secretary for children affairs

163.—(1) A local government authority shall designate one of its officers to be the person responsible for the welfare of children and such officer shall be referred to as the Secretary for Children's Affairs.

(2) The Secretary for Children's Affairs shall, in the exercise of his functions in relation to the welfare of children, be assisted by such other officers of the local government authority as the local government authority may determine.

Registration of children with disabilities

164. A local government authority shall keep a register of disabled children within its area of jurisdiction and give assistance to them whenever possible in order to enable those children grow up with dignity among other children and to develop their potential and self-reliance.

Duty to provide accommodation to children in need

165. A local government authority shall provide accommodation for children within its area of jurisdiction who appear to the assembly to be in need of the accommodation as a result of their being lost or abandoned or seeking refuge.

Tracing of parents or guardians

166. A local government authority shall make every effort, including publication through the mass media, to trace the parents or guardians of any lost or abandoned child or to return the child to the place where the child ordinarily resides; and, where the authority does not succeed, it shall refer the matter to a probation officer or social welfare officer or to the police.

Duty to report infringement of a child's right

167.—(1) It shall be the duty of any member of the community who has evidence that a child's rights are being infringed or that a parent, guardian or any person having custody of a child, who is able to but refuses or neglects to provide the child with adequate food, shelter, clothing, medical care or education, to report the matter to the local government authority of the area.

(2) The Secretary for Children's Affairs may, upon receiving the report, summon the person against whom the report was made under subsection (1) to discuss the matter; and a decision shall be made by the Secretary for Children's Affairs in the best interests of the child.

23rd December, 2005

233

(3) Where the person against whom the report was made refuses to comply with the decision made under subsection (2), the Secretary for Children's Affairs shall refer the matter to child justice court which may make such orders as it may see fit.

168.—(1) Unless the duty to do so has been conferred on another authority, a local government authority shall keep and maintain a register of the births and deaths of children in the area of its jurisdiction.

Registration
of births and
deaths of
children

(2) The registration of the birth or death of a child under this section shall be with sufficient particulars including in particular—

- (a) the name and sex of the child;
- (b) the name of the parents;
- (c) place of birth and the home of origin of the child; and
- (d) in the case of death, the place of death and, where possible, the cause of the death.

169. A local government authority shall keep a register of children suffering from HIV and AIDS for the purposes of ensuring that—

Registration
of children
suffering
from HIV and
AIDS

- (a) they are not discriminated against on the basis of their status;
- (b) they have equal access to health care services regardless of their status;
- (c) they are provided with the necessary material support if required; and
- (d) in conjunction with the District Social Welfare Officer, they are provided with substitute care in the form of—
 - (i) care by relatives;
 - (ii) foster-care; or
 - (iii) adoption

(2) For the purposes of this section, children suffering from HIV and AIDS means children who are—

- (a) infected by HIV;
- (b) orphaned by AIDS;
- (c) vulnerable to HIV infection; or
- (d) from infected families and facing increased financial, physical and emotional burdens.

Chapter VI—Protection of Children from Undesirable Practices

Child
abduction

170.—(1) A person who, unlawfully takes, retains or conceals a child without the consent of the parent or without the consent of any other person who has lawful custody of the child commits an offence and shall be liable to imprisonment for ten years.

(2) For the purposes of this section, lawful custody may be conferred on a person by—

- (a) the operation of any written law;
- (b) judicial or administrative decision; or
- (c) a lawful agreement.

Child
trafficking

171.—(1) A person who takes part in any transaction the object or one of the objects of which is child trafficking commits an offence and shall be liable to imprisonment for life.

(2) For the purposes of this section, child trafficking means the recruitment, transaction, transfer, harbouring or receipt of a child for the purposes of exploitation.

Harmful
cultural
practices

172. No person shall subject a child to a social or customary practice that is harmful to the health or general development of the child.

Forced
marriage or
betrothal

173. No person shall—

- (a) force a child into marriage;
- (b) force a child to be betrothed.

Pledge of a
child as
security

174. No person shall—

- (a) use a child as a pledge to obtain credit;
- (b) use a child as surety for a debt or mortgage; or
- (c) force a child into providing labour for the income of a parent, guardian or any other person.

Offence

175. A person who contravenes sections 172, 173 and 174 commits an offence and shall be liable to imprisonment for three years.

Inquiries and
placement

176.—(1) If a social welfare officer has reasonable grounds to believe that a child—

- (a) has been trafficked;
- (b) has been abducted;

23rd December, 2005

235

(c) has been subjected to a harmful cultural practice or any practice prohibited under sections 173 and 174; or

(d) is being used for the purposes of prostitution or immoral practices,

he may remove and temporarily place the child in a place of safety.

(2) A child who is temporarily placed in a place of safety, under this Chapter shall be brought before a child justice court within forty-eight hours if it is practicable to do so.

(3) The child justice court may commit the child to a foster home or may place the child under the supervision of a social welfare officer until an inquiry into the circumstances of the case has been carried out and submitted to the child justice court by a social welfare officer.

(4) The social welfare officer shall complete the inquiry under subsection (3) and submit a report of the inquiry to the child justice court within one month from the date of placing the child into a place of safety.

(5) The child justice court may, after considering the report and if satisfied that the child is in need of protection and rehabilitation—

(a) commit the child to a foster home;

(b) make an order placing the child under the supervision of a social welfare officer,

for such period as the court thinks fit.

(6) The child justice court may, in the best interests of the child, extend the period of the placement or the supervision, but such extension shall not go beyond the eighteenth birthday of the child.

(7) If the child justice court is not satisfied that the child is in need of protection or rehabilitation, it may order that the child be returned to the custody of the parent, guardian or any other person who had custody of the child.

177.—(1) If it appears to a child justice court that there are reasonable grounds to believe that a child has been abducted or trafficked, it may make a child recovery order.

Child
recovery
order

(2) A child recovery order may be made by a child justice court on the application by or on behalf of a person having lawful custody of the child.

(3) A child recovery order may—

(a) direct any person who is in a position to do so to take the child to a person specified in the order;

(b) authorize a person specified in the order to remove the child from the unlawful custody;

(c) require any person who has information that can assist in the recovery of the child to disclose that information to a person specified in the order; or

(d) authorize any police officer to enter premises specified in the order and search for the child.

(4) A person who knowingly obstructs an authorized person from exercising the power under subsection (3) commits an offence and shall be liable to imprisonment for three years.

PART X—EXPENSE AND CONTRIBUTIONS

Contribution order

178.—(1) When a reformatory centre order, safety home order, a foster home placement order or an order committing a child to the care of a fit person has been made by a child justice court (hereinafter in this section referred to as a committal order) the court may, at the same time or subsequently, make a contribution order requiring a parent or guardian or other person having custody of the child to contribute a weekly, monthly or any other periodic sum as may be specified in the order or to make other necessary contributions as the court may consider proper in respect of his maintenance.

(2) A contribution order may be made against the parent or guardian or a person having custody of the child, who having been required to attend before the child justice court, has failed to do so; but no such order shall be made without giving the person to make the contribution an opportunity to be heard.

(3) A contribution order shall remain in force as long as the relevant committal order is in force.

(4) Subject to subsections (4) and (5), no contribution shall be payable under a contribution order in respect of any period during which the person to be maintained is on conditional discharge or release or under the supervision of a probation officer.

(5) A contribution order may be varied, revoked or suspended by the court which made it but shall not be varied as to increase any contribution payable under the order without giving the person making the contribution an opportunity to be heard.

(6) If a person wilfully neglects to comply with a contribution order, the court which made the order may, for every breach of the order, by warrant, direct the amount due to be levied in accordance

with the law for levying fines imposed by courts or may sentence the person to imprisonment for fourteen days for each month's contribution remaining un paid.

179. Funds for public reformatory centre, public safety homes and public foster homes shall consist of—

Funds for public reformatory centres and public safety homes

- (a) such funds as Parliament may appropriate;
- (b) contributions ordered by the court under section 178; and
- (c) any donations of funds, materials and other gifts from any person.

PART XI—TRANSITIONAL PROVISIONS

180.—(1) The Minister shall, at the commencement of this Act, by writing under his hand direct—

Transfer of children

- (a) the transfer to a safety home in accordance with the provisions of this Act, any person in custody who is a child and is alleged to have committed an offence in respect of which proceedings have not been commenced;
- (b) the transfer to a reformatory centre in accordance with the provisions of this Act, any person who is a child and is serving a custodial sentence;
- (c) the transfer to a foster home or, where necessary, to a safety home in accordance with the provisions of this Act, any child who is in a reformatory centre for the purposes of care and protection.

181.—(1) A police officer In-charge of a police station or a person in charge of a prison shall, at the commencement of this Act—

Remittance of a list of children

- (a) remit to the Board a list of all persons in custody who are children within the meaning of this Act; and
- (b) remit to the Board a list of all persons serving sentences in custody who were children at the time the offences were committed.

(2) A person in charge of a reformatory centre shall, at the commencement of this Act remit to the Board a list of children being kept at the centre for the purposes of care and protection.

182.—(1) Where, at the commencement of this Act, proceedings have been commenced in respect of a person who is a child or a young person within the meaning of the Children and Young Persons Act (now repealed) the proceedings and all related matters shall be dealt with as if they had been commenced under this Act and any court dealing with the matter shall continue as if it has jurisdiction under this Act.

Proceedings under the repeal Act (Cap. 26:03)

PART XII—GENERAL

Saving of powers of the High Court

183.—(1) Nothing in this Act shall preclude the High Court from exercising its ordinary jurisdiction over any matter.

(2) All powers exercised by a child justice court under this Act may in like manner be exercised by the High Court.

Duties and powers of a person to whom a child is committed

184.—(1) A person to whose care a child is committed under this Act shall, whilst the order is in force, have the like control over the child as if he were the parent of the child responsible for the maintenance of the child and the child shall continue to be in the care of such person notwithstanding any claim by the child's parent or by any person unless the court orders otherwise.

(2) A person to whose care a child is committed under this Act shall report to the court—

(a) quarterly, on the condition, education and health of the child;

(b) immediately, if the child dies or escapes from that person's control.

(3) Where a person fails to make a report under this section the court may exercise any of its powers under section 63.

(4) A person to whose care a child is committed shall at all reasonable times allow a Social Welfare Officer to visit the place where the child is living and shall answer all reasonable enquiries which may be made by such Social Welfare Officer.

Duties arising from a probation order

185.—(1) Where a court has made a probation order under section 63 (1) (f) the parents or guardians of the child shall continue to be responsible for the care and maintenance of the child but shall allow the probation officer or other persons appointed for the purpose by the court (hereinafter referred to as the supervisor) to have access at any time to the place where the child is living.

(2) The parents of the child shall give all such information relating to the condition, education and health of the child as the supervisor may require and shall, in the best interests of the child, consider any advice relating to the upkeep and education of the child which may be given by the supervisor.

(3) If at any time the supervisor reports to the court that the child in respect of whom the probation order has been made should be removed from the custody of the parents or guardian, the court shall consider such report as though there were proceedings pending

23rd December, 2005

239

under section 61 and may make any order in place of the probation order which it might have made under section 63.

186. Any person, not being a child, who—

General offences

(a) refuses to answer, to the best of his knowledge and belief, any question which he is legally bound to answer and which is asked of him by any officer appointed by or under this Act;

(b) willfully signs or delivers any false or incorrect notification, report or statement;

(c) refuses to allow an officer appointed or authorized under this Act such entry or access to any house, building, land, enclosure, vessel or other place as he is required by this Act to allow; or

(d) contravenes or fails to comply with any order, summons or warrant lawfully made or issued under this Act,

commits an offence and shall be liable to imprisonment for six months and to a fine of Fifty Thousand Kwacha.

187.—(1) Subject to subsection (2), no action and no order made in to age the purported exercise of any power conferred by this Act shall be deemed illegal by reason only that it afterwards appears or is discovered that a mistake has been made regarding the age of a person.

Mistake as to age

(2) Where a mistake is made as to the age of a child, an order of the court made against the child on the basis of the mistake as to the age shall be invalid to the extent of the adverse effect as against the child, and the court which made the order or any other court of co-ordinate jurisdiction shall have power to make a declaration to that effect.

188. A court may, on application or on its own motion, extend the application of this Act to persons that are above eighteen years of age but below twenty one years of age.

Extension of application of the Act

189. The Minister may, on the recommendation of the Board, make regulations for carrying this Act into effect.

Regulation and rules

190. The Chief Justice may make rules regulating the procedure and practice in a child justice court.

Court rules

191. The enactments specified in the *First Column* of the Ninth Schedule are amended or repealed in the manner specified in the Second Column of that Schedule.

Amendment and repeals

SCHEDULES
FIRST SCHEDULE

Section 5

GUIDING PRINCIPLES IN MATTERS CONCERNING
CHILDREN

Welfare
principle

1. Whenever the state, a court, a local authority or any person determines any question with respect to—

(a) the upbringing of a child or;

(b) the administration of a child's property or the application of any income arising from it, the welfare of the child shall be of the paramount consideration.

Time being of
the essence

2. In all matters relating to a child, whether before a court of law or before any other person, regard shall be to the general principle that delay in determining the questions is likely to be prejudicial to the welfare

Criteria for
decisions

3. In determining any question relating to circumstances set in paragraphs (a) and (b) of paragraph (1), the court or any other persons shall have regard in particular to—

(a) the ascertainable wishes and feelings of the child concerned considered in the light of his age and understanding;

(b) the physical, emotional and educational needs of the child;

(c) the likely effects of any changes in the child's circumstances;

(d) the age, sex and background of the child and any other circumstances relevant in the matter;

(e) any harm that the child has suffered or is at the risk of suffering;

(f) where relevant, the capacity of the parents, guardians or other people involved in the care of the child in meeting needs of the child.

Rights of the
child

4. A child shall have the rights—

(a) to leisure which is not morally harmful and the right to participate in sports and positive cultural and artistic activities;

(b) to a just call on any social amenities or other resources available in any situation of armed conflict or natural or man-made disasters;

(c) to exercise, in addition to all rights states this Schedule and this Act, all the rights set out in the United Nations Convention on the Rights for the Child and the O.A.U. Charter on the Rights and Welfare of the African Child with appropriate modifications to suit the circumstances in Malawi that are not specifically mentioned in this Act.

23rd December, 2005

241

SECOND SCHEDULE
CHILD (CARE, PROTECTION AND JUSTICE) ACT

Section 29 (e)

Children charged with the following offences shall not be considered for diversion.

Offences

1. Rape
2. Attempted rape
3. Abduction
4. Defilement of a girl under 13 years and attempted defilement
5. Defilement of an idiot or imbecile
6. Manslaughter
7. Murder
8. Attempted murder
9. Infanticide
10. Killing an unborn child
11. Disabling in order to commit a felony or misdemeanour
12. Stupefying by overpowering drug or thing with intent to commit a felony or misdemeanour
13. Robbery with violence
14. Attempted robbery with violence
15. House breaking and burglary
16. Arson
17. Offences against Aircraft
18. Offences against motor vehicles, trains, etc.
19. Conspiracy to murder
20. Aiding suicide
21. Acts intended to cause grievous harm or prevent arrest
22. Preventing escape from a wreck
23. Maliciously administering poison with intent to harm
24. Intentionally endangering safety of persons travelling by railway
25. Accessory after the fact to murder.

THIRD SCHEDULE
CHILD (CARE, PROTECTION AND JUSTICE) ACT

Section 30

DIVERSION OPTIONS

CATEGORY A

Category A diversion options are—

- (1) An oral or written apology to the victim or victims of the offence or to any other specified person or institution;
- (2) A formal caution with or without conditions;
- (3) Placement under a supervision and guidance order placing the child under the supervision and guidance of a mentor or peer role model for a period not exceeding three months in order to monitor and guide the child's behaviour;
- (4) Placement under a reporting order requiring a child to report to a specified person at a time or at times specified in such order so as to enable such person to monitor the child's behaviour for a period not exceeding three months;
- (5) The issue of compulsory school attendance order for a period not exceeding three months requiring the child to attend school everyday for a specified period of time, which attendance shall be monitored by a specified person;
- (6) The issue of a family time order requiring the child to spend a number of hours with his family for a period not exceeding three months;
- (7) The issue of a positive peer association order requiring a child to associate with persons who can contribute to the child's positive behaviour for a period not exceeding three months;
- (8) The issue of a good behaviour order requiring a child to abide by an agreement made between the child and his family to comply with certain standards of behaviour;
- (9) The issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place;
- (10) Referral to counselling or therapy for a period not exceeding three months;
- (11) Compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a period not exceeding five hours each week, for a maximum of three months;
- (12) Symbolic restitution of an object owned, made or bought by a child to a specified person, persons, group or institution;
- (13) Restitution of a specified object to a specified victim or victims of the alleged offence where the object concerned can be returned or restored; and
- (14) Any order removing the child from undesirable environment for a specified period.

23rd December, 2005

243

CATEGORY B

Category B diversion options are—

- (1) Any of the options under Category A provided that where a maximum period has been imposed under paragraphs (3), (4), (5), (6), (7), (8), (9), and (10), the maximum period shall not exceed six months;
- (2) Compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a period not exceeding eight hours each week, for a maximum of six months;
- (3) Performance without remuneration of some service for the benefit of the community under the supervision or control of an organization or institution, or a specified person or group identified by the probation officer for a maximum period of fifty hours, and to be completed within a maximum period of six months;
- (4) Provision of some service or benefit to a specified victim or victims which the child or the family can afford;
- (5) Payment of compensation to a maximum of K10,000 to a specified person, persons, group or institution where the child or his family is able to afford this;
- (6) Where there is no identifiable person or persons to whom restitution or compensation could be made, provision of some service or benefit or payment of compensation to a community organization, charity or welfare organization;
- (7) Referral to appear at a victim-offender mediation or other restorative justice involving family members at a specified place and time; and
- (8) Any two of the options listed used in combination.

CATEGORY C

Category C diversion options are—

- (1) Referral to a programme with a residential requirement, where the duration of the programme does not exceed six months, and no portion of the residence requirement exceeds a maximum of thirty-five nights during the operation of the programme;
- (2) Performance without remuneration of some service for the benefit of the community under the supervision and control of an organization or institution, or a specified person or group identified by the probation officer for a maximum period of two hundred fifty hours, to be completed within a maximum period of twelve months;

- (3) Where a child is and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a maximum period of not more than thirty-five hours per week, to be completed within a maximum period of six months;
- (4) Referral to counselling or therapeutic intervention which shall be in conjunction with any of the options listed in this category.

FOURTH SCHEDULE

CHILD (CARE, PROTECTION AND JUSTICE) ACT

Section 58

Child offenders charged with the following offences shall be detained in accordance with section 58

1. Offences punishable by death
2. Attempting to murder.
3. Attempting to murder by convict
4. Accessory after the fact to murder
5. Written threats to murder
6. Conspiracy to murder
7. Aiding suicide
8. Disabling in order to commit felony or misdemeanour
9. Stupefying in order to commit felony or misdemeanour
10. Acts intended to cause grievous harm or prevent arrest
11. Preventing escape from wreck
12. Intentionally endangering safety of persons travelling by railway
13. Attempting to injure by explosive substance
14. Maliciously administering poison with intent to harm
15. Infanticide
16. Manslaughter

23rd December, 2005

245

FIFTH SCHEDULE
CHILD (CARE, PROTECTION AND JUSTICE) ACT

Section 64

REFORMATORY CENTRE AND SAFETY HOME ORDER

IN THE CHILD JUSTICE COURT SITTING AT ...

CHILD CASE NUMBER

.....
(hereinafter called the child) who appears to the court to be a child having been
born as far as can be ascertained, in or about the day of
..... 20..... has this day *been found to be responsible for or having been
charged with the following offences

.....
or * having been found to be in need of care, control and protection.

IS HEREBY ORDERED to be sent FORTHWITH (or on the day of
..... 20.....) to a reformatory centre/ safety home to be
kept there until the child has been released on the recommendation of the Child
Case Review Board or until the child has been discharged/released on
bail/acquitted.

AND it is further ordered that the Police officers of the Republic or
..... shall be responsible for conveying the child to such
reformatory centre/safety home as may be specified by the Child Case Review
Board.

*AND it is further ordered that residing at
..... being the parent or guardian or other person hitherto
having custody of the child shall pay to the weekly
(monthly) sum of until the child ceases to be subject to this
order.

*AND it is further ordered that until the child is sent to the said reformatory
centre/safety home in pursuance of this order he or she shall be kept in
..... or is committed to the custody of

Dated this Day of 20

.....
Magistrate/Chairman

*Delete if inappropriate

SIXTH SCHEDULE
CHILD (CARE, PROTECTION AND JUSTICE) ACT
Section 76
REFORMATORY CENTRE AND SAFETY HOME
(MANAGEMENT) RULES

- Citation 1. These Rules may be cited as Reformatory Centre and Safety Home (Management) Rules.
- Minimum standards of safety homes 2. Reformatory centres and safety homes shall provide for the following minimum services and conditions—
(a) education, recreation and health care;
(b) parent/child interaction centre;
(c) counselling services;
(d) proper hygiene and sanitation;
(e) adequate nutrition, proper clothing and bedding; and
(f) communication materials.
- Other services 3. In addition to the services mentioned in rule 2, reformatory centres and safety homes may where circumstances do require, facilitate any other services by allowing service providers access to the centre or home or by allowing children to have access to the services.
- Records 4. The officer In-charge of a reformatory centre or a safety home shall keep a register in which details each.
- Inspection of the Register by the Board. 5. Details of the register shall be examined by the Board.

23rd December, 2005

247

[Subsidiary]

Child Justice Courts Designation Notice

SUBSIDIARY LEGISLATION

CHILD JUSTICE COURT DESIGNATION NOTICE

DESIGNATION NOTICE

Under section 50

The Chief Justice has designated the following courts to exercise jurisdiction under the Act—

SEVENTH SCHEDULE

Under section 129

PRESCRIBED FORM OF ACCOUNT OF A CHILD'S ESTATE

I of
do solemnly and sincerely declare that the estate of (name of child
children) is
as follows—

Description of property.....

Income (monthly, quarterly, yearly).....

Bank Details (account number, balance etc).....

AND I MAKE this solemn declaration, conscientiously believing the same to be true [and by virtue of the Oaths, Affirmations and Declarations Act].

Declared at this Day of
20.....

Before me

.....
[Commissioner for Oaths]

248

23rd December, 2005

EIGHTH SCHEDULE
FOSTER-CARE PLACEMENTS
Section 144

FORM 1

APPLICATION TO FOSTER A CHILD

Name of applicant

Married/Single age

Address

..... Tel. No.:

Number of children age

Employment of applicant.....

Employment of husband.....

Employment of wife

Other sources of income (e.g. farm).....

Have you ever fostered a child/children before? (If so give particulars)

.....
.....

Reasons for foster

Are you willing to undertake short term fostering?

Names of referees and their addresses (one shall be your local or Village Chief)

.....

1.

.....

.....

2.

.....

Age range Sex of child you wish to foster

Applicant's signature

Date

23rd December, 2005

249

FOSTER-CARE PLACEMENTS

section 150

FORM 2

FORM OF UNDERTAKING

(To be filled in Triplicate)

I/we (names of foster parents)

Who received (name of child).....

Into my/our home on (date)

From (name of District Social Welfare Office)

Undertake that—

1. I/we will care for (name of Child)
as though he /she were my/our own child.
2. I/we will bring him/her up in accordance with the
.....
3. I/we will look after his/her health and allow him/her to be medically
examined as required by the District Social Welfare Office.
4. I/we will allow an Officer of the District Social Welfare Office or
representative of the Ministry to visit my/our home, and to see the child
at any time.
5. I/we will inform the District Social Welfare Office immediately if the
child is seriously ill, or is missing, or is involved in an accident, or is in
any kind or trouble.
6. I/we will inform the District Social Welfare Office immediately if I/we
plan to change residence and address.
7. I/we understand that an Officer of the District Social Welfare Office has
the right to remove the child from my/or home in certain circumstances.

.....
(Signed, Foster Father)

.....
(Signed Foster Mother)

.....
(Address of Foster Parent)

250

23rd December, 2005

CERTIFICATE

I (Title)
Certify that I have explained the foregoing undertaking in the
..... language to
..... and
foster parent(s).

Signed
(*District Social Welfare Officer*)

Signed
(*Witness*)

.....
(*Address of Witness*)

.....
(*Address of District Social Welfare Office*)

Date:.....

23rd December, 2005

251

FOSTER-CARE PLACEMENTS

section 159

FORM 3

PROSPECTIVE FOSTER PARENT RECORD

Name of Prospective Foster Parent(s).....

Date of Birth.....

Age

District of Origin

Religion

Occupation

Marital Status of Prospective Foster Parent(s)

Is the relationship monogamous or polygamous?.....

Home Address

T/A

Village

.....

District

.....

Details of other people living in the home:

Name	Relationship to Prospective Foster Parent	Age	School/Class Occupation
.....
.....
.....
.....

Is there or has there been any serious illness/infection in the family? (If any, give details)

.....

252

23rd December, 2005

State the income and wealth of the prospective foster parents. Give details of business and land owned by the family/person.

Description of the home

.....

.....

Number of Rooms Type of Toilet

Type of Water Supply

Will the family/person need material support in order to start fostering? If the answer is "yes" state what will be needed?

.....

.....

Why does this family/person wish to foster children?

.....

.....

.....

Do they understand the temporary nature of fostering?.....

Has the person/any member of the family had a serious conviction (if YES), give details and dates and state whether in your opinion it is of such seriousness as to prevent the family/person from taking on a foster placement?

.....

.....

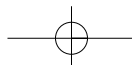
Assessment of the suitability of that family/person to foster children.

.....

.....

Recommendation

What type of foster child would best benefit from this family/person? (baby, child, male, female, etc).



23rd December, 2005

253

.....
.....
.....
Details of Foster Child (Children) already placed with foster parents.

Name of Foster	Sex	Date of placement	Age at date of placement	Date of termination	Why terminated
.....
.....
.....

.....
.....
.....
.....
Details of parents and siblings of foster children if known.

Name of Foster Child	Names of Parents	Names of brothers/sisters of foster child	Sex	Age	Religion	Address
.....
.....
.....

Name of Supervising Officer

Signature

Address

Date

254

23rd December, 2005

FOSTER-CARE PLACEMENTS

Section 159

FORM 4

FOSTER CHILD CASE RECORD

Name of child (surname first)

Date of Birth Age

District of Origin

Sex Religion

Name of Foster Parents

Foster Parent's Home Address

Change of Address

T/A

Village

District

Natural Father's Name Alive/Dead/Unknown

Natural Mother's Name Alive/Dead/Unknown

*Natural Father or
Guardians Address*

*Natural Mother or
Guardians Address*

T/A

Village

Details of Foster Child brothers, sisters and relative.

Name

Addresses

Alive/Dead

.....
.....
.....

23rd December, 2005

255

Where was the child living immediately prior to this foster placement? (Please give names and addresses of carers or institution).

.....
.....
.....
.....

CASE HISTORY OF THE CHILD AND HIS/HER FAMILY

.....
.....
.....
.....
.....
.....
.....

State what efforts have been made to trace the parents or relatives and to return the child to his/her family.

.....
.....
.....

Details of medical history including immunization.

.....
.....
.....

Give details of education.

School..... class.....

Name of supervising officer.....

Address.....

Date..... Supervisor's Signature.....

NINTH SCHEDULE
AMENDMENTS AND REPEALS

Section 191

<i>First Column</i>	<i>Second Column</i>
1. Affiliation Act: Cap 26:02	The whole Act is repealed.
2. Children and Young Person's Act: Cap 26:03	The whole Act is repealed.
3. Adoption of Children Act: Cap 26:01	<p>The Act is amended by—</p> <p>(a) the insertion, after section 3 of the following section—</p> <p>3A.—(1) Subject to the provisions of this Act, a court may make an inter-country adoption order as an alternative means of care and protection of a child who cannot be placed under foster care or in an adoptive family or who cannot in any suitable manner be cared for in Malawi.</p> <p>(2) A court shall not make an inter-country adoption order unless the Minister after consultation with competent authorities of the receiving country determines that—</p> <p>(a) the applicants are eligible to adopt the child;</p> <p>(b) the applicants have been counselled as may be necessary;</p> <p>(c) the child is or will be authorized to enter and reside permanently in the receiving country;</p> <p>(d) the applicant or one of the applicants, if not a relative of the child has, while in Malawi, fostered the child for a period of one year prior to the application; and</p> <p>(e) the receiving country is a signatory to and has implemented the United Nations Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption.</p> <p>(3) For the purposes of this section, inter-country adoption means an adoption in which the applicant intends to</p>

23rd December, 2005

257

take the adopted child outside Malawi within a period of one year from the date of the application.

(4) An adoptive parent who adopted a child otherwise than under the provisions of this section shall not subsequently take the child outside Malawi without leave of the court.

(b) deleting subsection (2) of section 6 and substituting therefore the following—

“(2) An adoption order shall not deprive the adopted child or person of any right to or interest in property to which the child is entitled under any intestacy occurring before the adoption order, or under a disposition, whether made before or after the making of the adoption order”.

(c) the insertion, after section 6, of the following section—

“Devolution where an adopter dies intestate”

6A Where an adopter dies intestate, the property of the adopter shall devolve in all respects as if the adopted child or person was the natural child of the adopter.”

(d) deleting section 9 and substitute it as follows.

“Jurisdiction

9.—(1) Subject to subsections (2) and (3), the court having jurisdiction to make an adoption order under this Act is a child justice court established under the Child (Care, Protection and Justice) Act

(2) Where the application is for an inter-country adoption order, the court having jurisdiction to make the order is the High Court.

(3) If owing to special circumstances, an application appears to a child justice court to be more fit to be dealt with by the High Court, the court may order that the matter be transferred to the High Court.

(4) For the purposes of any application under this Act, the court shall appoint some person or body to act as a guardian

ad litem of the infant upon the hearing of the application to safeguard the interests of the infant before the court.

(e) the insertion, after section 11, of the following sections—

“Disclosure of information of adoptive status to the adopted child

11A.—(1) An adopter may inform the adopted child or the person of the fact that the child or person is adopted and of his parentage but such disclosure shall only be made if it is in the best interest of the child or person after considering his age and mental maturity.

(2) No person other than the adopter shall disclose adoption to the adopted child or person.

(3) Any person who contravenes this section (2) commits an offence and shall be liable to a fine of Fifty Thousand Kwacha and imprisonment for one year.

Post adoption contracts with natural parents or family members

11B Where an adopted child knows of his adoptive status, the adopter shall not refuse or obstruct contacts by the child with the child’s natural parents or with other members of the child’s natural family, unless it can be shown on reasonable grounds that such contacts would not be in the best interests of the child.

(f) the deletion of section 3 (5).

(g) the deletion from the Adoption of Children (Subordinate Court) rules of—

(a) the definition of “the court” in rule 2;

(b) rule 16.

The Act is amended—

(a) In section 21 by inserting the following new subsection—

“(3) No person under the age of ten years shall be employed”.

(b) in section 22 (1) by deleting the words “between the age of fourteen and eighteen years”, and substituting the words “below eighteen years of age”.

4. Employment Act No. 6 of 2000

23rd December, 2005

259

(c) by the insertion, after section 23, of the following new section—

“Prohibition
of child
labour at
night

23A.—(1) No person shall engage a person under the age of fourteen years in night work.

(2) For the purposes of this section, night work constitutes work between the hours of eight o’clock in the evening and six o’clock in the morning”.

- 5. Court Act Cap 3:02 . . .
- 6. Births and Deaths
Registration Act Cap.
24:01

The Act is amended by deleting section 39 (2) (d).

The Act is amended by the repeal of section 6.