

CHILDREN'S AUTHORITY (AMENDMENT) BILL, 2008

EXPLANATORY NOTES

(These notes form no part of the Bill but are intended only to indicate its general purport)

The Bill seeks to amend the Children's Authority Act, 2001.

The Bill would contain perambulatory clauses which would declare that this Act is one which shall have effect even though inconsistent with sections 4 and 5 of the Constitution and one which has been passed by both Houses of Parliament with a final vote of not less than three-fifths of all members of both Houses.

Clause 1 of the Bill would contain the short title of the Bill.

Clause 2 of the Bill would declare that this Act shall have effect even though inconsistent with the Constitution.

Clause 3 of the Bill would provide for the interpretation of certain words in the Bill.

Clause 4 of the Bill seeks to amend section 3 of the Children's Authority Act (hereinafter referred to as "the Act") to amend a number of definitions, to delete the definition of "Assumption Order" and to insert a new definition of "child in need of care and protection".

Clause 5 of the Bill would made an editorial amendment.

Clause 6 of the Bill seeks to amend the Act to include a new section 3A which would set out the objects of the Act to promote the well being of all children in Trinidad and Tobago as well as provide care and protection for vulnerable children while complying with certain obligations under the UN Convention on the Rights of the Child.

Clause 7 of the Bill deletes section 5 of the Act and substitutes a new section 5 which would include additional powers for the Authority including the power to remove a child from his home where investigations have shown that the child is in imminent danger..

Clause 8 of the Bill seeks to delete section 5A of the Act which made the Children's Authority the Central Authority for the purpose of the Hague Convention. Separate discreet legislation would now deal with the obligations of Trinidad and Tobago under the Hague Convention. A new section 5A would be inserted to provide the requirements to be followed by the Authority in respect of the adoption of children.

Clause 9 of the Bill seeks to amend section 6 of the Act by deleting subsection (1) and substituting a new subsection (1) which will set out additional duties of the Authority. These include duties in respect of the recognizing the rights of parents and children to be

heard and a fair hearing, the provision of accommodation, the taking of steps to prevent the ill-treatment and abuse of children, the provision of services for advice and counselling and other social services. The clause goes on to amend subsection (2) to remove the reference to raising the child in his “creed” and the reference to giving the child medical care “recognised and permitted under the laws of Trinidad and Tobago”. The clause also provides for other things to be taken into account when determining what is in the best interest of the child.

Clause 10 of the Bill seeks to amend section 7 of the Act to change the composition of the Board from eleven to twelve members and having regard to the human resource constraints to provide that either a child psychologist or child psychiatrist be appointed to the board rather than a requirement for both. The social worker on the Board would now be required to have specific training and experience. The requirement for a public health specialist was substituted with a requirement for a paediatrician. The qualifications for the attorney-at-law were amended to remove the number of years. The representative of the Tobago House of Assembly would now be required to have experience in children’s issues and the representative of the police force would be changed from a person above the rank of inspector to a person above the rank of corporal. The Board would now also include the Chief Probation Officer or his nominee and the Director who would be an *ex officio* member. The clause would also now provide that an appointment may be terminated where a member has been absent for three consecutive duly constituted meetings rather than simply two consecutive meetings.

The clause also amends the quorum of the Board from seven members to five inclusive of the Chairman or Deputy Chairman and where the Board sits to make a decision and the voting number is even, the Chairman would have a casting vote. The clause would also now provides that the President may appoint persons to act for members who are unable to perform. The clause goes on to provide for the selection of a person from amongst the members of the Board to act as Chairman or Deputy Chairman where they are absent from a meeting.

Clause 11 of the Bill seeks to insert a new section 7A to provide for the establishment of a committee of the Board to deal with matters relating to the adoption of children. The clause would provide for the composition of the committee similar to what obtained under the Adoption of Children Act, 2000.

Clause 12 of the Bill seeks to amend section 8 of the Act to provide for the Seal of the Authority to be kept by the Director rather than the Chairman or Deputy Chairman and require the Director, Secretary or such other person authorized by the Board to sign documents required to be under seal and the decisions of the Authority.

Clause 13 of the Bill would seek to amend section 9 of the Act to provide for service to be effected upon the Director of the Authority rather than the Chairman.

Clause 14 of the Bill would seek to amend section 10 of the Act to provide for the appointment of Deputy Director and an Assistant Director to assist the Director with the

day-to-day functions of the Authority and for the appointment of a Secretary to the Board. The clause would also be amended so that the Board can also delegate functions to other specific officers employed by the Authority.

Clause 15 of the Bill would amend section 11 to now to empower the Minister to prescribe units and centres for the Authority as the Board advises and specifically provides for the inclusion of an Adoption Unit and a Foster Care Unit.

Clause 16 of the Bill would delete sections 12 and 13 of the Act, as the Co-ordinating Unit will no longer exist.

Clause 17 of the Bill would amend section 14 of the Act to provide that the requirement for the establishment of Assessment and Support Centres and Reception Centres not to be tied to a particular unit. The clause also makes editorial amendments as well as the extension of the period of time for a child to be in a reception centre from six weeks to twelve weeks. The requirement in subsection (4) for the Reception centres to be staffed with certain persons is removed and the requirements would now be for the Reception Centres to have the service available. The clause would also provide that the Authority be empowered to make other arrangements for the availability of qualified personnel that it may need from time to time.

Clause 18 of the Bill would delete section 15 of the Act as the Research Unit would no longer be specifically provided.

Clause 19 of the Bill seeks to amend section 17 of the Act to provide that the period of secondment would be for three years and would only be extended up to a maximum period of five years.

Clause 20 of the Bill seeks to amend section 18 to make editorial amendments.

Clause 21 of the Bill seeks to amend section 19 of the Act to remove the reference to approved pension scheme and substitute a reference to approved pension plan. The clause also removes the power of the Authority to give donations or subscriptions to charitable institutions, benevolent funds and other objects calculated to benefit its employees under a pension plan.

Clause 22 of the Bill seeks to amend section 21 of the Act to provide for the consequential duty on the Authority to follow the directions given by the Minister on policy matters.

Clause 23 of the Bill seeks to amend section 22 of the Act by deleting subsection (1) and substituting new subsections (1) and (1A) which would deal with the reception of a child by the Authority and to create a definition of “a child in need of care and protection”.

Clause 24 of the Bill seeks to delete the sections 23 and 24 of the Act and substitute new sections 23 and 24 which would set out a new procedure for a child who is received into

the care of the Authority. The new procedure would entail the Authority approaching the court for the child to be made a ward of the Court as well as the joining of parents to a Wardship proceeding or applications for orders to be made *ex parte*. Provision is also made for the objections of the parents or guardians of the child to such wardship order.

Clause 25 of the Bill would delete section 25 of the Act and substitute a new section 25 which would contain new orders that the court can make in respect of a child.

Clause 26 of the Bill would insert new sections 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H and 25I which would describe the new orders under clause 18 that the court can make in respect of a child. The orders include Family Assistance Order, Secure Accommodation Order, Care Order, Child Assessment Order, Emergency Protection Order, Recovery Order, Fit Person Order, Recognisance Order, Foster Care Order and Orders freeing a child for adoption.

Clause 27 of the Bill would delete sections 26 and 27 of the Act and substitute new sections 26 and 27. The new section 26 would empower the court to appoint a guardian *ad litem* for any child before it where it deems it necessary to so appoint and the new section 27 which would empower the court make an order requesting the Attorney General assign an appropriate office from the Civil Law Department to represent any child before the court, where the court deems it necessary to do so.

Clause 28 of the Bill seeks to amend section 28 to remove the offence of preventing a person from returning a child to place from which he had run away and to increase the penalty for a person who assists, induces or attempts to induce a child to run away or harbours or conceals a child who has run away from the care of the Authority from \$1,500 and community service to imprisonment for twenty-five years.

Clause 29 of the Bill would delete section 29.

Clause 30 of the Bill seeks to amend section 30 of the Act to remove the references to assumption of care of a child and change the reference to the “Psychiatric Hospital Director” as the person so named under the Mental Health Act, Chap. 28:02 to a person who is the “director of a psychiatric hospital”. This is to avoid limiting the section to the Psychiatric Hospital Director under the Mental Health Act.

Clause 31 of the Bill would amend section 31 of the Act to make an editorial amendment as well as create a duty on the Authority to keep a record of the names and addresses of the parents of children in the care of the Authority.

Clause 32 of the Bill would delete section 32 and substitute a new section 32 to require the Authority to apply to the court for an order to prevent a person from leaving the country rather than to the Chief Immigration Officer.

Clause 33 of the Bill would seek to amend section 33 of the Act to make the court referred to as court with criminal jurisdiction. The clause would also require the court

direct that the child be brought before the Authority rather than before another court for an order to be made. Subsection (2) is consequentially deleted.

Clause 34 of the Bill would make an editorial amendment to section 34(2) of the Act.

Clause 35 of the Bill would amend section 35 of the Act to allow the authority to defray the cost of a child staying in a hostel where it made arrangements for that child to go into the hostel.

Clause 36 of the Bill would delete section 35A of the Act which required the President to convey land to private individuals for the establishment of community residences.

Clause 37 of the Bill would amend section 36 of the Act to make the court the functionary required to give consent for the emigration of a child rather than the Minister. The clause goes on to alter the test for the determination of the requirement of the order, from what would benefit the child to what would have been in the best interest of the child. The clause is also amended to provide the necessary legal requirements for the child's emigration to the destination country and the wishes of the child be taken into account rather than the consent of the child being obtained. Subsection (3) is consequentially deleted.

Clause 38 of the Bill would delete section 37(3).

Clause 39 of the Bill seeks to amend section 39 of the Act to require the Authority to seek contributions from the parent of a child discretionary rather than mandatory.

Clause 40 of the Bill would make cross-reference amendments to section 40 of the Act.

Clause 41 of the Bill would make editorial amendments to section 41 of the Act.

Clause 42 of the Bill seeks to amend section 43 of the Act to delete subsections (2) and (3).

Clause 43 of the Bill seeks to amend section 44 of the Act in respect of the reference to Contribution Order for the purpose of clarity.

Clause 44 of the Bill seeks to make an editorial amendment to section 46 of the Act.

Clause 45 of the Bill would amend section 50 to make editorial amendments.

Clause 46 of the Bill seeks to insert a new section 51 to empower the Rules Committee of the Supreme Court of Judicature to make rules for the purposes of this Act and a new section 52 would provide that an application for judicial review of decisions of the Children's Authority shall be made to the Family Court.

Clause 47 of the Bill would amend the Schedule to the Children's Authority Act to delete incorrect references in the Acts listed.

A BILL

An Act to amend the Children's Authority Act, 2000

Preamble. WHEREAS it is enacted by section 13(1) of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution, and if any Act does so declare it shall have effect accordingly:

And whereas it is provided in subsection (2) of the said section 13, that an Act of Parliament to which that section applies is one of the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all members of the House:

And whereas it is necessary and expedient that this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment. ENACTED by the Parliament of Trinidad and Tobago as follows:

- Short title. 1. This Act may be cited as the Children's Authority (Amendment) Act, 2008.
- Inconsistency with the Constitution. 2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.
- Interpretation. 3. In this Act "the Act" means the Children's Authority Act, Act No. 65 of 2000.
- Section 3 amended. 4. Section 3 of the Act is amended -
- (a) by deleting the definition of "Assumption Order";
 - (b) by inserting after the definition of "child" the following new definition:

“ “child in need of care and protection”
means a child referred to in section
22(1);”;

- (c) by deleting the definition of “Children’s Home” and substituting the following:

“ “Children’s Home” has the meaning
assigned to it by the Children’s
Community Residences, Foster
Care and Nurseries Act, 2000;”;

- (d) by deleting the definition of “Community Residence” and substituting the following in the appropriate alphabetical sequence:

“ “Community Residence” means a
Children’s Home or Rehabilitation
Centre licensed under the Children’s
Community Residences, Foster
Care and Nurseries Act, 2000;”;

- (e) by deleting the definition of “fit person” and substituting the following definition:

“ “fit person” means a relative of the child or such
other person, including a body corporate,
authority, agency or society established for
the reception of children and young
persons to whom this Act applies and who
is found by the court to be a suitable person
to care for the child;”;

- (f) in the definition of “foster care” by deleting the words “Foster Homes” and substituting the words “Foster Care”;

- (g) by inserting after the definition of “guardian” the following new definition:

“ “imminent danger” means likelihood of physical,
emotional , mental or psychological harm;”;

- (h) by deleting the definition of “Minister” and substituting the following definition:

“ “Minister” means the Minister with

responsibility for the Children’s Authority;”;

- (i) by deleting the definition of “Rehabilitation Centre” and substituting the following definition:

“ “rehabilitation centre” has the meaning assigned to it by the Children’s Community Residences, Foster Care and Nurseries Act, 2000;”;

- (j) by deleting the definition of “relative” and substituting the following definition:

“ “relative” includes–

- (a) a parent;
- (b) a step-parent;
- (c) a grand parent;
- (d) a brother or sister, whether of whole or half-blood; or
- (e) an uncle or aunt, whether of whole or half-blood;”;

- (k) by deleting the definitions of “young person” and “temporary assumption”.

Act amended.

5. The Act is amended by-

- (a) deleting the words “Children’s Community Residences, Foster Homes and Nurseries Act, 2000” wherever they occur and substituting the words “Children’s Community Residences, Foster Care and Nurseries Act, 2000”; and
- (b) deleting the words “Reception Center” and “Reception Centers” wherever they occur and substituting the words “Reception Centre” and “Reception Centres” respectively.

Section 3A inserted.

6. The Act is amended by inserting after section 3 the following new section:

“Objects of the Act

3A. The objects of this Act are to-

- (a) promote the well being of all children in Trinidad and Tobago;
- (b) provide care and protection for vulnerable children; and
- (c) comply with certain obligations under the United Nations Convention on the Rights of the Child.”.

Section 5 repealed and new section substituted.

7. The Act is amended by repealing section 5 and substituting the following new section:

“Powers and functions of the Authority.

5.(1) The Authority may have and exercise such powers and functions as are conferred on it by this Act and in particular may-

- (a) provide care, protection and rehabilitation of children in accordance with Part III of this Act;
- (b) investigate and make recommendations with respect to the adoption of children in accordance with the Adoption of Children Act, 2000;
- (c) investigate complaints made by any person with respect to any child who is in the care of a community residence, foster home or nursery, that the said residence, home or nursery failed to comply with the requisite standards prescribed under the Children’s Community Residences, Foster Care and Nurseries Act, and any incident of mistreatment of children in such places;
- (d) investigate complaints or reports of

mistreatment of children;

- (e) upon investigation remove a child from his home where it is shown that the child is in imminent danger;
- (f) monitor community residences, foster homes and nurseries and conduct periodic reviews to determine their compliance with such requirements as may be prescribed;
- (g) issue, suspend and revoke licences of community residences and nurseries as provided under the Children's Community Residences, Foster Care and Nurseries Act;
- (h) advise the Minister on matters relating to the operation of this Act; and
- (i) do all such things as may be necessary or expedient for the proper performance of its duties.

(2) In the course of exercising its powers under subsection (1), the Authority may provide the following services to children assessed by the Authority to be in need of those services, while they are living with their families:

- (a) advice, guidance and counselling;
- (b) occupational, social, cultural or recreational activities;
- (c) home help; and
- (d) facilities for or assistance with travelling to and from home for the purpose of accessing

any other service provided by the Authority or any similar service.”.

Section 5A repealed and new section substituted.

8. The Act is amended by repealing section 5A and substituting the following:

“ 5A. In exercising its powers in relation to the adoption of children, the Authority shall –

- (a) receive applications from parents, guardians and prospective adopters in respect of the adoption of children;
- (b) make such investigations concerning the adoption of children for the consideration of the Court as may be prescribed;
- (c) make recommendations to the Court as to whether in its view the adoption is in the best interest of the child whose adoption is sought;
- (d) advise the Minister regarding adoption matters generally; and
- (e) listen to the views of the child.

Section 6 amended.

9. Section 6 of the Act is amended -

- (a) by repealing subsection (1) and substituting the following new section:

“Duties of the Authority.

6.(1) It shall be the duty of the Authority to-

- (a) promote the well being of the child;
- (b) recognize and give effect to the right of the parent to be heard and the right of the parent to a fair hearing;
- (c) act as an advocate to promote the rights of all

children in Trinidad and Tobago;

- (d) take all reasonable steps to ensure the availability of accommodation necessary for compliance with this Act;
- (e) take all reasonable steps to ensure the availability of staff required for proper implementation of the Act inclusive of programmes for training;
- (f) take all reasonable steps to prevent children from suffering ill-treatment or neglect;
- (g) promote contact between the child and-
 - (i) his parents;
 - (ii) any person who is not his parent but who has parental responsibility for him; or
 - (iii) any relative, friend or other person connected with him, except where it is not reasonably practicable or is prejudicial to the welfare of the child;
- (h) exercise such powers as are conferred on it by this Act and as may be necessary with respect to any child so as to serve the best interests of that child;
- (i) make use of such facilities and services available for children that are provided by

other agencies or institutions, as appears reasonably necessary to the Authority.”; and

(b) in subsection (2) -

- (i) by inserting after the word “child” the word “;”;
- (ii) in paragraph (b)(i), by deleting the words “or creed”;
- (iii) in paragraph (b)(ii), by deleting the words “recognized and permitted under the laws of Trinidad and Tobago”;
- (iv) by inserting after paragraph (c) the following new paragraphs:
 - “(ca) where appropriate, preserving the family unit and reuniting the child with his relatives at the earliest opportunity;
 - (cb) the right of the child to the enjoyment of family life;
 - (cc) the right of the child to be heard;
 - (cd) the right of the child to representation and a fair hearing; and
 - (ce) any other relevant support necessary for the well being of the child;”;
- (vi) in paragraph (f), by inserting before the word “other” the word “the”;
- (vii) in paragraph (h), by inserting after the words “domestic violence” the words “or any other form of abuse”; and
- (viii) in paragraph (i), by inserting after the words “to be” the word “of”.

Section 7
amended.

10. Section 7 of the Act is amended –

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

“ (2) The Board shall consist of no more than eleven persons and no less than seven persons who shall be appointed by the President and have the following qualifications and skills:

- (a) child psychology; or
- (b) child psychiatry; and
- (c) social work;
- (d) paediatrics;
- (e) education
- (f) accounting; and
- (g) family law.

(2A) The persons selected under subsection (1) shall include:

- (a) a person under the age of twenty-five years representing the youth appointed by the President;
 - (b) a person nominated by the Tobago House of Assembly with experience in children’s issues appointed by the President; and
 - (c) the Director of the Authority appointed under section 10 who should be an *ex officio* member of the Board.
- (b) in subsection (7)(e), by deleting the words “two consecutive meetings” and substituting the words “three consecutive, duly constituted meetings”;
- (c) in subsection (9), by deleting the words “shall” and “must” and substituting the words “may” and “shall”, respectively;
- (d) in subsection (10), by deleting the word “seven” and substituting the words, “five inclusive of the Chairman or Deputy Chairman”; and

- (e) by inserting after subsection (10) the following new subsections:
 - “ (10A) Where a decision is to be made by the Board and the number of members sitting to vote is even, the Chairman shall have a casting vote.
 - (10B) Where members are temporarily unable to perform their duties, the President may appoint other persons to act in their stead.”.

Section 7A inserted.

11. The Act is amended by inserting after section 7 the following new section:

“Adoption Committee.

7A. (1) Where a decision with respect to the adoption of a child arises, a committee of the Board to be known as the Adoption Committee shall sit to take such decision.

(2) The Adoption Committee shall consist of persons who have the following qualifications:

- (a) paediatrics;
- (b) law;
- (c) child psychology or child psychiatry; and
- (d) social work.

(2A) The following persons shall also be member of the Committee:

- (a) a person nominated by the Tobago House of Assembly with experience in children’s issues appointed by the President;
- (b) the representative of the Non-Governmental Organization; and

(c) the head of the Adoption Unit.

(3) Where the Adoption Committee makes a decision in respect of the adoption of a child such decision shall be ratified by the Board.

(4) The Adoption Committee shall elect one of their number to be the Chairman of the Committee.

(5) The Adoption Committee may regulate its own procedure.”.

Section 8 amended.

12. Section 8 of the Act is amended in –

- (a) subsection (1), by deleting the words “the Chairman, or in his absence the Deputy Chairman.” and substituting the words “the Director.”;
- (b) subsection (2), by deleting all the words after the words “an instrument” and substituting the words “by the Director or the Secretary.”; and
- (c) subsection (3), by deleting the words “Chairman, or in his absence the Deputy Chairman” and substituting the words “Director, Secretary or such other persons authorized to do so by the Board.”.

Section 9 amended.

13. Section 9 of the Act is amended by deleting the word “Chairman” and substituting the word “Director”.

Section 10 amended.

14. Section 10 of the Act is amended-

- (a) by inserting after subsection (1), the following new subsections:
 - “ (1A) The Board shall appoint two Deputy Directors and an Assistant Director who shall assist the Director with the day-to-day functions of the Authority.

(1B) The Board shall appoint a Secretary on such terms and conditions as it thinks fit.”; and

- (b) in subsection (2), by inserting after the word “Director” the words “or to the Deputy Directors”.

Section 11 repealed and new section substituted.

15. The Act is amended by repealing section 11 and substituting the following new section:

“Composition of Authority.

11. For the effective management of its duties and functions, the Authority shall have such units and centres including an Adoption Unit and a Foster Care Unit as may be prescribed by the Minister on the advice of the Board.”.

Sections 12 and 13 repealed.

16. The Act is amended by repealing sections 12 and 13.

Section 14 amended.

17. Section 14 of the Act is amended -

- (a) by repealing subsections (1) and (2) and substituting the following new subsections:

“Assessment and Support Centres and Reception Centres.

14.(1) The Authority shall maintain Assessment and Support Centres and Reception Centres.

(2) An Assessment and Support Centre shall be responsible for-

- (a) the initial assessment and referral of children coming to the attention of the Authority; and

- (b) where necessary, shall liaise with support services and agencies for counselling, investigations and continued management of cases,

and shall be staffed with social workers with experience in children's issues.”;

(b) in subsection (4), by deleting the words “be staffed with” and substituting the words “ have available to them”;

(c) by inserting after subsection (4) the following new subsection:

“ (4A) The Authority may also make other arrangements for the availability of such qualified personnel as it may need from time to time.”;

(d) in subsection (6), by deleting the words “the Reception” and “six” and substituting the words “a Reception” and “twelve” respectively;

(e) in subsections (2) to (5) by deleting the words “The Reception” wherever they occur and substituting the words “a Reception”.

Section 15
deleted.

18. The Act is amended by deleting section 15.

Section 17
amended.

19. Section 17 of the Act is amended-

(a) in subsection (1) by deleting the words “transferred on”;

(b) by repealing subsections (2) and (3) and substituting the following:

“ (2) Where secondment referred to in subsection (1) is effected, arrangements shall be made to preserve the rights of the officers seconded to any pension, gratuity or other allowance for which he would have been eligible had he not been seconded.

(3) A period of secondment shall be for three years and may only be extended once for a further period of up to two years.”.

Section 18
amended.

20. Section 18 of the Act is repealed and the following new section substituted:

“ 18. An officer in the public service may with the approval of the appropriate Service Commission consent to be transferred to the service of the Authority

Section 19
amended.

21. Section 19 of the Act is repealed and the following new section substituted: -

“ 19(1) The Authority shall provide for the establishment and maintenance of a pension plan or arrange for membership in a plan for its employees.

(2) A member of the public service who transfers to the Authority shall become a member of any pension plan operated for the benefit of employees of the Authority.

(3) Superannuation benefits which have accrued to any person who was transferred from the public service to the Authority under section 18, shall be preserved at the date of his transfer to the Authority and such person shall continue to accrue such benefits under the relevant pensions legislation up to the date -

(a) of the establishment of a pension plan under this section; or

(b) that arrangements are made for membership in a plan.

(4) Superannuation benefits accrued under subsection (3) shall be calculated on the basis of pay, pensionable emoluments or salary applicable to the office which the person held immediately prior to his employment by the Authority.

(5) Where a person who transferred from the

public service to the Authority dies or retires before-

(a) the establishment of a pension plan under this section; or

(b) arrangements could be made for membership in a plan,

and at the date of his death or retirement was in receipt of a salary higher than the pay, pensionable emoluments or salary applicable to the office which he held immediately prior to his employment by the Authority.

(6) The difference in superannuation benefits payable on the basis of the higher salary and those payable under the relevant pension legislation on the basis of the salary referred to in subsection (4) shall be paid by the Authority.

(7) Where a person who transferred from the public service to the Authority dies or retires while being a member of any pension plan-

(a) established by the Authority under this section; or

(b) in respect of which arrangements have been made for membership,

he shall be paid superannuation benefits at the amount which when combined with the superannuation benefits payable under subsection (3) is the equivalent to the benefits based on his pensionable service in the public service combined with his service in the Authority and calculated at the pensionable salary applicable to him on the date of his retirement or death.

Section 21 amended.

22. Section 21 of the Act is amended by inserting after the words “the Act” the words, “which the Authority shall follow”.

Section 22
amended.

23. Section 22 of the Act is amended-

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

“(1) Where the Authority is of the view that a child is in need of care and protection and that its intervention is necessary in the best interest of the child, it shall investigate the matter and it shall be lawful where appropriate for the Authority to receive the child, into its care.

(1A) A child is in need of care and protection where the child-

- (a) has neither parent nor guardian who is fit to exercise care and guardianship;
- (b) is lost or has been and remains abandoned by his parent or guardian;
- (c) whose parent or guardian is prevented by-
 - (i) reason of mental or bodily disease;
 - (ii) infirmity or other incapacity; or
 - (iii) any other circumstances,

from providing for his up-bringing, and there is no available person or persons capable, fit or willing to undertake the care of such child;

- (d) is exposed to moral danger;
- (e) is beyond the control of his parent or guardian;
- (f) is ill-treated or neglected in a manner likely to cause him suffering or injury to health;

- (g) is destitute or is wandering without any settled place of abode and without visible means of subsistence;
- (h) is begging or receiving alms;
- (i) is found loitering for the purpose of begging or receiving alms;
- (j) frequents the company of any criminal; or
- (k) frequents the company of any common or reputed prostitute not being the mother of the child.”.

- (b) in subsection (3), by deleting the words “parents or other persons” and substituting the words “parent or other person”.

Sections 23 repealed and new sections substituted.

24. The Act is amended by repealing sections 23 and 24 and substituting the following new section:

“Wardship of children in the care of the Authority.

23.(1) Where the Authority receives a child into its care under section 22, it shall immediately make an application to the court for-

- (a) a Wardship Order under the Family Law (Guardianship of Minors, Domicile and Maintenance) Act to be made in respect of the child and any other Order; or
- (b) an Order including an interim Order under section 25 that the Authority determines necessary.

Chap. 46:08

(2) Where the Authority makes an application for a Wardship Order in pursuance

of subsection (1), the Authority shall join the parent or guardian of the child in the application.

(3) An application for an interim order under subsection (1) may be made *ex parte*.

Section 25 repealed and new section substituted.

25. Section 25 of the Act is repealed and the following new section substituted -

”Powers of Court in respect of children in need of care and protection.

25. Where the Court is satisfied that a child brought before it by the Authority is a child in need of care and protection, the Court may make the following:

- “(a) a Family Assistance Order;
- (b) a Secure Accommodation Order;
- (c) a Care Order;
- (d) a Child Assessment Order;
- (e) an Emergency Protection Order;
- (f) a Recovery Order;
- (g) a Fit Person Order under the Children Act;
- (h) a Recognisance Order;
- (i) a Foster Care Order;
- (j) an Order freeing a child for adoption;
- (k) a Contribution Order under section 44; or
- (l) any other Order including an interim Order as the Court thinks fit.”.

Sections 25A to 25J inserted.

26. The Act is amended by inserting after section 25 the following new sections:

“Family Assistance Order.

25A. A Family Assistance Order made under section 25(a) shall be for the purpose

of counselling and any other relevant assistance deemed necessary for the well being of the child.

Secure
Accommodation
Order.

25B. A Secure Accommodation Order made under section 25(b) shall be for the purpose of restricting the liberty of the child where it appears to the Court that the child has a history of absconding and is likely to abscond from another type of accommodation where the child is likely to-

- (a) suffer significant harm if he absconds; or
- (b) injure himself or other persons if he is kept in any other kind of accommodation.

Care Order.

25C. (1) A Care Order made under section 25(c) shall be for the purpose of placing a child under the care of the Authority or a community residence.

(2) A Care Order under this section may be made on the application of the Authority, a probation officer or an officer of the National Family Services Division of the ministry with responsibility for the delivery of social services.

Child
Assessment
Order.

25D. (1) A Child Assessment Order made under section 25(d) shall be for the purpose of assessing –

- (a) the state of a child's health;
- (b) the child's development; or
- (c) the manner in which the child has been treated.

(2) The Court may make a Child Assessment Order where it is satisfied that-

- (a) the applicant has reasonable cause to suspect that the child is suffering or is likely to suffer physical, emotional, mental or psychological harm;
- (b) such an assessment is required to enable the applicant to determine whether or not the child is suffering or is likely to suffer harm; and
- (c) it will be unlikely that an assessment will be made or be satisfactory in the absence of the order.

(3) A Child Assessment Order-

- (a) shall specify the period of assessment and the date on which the assessment is to begin; and
- (b) may require the medical, psychiatric and psychological examination of the child.

(4) Where a Child Assessment Order states that a child shall be kept away from

his home, it shall specify the conditions under which the child may be so kept, including the degree of contact with other persons which shall be permitted during that period.

(5) Where the Court makes a Child Assessment Order the person who is in *de facto* control of the child or who is in a position to produce the child, shall comply with any direction in the Order and produce the child to the person named in the Order.

Emergency
Protection
Order.

25E.(1) An Emergency Protection Order under section 25(e) shall be made where the Court is of the view that-

- (a) the child is likely to suffer physical, emotional, mental or psychological harm;
- (b) enquiries as to whether the child is suffering or is likely to suffer physical, emotional, mental or psychological harm are being frustrated by access to the child being unreasonably refused and the applicant has reason to believe that access to the child is required as a matter of urgency.

(2) An Emergency Protection Order may-

- (a) direct a person named in the Order and who is in *de facto* control of the child or

who is in a position to do so, to produce the child to the applicant;

- (b) authorize the removal of a child from any place or the detention of a child at a community residence at any time;
- (c) prohibit the removal of the child from any place at which he was being accommodated immediately before the order was made;
- (d) give the applicant parental responsibility for the child;
- (e) limit the applicant to the exercise only of those powers which are specified in the Order;
- (f) determine the contact which is or is not allowed with any named person; and
- (g) require the medical, psychiatric and psychological examination of the child.

Recovery Order. 25F.(1) A Recovery Order under section 25(f) may be made where it appears to the court that there is reason to believe that a child-

- (a) has been unlawfully taken or is being unlawfully taken away from the person who has parental care and responsibility for the child;
- (b) has run away or is staying

away from the person who has parental care and responsibility for him; or

(c) is missing.

(2) A Recovery Order shall-

(a) direct any person who is in a position to do so, to produce the child on request to –

(i) any person specified in the Order;

(ii) a police officer; or

(iii) any other person who is authorized by the parent or any person in whose favour a Care Order or an Emergency Protection Order is made,

after the Recovery Order is made;

(b) authorize the removal of the child by any of the persons under paragraph (a); or

(c) authorize a police officer to enter premises specified in the order to search for the child, using reasonable force if necessary.

Fit Person Order.

25G. A Fit Person Order made under section 25(g) shall be an order under the Children Act directing a child to be put in the care of a fit person.

Recognizance Order.

25H. A Recognizance Order made

under section 25(h) shall direct the parent or guardian of a child to enter into recognizance to exercise proper care and guardianship over the child.

Foster Care Order.

25I. A Foster Care Order made under section 25(i) would direct the foster care unit under the Community Residences, Foster Homes and Nurseries Act, to place the child in foster care.

No. 65 of 2000

Order freeing a child for adoption.

25J. An Order freeing a child for adoption made under section 25(j) shall make the child available for adoption under the Adoption of Children Act.”.

No. 67 of 2000

Sections 26 and 27 repealed and new sections substituted.

27. The Act is amended by repealing sections 26 and 27 and substituting the following new sections:

“Appointment of a guardian *ad litem*.

26. Where in a matter before the Court under this Act, a child is before the Court, it may, where it considers it necessary, appoint a guardian *ad litem* to represent the views of the child and act in his interest.

Appointment of an officer of the Civil Law Department.

27. Where in a matter before the Court under this Act, a child is before the Court, it may, where it considers it necessary, make an order requesting the Attorney General to assign the appropriate officer

from the Civil Law Department to represent any child before the court.”.

Section 28 amended.

28. Section 28 of the Act is amended by -

- (a) deleting paragraph (a); and
- (b) deleting all the words after the words “and shall” and substituting the words “be liable on conviction to imprisonment for a term of not less than twenty-five years.”.

Section 29 repealed.

29. The Act is amended by repealing section 29.

Section 30 amended.

30. Section 30 of the Act is amended -

- (a) by repealing subsection (1) and substituting the following:

“(1) Where a child has been received into the care of the Authority and subsequently that child is determined to be mentally ill under the Mental Health Act, and such determination results in the admission of the child to a psychiatric hospital, if there is no one willing and able to assume responsibility for the child, the Authority shall continue to exercise responsibility and rights in respect of that child notwithstanding the fact that the Authority does not have physical control of the child. ”; and

- (b) in subsection (2), by deleting the words “Psychiatric Hospital Director of the institution” and substituting the words “director of the psychiatric hospital”.

Section 31 amended.

31. Section 31 of the Act is amended by -

- (a) inserting before the word “informed” the word “kept”; and

- (b) inserting after subsection (1), the following new subsection:

“(1A) The Authority shall keep and maintain a record of the names, addresses and other pertinent information of all parents or guardians of children who have been received into care .”.

Section 32
repealed and
new section
substituted.

32. The Act is amended by repealing section 32 and substituting the following new section:

“Leaving the
country without
making proper
arrangements.

32. Where the Authority is of the view that a person legally liable for the care and maintenance of any child, intends to leave Trinidad and Tobago without making adequate arrangements for the care of the child, it may apply to the Court for an Order to prevent the person from leaving Trinidad and Tobago until such person has made provision to the satisfaction of the Court that-

- (a) the child is not likely to become a charge on the public funds; or
- (b) such child is not exposed to moral danger or neglect by reason of lack of care and maintenance.”.

Section 33
amended.

33. The Act is amended in section 33 by repealing subsections (1) and (2) and substituting the following new subsections:

“ (1) A court with criminal jurisdiction before which a person is charged with having committed an offence in respect of a child mentioned in the Schedule or any offence under this Act, may direct that the child be brought to the attention of the Authority.

(2) The Minister may by Order, amend the Schedule.”.

Section 34
amended.

34. Section 34 of the Act is amended in subsection (2), by deleting the word “homes” and substituting the word “Care”.

Section 35
amended.

35. Section 35 of the Act is amended –

- (a) in subsection (2), by deleting the word “part” and substituting the word “Part”;
- (b) by inserting after subsection (2) the

following new subsection:

“(3) The Authority may defray the cost of accommodation referred to in subsection (1).”.

Section 35A
repealed.
Section 36
amended.

36. The Act is amended by repealing section 35A.

37. Section 36 of the Act is amended -

(a) in subsection (1), by deleting the words “consent of the Minister, procure or assist in procuring the emigration for” and substituting the words “permission of the Court, assist in the emigration of”;

(b) in subsection (2)-

(i) by deleting the words “Minister shall not give his consent” and “he” and substituting the words “Court shall not give its permission” and “it” respectively;

(ii) in paragraph (a), by deleting the words “benefit the child” and substituting the words “be in the best interest of the child”;

(iii) in paragraph (b), by inserting after the word “reception” the words “ and the necessary legal requirements for the immigration of the child in the destination country are met”;

(iv) in paragraph (c), by deleting the word “has” and substituting the word “have”; and

(v) by deleting paragraph (e) and substituting the following new paragraph:

“(e) the wishes of the child have been taken into account.”; and

(c) by deleting subsection (3).

Section 37
amended.

38. Section 37 of the Act is amended by repealing subsection (3).

Section 39
amended.

39. Section 39 of the Act is amended in -

(a) subsection (1), by deleting the word “shall” and substituting the word “may”;

- (b) subsection (2), by deleting the word “shall” and substituting the word “may”; and
- (c) subsection (3), by deleting the words “made on that person notwithstanding that there may also be a parent” and substituting the words “made against that person”.

Section 40 amended.

40. Section 40 of the Act is amended in -

- (a) subsection (1), by deleting the words “section 23” and substituting the words “section 22” and by inserting after the word “Act” the words “and the Status of Children Act”; and
- (b) subsection (2), by deleting the words “this section” and substituting the words “section 39”.

Section 41 amended.

41. Section 41 of the Act is amended in -

- (a) subsection (1), by deleting the words “or a child is detained make an order against a parent or any other person” and substituting the words “is detained in a rehabilitation centre make an order against a parent or any other person who has care and control over the youthful offender”;
- (b) by repealing subsection (2); and
- (c) in subsection (3), by deleting the words “on whom” wherever they occur and substituting the words “against whom”.

Section 43 amended.

42. Section 43 of the Act is amended by repealing subsections (2) and (3).

Section 44 amended.

43. Section 44 of the Act is amended by-

- (a) inserting after the words “order the payments” the words “(hereinafter referred to as a Contribution Order)”; and
- (b) deleting the words “the remunerative” and substituting the word “remunerative”.

Section 46 amended.

44. Section 46 of the Act is amended in subsection (2)(b) -

- (a) by deleting the word “by” and substituting the word

“from”; and

- (b) by inserting after the word “agencies” the words “as approved by the Minister of Finance”.

Section 50
amended.

45. Section 50 of the Act is amended-

- (a) in subsection (1)(b), by inserting the words “under this Act” after the word “prescribed”; and
- (b) by repealing subsection (2) and substituting the following:

“ (2) Regulations made under this Act shall be subject to negative resolution of Parliament.”.

Section 51
inserted.

46. The Act is amended by inserting after section 50 the following new section:

“Rules
Committee to
make Rules.
Chap. 4:01

51. The Rules Committee established by section 77 of the Supreme Court of Judicature Act may, subject to negative resolution of Parliament, make rules for the purpose of the Court exercising its functions under this Act.

Schedule
amended.

47. The Schedule to the Act is repealed and the following new Schedule substituted:

“SCHEDULE

(Section 33)

Legislation	Section
The Summary Offences Act, Chap 11:02	4, 5
The Offences Against the Person Act, Chap. 11:08	6, 21, 48, 54
Children Act, Chap. 46:01	3 to 8, 24 to 28
Sexual Offences Act, No. 28 of 1996	4 to 11”

Passed in the House of Representatives this day of , 2008.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less that three-fifths of all the members of the House, that is to say, by the votes of members of the House.

Clerk of the House

Passed in the Senate this day of , 2008.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less that three-fifths of all the members of the House, that is to say, by the votes of members of the Senate.

Clerk of the Senate