

**For discussion
on 14 December 2015**

Legislative Council Panel on Welfare Services

**Public Consultation on the Proposed Legislation to Implement the
Recommendations of the Law Reform Commission Report on
Child Custody and Access**

Purpose

The Labour and Welfare Bureau (LWB) has launched a public consultation on the proposed legislation to implement the recommendations of the Law Reform Commission Report on Child Custody and Access (the Report) since 25 November 2015. This paper briefs Members on the proposed legislation and the support measures as set out in the consultation paper at Annex.

Public Consultation on the Proposed Legislation and Support Measures

2. LWB conducted a public consultation on whether to implement the parental responsibility model (the Model) as recommended by the Law Reform Commission (LRC) on Custody and Access by legislative means from December 2011 to April 2012. During the period, LWB consulted this Panel on 9 January 2012, and listened to the views of deputations/individuals on 25 February 2012. LWB subsequently reported to this Panel on 8 July 2013 the results of the last public consultation and briefed Members on how to take LRC's recommendations forward. Noting that there were concerns on how the Model was to be implemented in practice, it was proposed that the Government should work out the legislative proposals and proposed support measures to show how the concerns would be addressed in practical terms. Upon working out the proposals, LWB would further engage the stakeholders and interested parties before embarking on legislation.

3. In consultation with the Department of Justice, the Home Affairs Bureau, the Social Welfare Department (SWD), the Judiciary and other relevant bureaux/departments, LWB has now prepared the draft Children Proceedings (Parental Responsibility) Bill (the draft Bill) to implement

LRC's recommendations by legislative means as appropriate. Meanwhile, a number of support measures to promote the concept of parental responsibility, as stated in the consultation paper, have been and will be implemented. For example, SWD has produced a set of handbooks on co-parenting issues, and is running on a trial basis a short psycho-educational programme to instil the concept of continuing parental responsibility in separated/divorced parents. SWD will also launch a pilot project on children contact service to facilitate the arrangement of children contact with separated/divorced parents.

4. LWB is inviting public views on the draft Bill and the support measures as set out in the consultation paper on or before 25 March 2016. During the four-month public consultation period, stakeholders and interested parties can send their views to LWB by post, by fax or by email. LWB will present the proposals to the relevant committees, including the Social Welfare Advisory Committee, Women's Commission and Family Council, and arrange discussion fora for different groups, including non-governmental organisations from the welfare sector and women's groups. The public engagement activities will be announced via LWB's website (www.lwb.gov.hk/parentalresponsibility_consult). LWB will revise its proposals in the light of the comments received during the public consultation period, as appropriate.

Advice Sought

5. Members are invited to note and comment on the proposals set out in the consultation paper.

**Labour and Welfare Bureau
November 2015**



The Proposed Legislation to Implement the Recommendations of The Law Reform Commission Report on Child Custody and Access

Public Consultation

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**CONSULTATION PAPER ON THE PROPOSED LEGISLATION
TO IMPLEMENT THE RECOMMENDATIONS OF THE
LAW REFORM COMMISSION REPORT
ON CHILD CUSTODY AND ACCESS**

FOREWORD

Law Reform Commission Report on Child Custody and Access

The Law Reform Commission of Hong Kong ('LRC') published a series of four reports on the law relating to guardianship and custody of children with recommendations on the appropriate changes to the law. The last one of the series was the Report on Child Custody and Access ('the Report'), which put forward a total of 72 recommendations¹. The main thrust of the Report relates to the introduction into Hong Kong's family law of a "parental responsibility model" ('the Model'). Underlying the Model is the principle that the best interests of children should guide all proceedings concerning children ('the best interests principle').

2. LRC observes that Hong Kong's existing law in this area defines parent-child relationship in terms of the "rights and authority" that parents have over their children. In the past, when a couple divorced or were engaged in other matrimonial proceedings, the courts would often award one parent sole custody of the child – with all the decision-making power that implied – while the other parent's involvement with the child was limited to the right of access only. Over time, this often resulted in dwindling contact between the child and the non-custodial parent. In recent years, the courts have recognised the importance of maintaining the direct involvement of both parents in the child's life as far as possible, and more orders for joint custody are now being made. Under these orders, although one parent may have daily care and control of the child, both parents continue to be actively involved in the child's life and in making major decisions affecting the child.

3. On the other hand, LRC observes that in England, Scotland, Australia and New Zealand, former child custody laws similar to Hong Kong's have been replaced with laws reflecting the Model. This new approach emphasises the continuing responsibilities of both parents

¹ The Report is available at www.hkreform.gov.hk and a summary of the 72 recommendations is provided in Chapter 14 of the Report.

towards their children rather than their individual parental rights. It also emphasises the child's right to enjoy a continuing relationship with both parents if this is in the child's best interests in line with the best interests principle. Allied to this change in concept, a range of new court orders have been introduced in England, Scotland, Australia and New Zealand to sweep away the old "custody" and "access" terminologies in family proceedings, with their connotations of ownership of the child.

4. As stated above, LRC has put forward a total of 72 recommendations in the Report. The main thrust of the Report relates to the introduction of the Model into Hong Kong's family law. As part of this approach, LRC recommends the introduction of new court orders to govern the arrangements of children when their parents divorce. LRC further recommends the removal of the current limitation on the right of interested third parties, such as close relatives, to apply for court orders affecting children. Other recommendations of the Report relate to: how the views of the children (up to 18 years old) may be better expressed in family proceedings which affect them; how the current care and protection provisions may be improved to better protect children's rights; and how the custody and access cases involving domestic violence may be better dealt with under the law. LRC also recommends that all parental rights and responsibilities shall apply in respect of a child until the child reaches the age of 18, and that the minimum age for marriage without parental consent should be reduced from 21 to 18 years. For the removal of doubt, LRC recommends that it should be made clear that the best interests principle should guide all proceedings concerning children under the Guardianship of Minors Ordinance (Cap. 13) ('GMO'), the Matrimonial Causes Ordinance (Cap. 179) ('MCO'), the Matrimonial Proceedings and Property Ordinance (Cap. 192) and the Separation and Maintenance Orders Ordinance (Cap. 16), including questions of guardianship, maintenance or property.

Public Consultation in 2011-12 and Our Response

5. The Labour and Welfare Bureau ('LWB') conducted a public consultation on the Report from December 2011 to April 2012².

6. From the views received during the public consultation, it was found that a clear majority of respondents supported or did not dispute the

² *The Consultation Paper on Child Custody and Access: Whether to Implement the "Joint Parental Responsibility Model" by Legislative Means* published by LWB in December 2011. This paper is available on http://www.lwb.gov.hk/eng/public_consultation/Custody_Consultation.htm

concept of the Model. Having also examined the latest developments in other common law jurisdictions (including Australia, England and Wales, New Zealand and Scotland) and found that none of the studies questioned the fundamental merits of their law reforms to implement the Model, it is considered that the concept of parental responsibility should be pursued in Hong Kong and the recommendations put forward in the Report should be implemented through legislative or administrative means as appropriate.

Implementation of the Report

7. Not all of the recommendations of the Report will be implemented through new legislation. For example, most of LRC's recommendations relating to domestic violence (Recommendations 33-35) have been addressed in the context of the Domestic Violence (Amendment) Ordinance 2008 and 2009. In the case of LRC's recommendation to reduce the minimum age of marriage without parental consent from 21 to 18 years (Recommendation 69), it will be dealt with separately, outside the context of the proposed legislation to cover child custody and access. As to LRC's recommendation that a list of circumstances should be set out in the legislation to determine when it is appropriate to appoint a separate representative for a child in children proceedings (Recommendation 50), it is noted that the Judiciary's Practice Direction "Guidance on Separate Representation for Children in Matrimonial and Family Proceedings" has covered such a list. Further, the Practice Direction may be codified into the law when the Judiciary implements the recommendations of the Final Report issued by the Chief Justice's Working Party on Family Procedure Rules. This notwithstanding, the bulk of LRC's recommendations of the Report could be given effect through new legislation.

8. LWB has, in consultation with the Department of Justice, Home Affairs Bureau, Social Welfare Department ('SWD'), Judiciary and other relevant bureaux/departments, prepared the draft Children Proceedings (Parental Responsibility) Bill³ ('the draft Bill') (at **Annex**) to implement the Report's recommendations by legislative means as appropriate, including, *inter alia* –

³ The draft Bill is a consultative bill. It is included to assist in explaining the proposals in this consultation paper. It is not the final version for the legislative process if legislation is introduced for giving effect to the proposals.

- (a) replacing the concept of “guardianship” with the concept of “parental responsibility” to redefine the parent-child relationship in law;
- (b) introducing various statutory lists covering (i) parental responsibility (encompassing both responsibilities and rights) and (ii) major decisions concerning the child’s upbringing that would require express consent of or notification to the other parent;
- (c) introducing a range of new court orders to replace the existing custody and access orders; and
- (d) consolidating the existing substantive provisions dealing with disputes relating to children, arrangements on divorce, guardianship, disputes with third parties, or disputes between parents without accompanying divorce proceedings, as well as the new legislative provisions resulting from the recommendations of the Report, into one consolidated Ordinance⁴.

Some details of the draft Bill are set out in paragraphs 12 to 47 below.

9. It is noted that some members of the public have expressed concerns about the support services for implementing the Model. Particular concern is placed on whether there would be additional support services for divorced families to tie in with the proposed legislative reform and whether our community is ready for such a paradigm shift in parenting concept given that Hong Kong is a Chinese society and has a different culture from that of other western common law jurisdictions. Noting the public concerns on the promotion of the concept of parental responsibility and the need to strengthen support for separated/divorced families, a number of support measures have been and will be implemented by the Government in partnership with non-governmental organisations and other interested parties to address these concerns. For details, please refer to paragraphs 48 to 50 below.

⁴ The Report, para. 13.69-13.74 and Recommendation 71.

Your Views

10. The Government wishes to know your views on the draft Bill and the support measures as set out in this consultation paper. Please send us your views through the following channels on or before 25 March 2016:

Email address: parentalresponsibility_consult@lwb.gov.hk

Fax number: 2524 7635

Address: Team 1, Labour and Welfare Bureau
11/F, West Wing,
Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong

Website: www.lwb.gov.hk/parentalresponsibility_consult

11. It is voluntary for any member of the public to supply his or her personal data upon providing views on this consultation exercise. The submissions and any personal data collected may be transferred to the relevant Government bureaux/departments for purposes directly related to this consultation exercise. The Government bureaux/departments receiving the data may only use the data for such purposes. Your views and suggestions may be made public. If you prefer to remain anonymous, please indicate so.

CHAPTER 1 : THE PROPOSED LEGISLATION – CHILDREN PROCEEDINGS (PARENTAL RESPONSIBILITY) BILL – to Implement the Recommendations of the Law Reform Commission Report on Child Custody and Access

INTRODUCTION

12. The proposed legislation (at **Annex**) seeks to repeal the existing GMO and re-enact its provisions in a new Ordinance, whereby such provisions and the proposed provisions resulting from the recommendations of the Report would be consolidated and incorporated therein in accordance with Recommendation 71 of the Report. It is proposed that the new Ordinance should adopt the title of “Children Proceedings (Parental Responsibility) Ordinance”. This approach allows for greater flexibility in the language and structure of the provisions and thus a more user-friendly legislation.

IMPLICATIONS OF THE PROPOSED LEGISLATION

13. Upon implementing the LRC’s recommendations, the proposed legislation will bring along some implications for divorced families, including, *inter alia* –

- (a) both parents retain the parental responsibility they had during the marriage under the Model. The newly introduced range of court orders simply regulate the exercise of particular aspects of parental responsibility, whilst leaving parental responsibility itself intact (the “child arrangements order” allows the court to address issues concerning the person or persons with whom the child is to live, spend time or otherwise have contact, the “prohibited steps order” allows the court to prohibit the exercise of certain aspects of parental responsibility, for example to prohibit a parent from relocating from the jurisdiction with the child, and the “specific issue order” allows the court to determine a specific question, for example which school the child is to attend). Thus, the parent who does not live with the child still has the right (i) to be involved in major decisions affecting the child’s well-being and future (see sub-paragraph (c) below) and (ii) to act independently in relation to the day-to-day care of the child in the best interests of the child while contact is being exercised;

- (b) the removal of the limitation on the rights of third parties (such as grandparents) to apply for court orders in relation to the child where an interested third party would not require leave of the court to apply for any of the new orders if the child had been living with the third party for a total of one year out of the previous three years provided that this period had not ended more than three months before the application was made;
- (c) while a parent exercising parental responsibility can act independently in relation to the day-to-day care in the best interests of the child, he or she has to seek the consent of or notify the other parent (depending on which class of decisions it falls within) if a major decision affecting the child is to be made; and
- (d) parents, whose children are committed to the care of the Director of Social Welfare ('DSW') under care orders, will be entitled to apply to have orders made to secure reasonable contact with their children.

SALIENT PROVISIONS OF THE PROPOSED LEGISLATION

14. The draft Bill consists of eight parts to reform and consolidate the law relating to children in certain children proceedings and to make related and consequential amendments. Some salient provisions are set out as follows –

Part 1: Preliminary

15. Part 1 is an introductory part that sets out the short title of the new Ordinance, its commencement arrangement, and the interpretation and definition of various terms and expressions used in the Ordinance.

16. In England, a child is defined under section 105(1) of the Children Act 1989 as a person below the age of 18 years. In Hong Kong, according to section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), the term "infant" or "minor" is defined as a person who has not attained the age of 18 years. With reference to the said definitions, a "child" is proposed to be a person under the age of 18 years under the Bill.

17. It is proposed that parental responsibility for the child would cease when he or she reaches the age of 18 years⁵.

Part 2: General Principles

Statutory list in determining a child's best interests

18. To make clear that the best interests principle would guide the children proceedings, a statutory checklist of factors in Part 2 is proposed to assist the court in determining what is in the best interests of the child in those proceedings. These factors include, *inter alia*⁶ –

- (a) the views of the child;
- (b) the child's physical, emotional and educational needs;
- (c) the nature of the relationship of the child with each of the child's parents and with other persons;
- (d) the child's age, maturity, sex, social and cultural background, as well as any other relevant characteristics;
- (e) any harm or family violence that the child has suffered or is at risk of suffering; and
- (f) the practical difficulty and expense of a child maintaining contact with a parent.

*Parental responsibility for children*⁷

19. One of the key recommendations of the Report is to replace the concept of “guardianship” under the existing law with “parental responsibility”.

20. The concept of parental responsibility under the Bill is proposed to encompass all parental duties and rights/powers towards the child. A person who has “parental responsibility” is someone with all the responsibilities and rights for the child. The function of “parental right” is to facilitate the parents to fulfill their “parental responsibility”. To

⁵ The Report, para. 9.63-9.65 and Recommendation 6.

⁶ The checklist is proposed in response to Recommendation 3 of the Report. For details, please refer to the Report, para. 9.23-9.49 and Recommendation 3.

⁷ Ditto, para. 9.56-9.62 and Recommendation 5.

better illustrate the concept of “parental responsibility”, the responsibilities and rights of a parent is proposed to be:

Responsibilities

- (a) safeguarding the child’s best interests;
- (b) providing direction and guidance to the child in a manner appropriate to the child’s development;
- (c) maintaining personal relations and direct contact with the child on a regular basis; and
- (d) acting as the child’s legal representative.

Rights

- (a) living with the child or otherwise regulating the child’s residence;
- (b) controlling, directing or guiding the child’s upbringing in a manner appropriate to the child’s stage of development;
- (c) maintaining personal relations and direct contact with the child on a regular basis; and
- (d) acting as the child’s legal representative.

Acquisition of parental responsibility by an unmarried father

21. Under the current law, an unmarried father must apply for a court order to acquire parental responsibility for his child. This is the case even if he has already taken the positive step of signing the birth register to identify himself as the father of a child⁸. In order to facilitate an unmarried father to acquire parental responsibility, it is proposed that, as recommended by LRC in the Report⁹, one of the means by which an unmarried father can acquire parental responsibility is by signing the birth register.

⁸ Ditto, para. 9.75 and sections 3(1)(c)(ii) and 3(1)(d) of GMO.

⁹ Ditto, para. 9.74-9.80 and Recommendation 10.

Consent or notification required for certain acts relating to children

22. The crux of the Model is that the child's best interests should always be safeguarded as the first priority. To achieve this and to reduce the number of disputes between parents after separation or divorce, LRC is of the view that any major decisions in respect of the child should be made jointly by the parents, while the day-to-day decisions do not need notification to, or consent of, the other parent¹⁰.

23. Accordingly, it is proposed that a parent should obtain the consent in writing of every other person who has parental responsibility for the child or obtain the leave of the court before doing certain acts. In addition, it is proposed that a parent should notify every other person who has parental responsibility for the child in writing within a reasonable time before making major decisions in relation to the child. "Major decision" is proposed to be defined as "a decision of long term consequence for the child's health, development and general welfare"¹¹.

Part 3: Appointment and Powers of Guardians Taking Effect on or after the Death of Parent or Guardian

Concept of parental responsibility

24. It is proposed that the concept of "guardianship" should be interpreted as a third party's responsibilities for a child after the death of a parent only; other than that, the concept of parental responsibility would replace that of guardianship¹². This is to tally with the legislative purpose to emphasise parental responsibility for children and to encourage the greater involvement of both parents in the lives of their children even after divorce.

25. When re-enacting the relevant provisions of GMO in Part 3 regarding the appointment, application for, removal and powers of guardians, account has been taken of the reinterpreted concept of "guardianship".

Abolition of the common law right of the father to be natural guardian

26. At common law, a father is the natural guardian of his legitimate

¹⁰ Ditto, para. 9.92.

¹¹ Ditto, para. 9.94-9.97 and Recommendation 13.

¹² Ditto, para. 9.50-9.52 and Recommendation 4.

child. Even though the mother has the same rights and authority as the law allows to a father by virtue of section 3(1)(b) of GMO, the common law right of the father has never been abolished in Hong Kong. This is inappropriate in the light of gender equality, and is also inconsistent with overseas legal developments. In England, section 2(4) of the Children Act 1989 provided that the “*rule of law that a father is the natural guardian of his legitimate child is abolished*”.

27. In the light of the above, it is proposed that the common law right of the father to be the natural guardian of his legitimate child should be abolished and that section 3(1)(b) of GMO will not be re-enacted in the proposed legislation¹³.

Part 4: Orders with respect to Children in Children Proceedings

28. In Part 4, it is proposed that a range of new court orders should be introduced to replace the existing orders for child custody and access. The new range of orders would be available in any “children proceedings” (which are defined in Part 1 of the draft Bill) where a question arises as to the welfare of a child. Accordingly the new orders can be made not only in divorce proceedings but also in other proceedings such as wardship or guardianship.

Introduction of new court orders

29. In order to emphasise the concept of parental responsibility for the child, the existing legal terminologies of “custody” and “access” should no longer be used. In the light of recent overseas developments in the Model, it is proposed that an all-in-one term “child arrangements order” should be used to encompass and regulate arrangements (including timing) relating to the person with whom a child is to live, spend time or otherwise have contact, instead of adopting the terms “residence order” and “contact order” as set out in the Report¹⁴.

30. In addition, it is proposed that “prohibited steps order” and “specific issues order” should be introduced to address the disagreements between parents on issues relating to their children¹⁵.

¹³ Ditto, para. 9.66-9.68 and Recommendation 7.

¹⁴ Ditto, para. 10.14-10.16 and Recommendation 21, and para. 10.20-10.25 and Recommendation 24.

¹⁵ Ditto, para.10.26-10.30 and Recommendation 25, and para. 10.31-10.34 and Recommendation 26.

31. The intention of the above proposed measures is to move away from terminologies that would imply a winner or a loser in disputes concerning a child and focus on the practical arrangements for meeting parental responsibility with a view to minimising disputes.

32. It is proposed that the option of “no order” could be made available for those cases where both parties consent to no order being made by the court and the court considers that making no order would be in the best interests of the child¹⁶.

Right of third parties to apply for court orders

33. Under the existing section 10(1) of GMO, only either parent of a child or DSW may apply to court for orders of custody or access to the child. This causes problems for third parties such as grandparents or other carers who want to apply to the court for such orders. Such orders may be necessary to protect the child’s best interests, for example, where a single parent leaves his or her child to be brought up by the grandparents and subsequently demands the child back. LRC therefore proposed removal of the limitation set out in section 10(1) of GMO on the right of third parties to apply to the court for orders concerning children¹⁷.

34. Sharing LRC’s views, it is proposed that the limitation as set out in section 10(1) of GMO should be removed and that a new provision along the lines of section 10 of the English Children Act 1989 should be added to provide that third parties can apply for child arrangements orders without the court’s leave in cases, among others, where the child has lived with the applicant for a total of one year out of the previous three years (the one-year period needs not be a continuous period, but must not have ended more than three months before the application).

Part 5: Care Order and Supervision Order

Power to make care orders and supervision orders

35. Under the GMO and MCO, the court may commit a child to DSW’s care if there are exceptional circumstances making it impracticable or undesirable to entrust the child to his or her parents or any other individual. The court may also order the child to be placed

¹⁶ Ditto, para. 10.50-10.58 and Recommendation 30.

¹⁷ Ditto, para. 10.37-10.41 and Recommendation 28.

under DSW's supervision in exceptional circumstances where it is desirable that the child should be under the supervision of an independent person.

36. We share LRC's view that the powers of DSW in relation to care and supervision orders in matrimonial legislation should be retained. Furthermore, DSW's powers under matrimonial legislation and the Protection of Children and Juveniles Ordinance (Cap. 213) ('PCJO') should be rationalised¹⁸. Hence it is proposed that the Bill should make provisions for the court's powers in Part 5 to grant an order –

- (a) placing a child under DSW's supervision (**supervision order**);
or
- (b) committing such a child to the care of DSW (**care order**);

so as to align the grounds on which DSW would be entitled to apply for a care or supervision order in children proceedings with the grounds on which DSW would be entitled to apply for a care or protection order under PCJO.

Contact in respect of a child in care

37. Under the existing law, there does not appear to be any clear provision allowing a child who is the subject of a care order to have access to his or her parents (apart from the court's more general power under section 10 of GMO to make an access order on an application of the parents or DSW). Even though DSW may informally grant access to a child under DSW's care, there is no clear legal basis for the parents or guardians to have contact with the child in care.

38. In view of the above, it is proposed that the Bill should include express provisions allowing parents, guardians or any person named in the child arrangements order as a person with whom the child was to live, to apply to have orders made to secure reasonable contact between them and children in care¹⁹. DSW should allow children in care to have reasonable contact with those groups of people without an application to court unless DSW is satisfied that it is necessary to refuse contact in order to safeguard and promote the welfare of the child.

¹⁸ Ditto, para. 13.11-13.14 and Recommendation 55.

¹⁹ Ditto, para. 13.47-13.48 and Recommendation 67.

Part 6: Views of Child and Separate Representation for Child

Child not required to express views

39. LRC recommends that a child should not be required to express his or her views as to do so would place the child under pressure by one or both parents to take side in a dispute concerning the child's best interests²⁰. It is now proposed that this recommendation should be implemented through the Bill.

How views of child are expressed

40. If a child indicates directly or indirectly his or her desire to express views, LRC recommends that a child should be given the facility to express such views. It is then up to the court to determine the weight to be given to such views²¹.

41. It is proposed that the mechanism for ascertaining and expressing the child's views to the court, if the child wishes to do so, should be provided in the Bill.

Court order for independent representation for child's interests

42. At present, the court has a discretion under rule 108 of the Matrimonial Causes Rules (Cap. 179A) to order that a child be separately represented in any "matrimonial proceedings", which is defined as "any proceedings with respect to which rules may be made under section 54(1) of the Matrimonial Causes Ordinance or section 32 of the Matrimonial Proceedings and Property Ordinance (Cap 192)". However, section 54(1) of MCO provides for rules to be made "for the better carrying out of the purposes and provisions of this Ordinance [i.e. MCO]". There may be doubt as to whether "matrimonial proceedings" referred to in rule 108 include custody proceedings, as the court's powers to award custody and access orders are generally found within the provisions of other matrimonial Ordinances.

43. For removal of doubt, it is proposed that the Bill should make it clear that a court may make an order for the independent representation of a child's interests by a solicitor, or by a solicitor and counsel in any dispute relating to parental responsibility for, or guardianship of, a

²⁰ Ditto, para. 12.22-12.24 and Recommendation 45.

²¹ Ditto, para. 12.17 and 12.21, and Recommendation 44.

child²², with the following persons being entitled to apply for such court order –

- (a) the child;
- (b) a parent or guardian of the child;
- (c) a person who is named as the person with whom the child is to live in a child arrangements order which is in force; and
- (d) persons who are entitled to apply for a child arrangements order in respect of the child as provided in the proposed legislation.

Part 7: Procedure, Jurisdiction and Subsidiary Legislation

44. It is proposed that the relevant provisions dealing with the court's jurisdiction, as well as the statutory basis for making various regulations and rules for the better carrying out of the purposes and provisions of the new Ordinance should be included in the Bill.

45. For instance, it is proposed that Part 4 of the District Court Ordinance (Cap. 336) should apply to every proceeding before, and every order by, the District Court under the new Ordinance, and the proceedings may be transferred to the Court of First Instance upon application by any party to the proceedings. The Bill should provide for the regulation-making power of the Secretary for Labour and Welfare as well as the rule-making power of the Chief Justice.

Part 8: Repeal, Transitional and Savings Provisions and Consequential or Related Amendments

46. It is proposed that the Bill should specify the provisions that repeal GMO, and deal with the consequential or related amendments to other relevant Ordinances and Subsidiary Legislations²³.

²² Ditto, Recommendation 48.

²³ We propose to make consequential and related amendments to some Ordinances and Subsidiary Legislation, including, among others:

- (a) Separation and Maintenance Orders Ordinance (Cap. 16);
- (b) Births and Deaths Registration Ordinance (Cap. 174);
- (c) Matrimonial Causes Ordinances (Cap. 179);
- (d) Matrimonial Causes Rules (Cap. 179, sub. leg. A);
- (e) Marriage Ordinance (Cap. 181);
- (f) Matrimonial Proceedings and Property Ordinance (Cap. 192);
- (g) Protection of Children and Juveniles Ordinance (Cap. 213); and

47. The Bill should also specify the transitional and savings provisions, including, *inter alia*, any proceedings under GMO that are pending immediately before the commencement date of the new Ordinance will not be affected by the new Ordinance, and any guardian appointed under GMO will have the same responsibilities and rights as a guardian appointed under the new Ordinance.

CHAPTER 2 : SUPPORT MEASURES TO IMPLEMENT THE RECOMMENDATIONS OF THE REPORT

48. The successful implementation of the Model and application of the best interests principle require a significant change in the mindset of parents and the community at large. To promote the concept of continuing parental responsibility towards children even after divorce, SWD has been undertaking publicity measures and public education work relating to the Model. These include launching a territory-wide campaign entitled “Marriage may end but parenthood goes on” (夫妻緣不再 親子情永在), production of a set of DVD cum two sets of information sheets for social workers and parents, and distribution of the above materials to the Government departments and other organisations concerned (such as the Family Mediation Coordinator’s Office and The Law Society of Hong Kong, etc.).

49. SWD has produced a set of handbooks to provide more detailed information and guidance for separated/divorced parents and their children on co-parenting issues for distribution by phases from September 2015 onwards, and will roll out a website by end-November 2015 to promote the concept of parental responsibility. It will also produce a set of television and radio Announcements in the Public Interest as well as a poster for release by end-2015. Besides, it has developed and is trial-running a short psycho-educational programme to instil the concept of continuing parental responsibility in separated/divorced parents. SWD will provide “dedicated help service” to handle enquiries and requests for assistance from parents and the public during the initial one to two years after the Bill has come into effect.

50. In response to the suggestion made by the legal profession and some welfare non-governmental organisations, SWD will launch a two-year pilot project on children contact service in the first half of 2016-17 to facilitate the arrangement of children contact with separated/divorced parents and to strengthen support for separated/divorced families so that children need not be torn between parents, irrespective of whether there are court orders on the divorce cases.

CHAPTER 3 : PUBLIC PARTICIPATION

51. During the public consultation period up to 25 March 2016, stakeholders and other interested persons or groups are welcome to send us their views on the draft Bill and the relevant support measures to implement the recommendations put forward by LRC in the Report (please refer to paragraph 10 above). Details of public consultation activities will be announced at www.lwb.gov.hk/parentalresponsibility_consult. The Government earnestly invites public participation in the consultation exercise, and will revise the draft Bill in the light of the comments received during the consultation period, as appropriate, for subsequent introduction into the Legislative Council at a suitable time.

Labour and Welfare Bureau
November 2015

**Proposed Legislation:
Children Proceedings
(Parental Responsibility) Bill**

Children Proceedings (Parental Responsibility) Bill

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A BILL

To

Reform and consolidate the law relating to responsibilities and rights of parents for children, particularly in relation to proceedings involving children; to provide for the appointment and powers of guardians; and to make related and consequential amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Children Proceedings (Parental Responsibility) Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

2. Interpretation

In this Ordinance—

care order (照顧令) means an order made under section 51(1)(b);

child (子女) means a person under the age of 18;

child arrangements order (子女安排令) means an order made under section 28(1)(a);

child of the family (家庭子女), in relation to parties to a marriage, means—

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

children proceedings (子女法律程序) means any proceedings—

- (a) under the inherent jurisdiction of the High Court in relation to children; or
- (b) under any of the following enactments—
 - (i) this Ordinance;
 - (ii) the Separation and Maintenance Orders Ordinance (Cap. 16);
 - (iii) the Matrimonial Causes Ordinance (Cap. 179);
 - (iv) the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189);
 - (v) the Matrimonial Proceedings and Property Ordinance (Cap. 192);
 - (vi) the Adoption Ordinance (Cap. 290);
 - (vii) the Parent and Child Ordinance (Cap. 429);

court (法院) means the Court of First Instance or the District Court;

maintenance order (贍養令) means an order—

- (a) for payment of a lump sum referred to in section 33(2)(a), 36(2)(a) or 52(1)(a);
- (b) for periodical payments referred to in section 33(2)(b), 36(2)(b) or 52(1)(b); or
- (c) for secured periodical payments referred to in section 33(2)(c) or 36(2)(c);

parent (父母)—

- (a) subject to paragraph (b), means father or mother;

- (b) for the purposes of sections 14, 15, 20 and 36(1)(a), in relation to a child whose father and mother were not married to each other at the time of the child's birth, does not include the natural father of the child unless he—
 - (i) is named in a child arrangements order as a person with whom the child is to live; or
 - (ii) has acquired parental responsibility for the child under section 6(1), and has not ceased to have it as provided in section 7(1);

parental responsibility (父母責任)—see section 5(1);

parental responsibility agreement (父母責任協議) means a parental responsibility agreement as referred to in section 6(1)(c);

supervision order (監管令) means an order made under section 51(1)(a);

will (遺囑) includes a codicil.

Part 2

General Principles

3. General principles

- (1) In determining a question concerning any of the following matters in the children proceedings, a court (whether or not a court as defined by section 2) must regard the best interests of a child as the paramount consideration—
 - (a) the making of an order under section 28(1);
 - (b) the upbringing of a child;
 - (c) the administration of any property belonging to or held in trust for a child;
 - (d) the application of the income of the property referred to in paragraph (c).
- (2) In determining what is in the best interests of a child, the court must have regard, in particular, to—
 - (a) the ascertainable views of the child concerned (considered in the light of the child's age and understanding);
 - (b) the child's physical, emotional and educational needs;
 - (c) the nature of the relationship of the child with each of the child's parents and with other persons;
 - (d) the likely effect on the child of any change in the child's circumstances;
 - (e) the child's age, maturity, sex, social and cultural background and any other characteristics of the child that the court considers relevant;

- (f) any harm that the child has suffered or is at risk of suffering;
- (g) any family violence involving the child or a member of the child's family;
- (h) how capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs;
- (i) the practical difficulty and expense of the child having contact with a parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;
- (j) the range of powers available to the court under this Ordinance in the proceedings in question; and
- (k) any other fact or circumstances that the court considers relevant.

4. Parents' parental responsibility for child

- (1) If a child's father and mother were married to each other at the time of the child's birth, they each have parental responsibility for the child.
- (2) If a child's father and mother were not married to each other at the time of the child's birth—
 - (a) the mother has parental responsibility for the child; and
 - (b) the father has parental responsibility for the child only if he has acquired it under section 6(1), and has not ceased to have it as provided in section 7(1).

5. Meaning of *parental responsibility*

- (1) In this Ordinance—

parental responsibility (父母責任) means the responsibilities specified in subsection (2) and the rights specified in subsection (3).

- (2) The responsibilities are the responsibilities of a parent—
 - (a) to safeguard and promote the child's health, development and best interests;
 - (b) to provide direction and guidance to the child in a manner appropriate to the stage of development of the child;
 - (c) if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis; and
 - (d) to act as the child's legal representative,
but only in so far as meeting the responsibilities is practicable and in the child's interests.
- (3) The rights are the rights of a parent—
 - (a) to have the child living with the parent or otherwise regulate the child's residence;
 - (b) to control, direct or guide the child's upbringing in a manner appropriate to the stage of development of the child;
 - (c) if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis; and
 - (d) to act as the child's legal representative.
- (4) Parental responsibility supersedes—
 - (a) any analogous duty imposed on a parent at common law; and
 - (b) any analogous right enjoyed by a parent at common law.

- (5) This section does not limit—
 - (a) any other duty imposed on or any other right enjoyed by a parent at common law; or
 - (b) any duty imposed on or any right enjoyed by a parent by or under any other provision of this Ordinance or of any other Ordinance.

6. Acquisition of parental responsibility by father

- (1) If a child's father and mother were not married to each other at the time of the child's birth, the father acquires parental responsibility for the child when—
 - (a) he is married to the mother of the child after the child's birth;
 - (b) he becomes registered as the father of the child under section 12 of the Births and Deaths Registration Ordinance (Cap. 174);
 - (c) he makes an agreement with the mother of the child providing for him to have parental responsibility for the child (*parental responsibility agreement*);
 - (d) he assumes guardianship over the child as a guardian appointed under Part 3; or
 - (e) the court makes an order under subsection (2) that the father has parental responsibility for the child.
- (2) On an application by a person, the court may, if satisfied that the person is the father of a child, order that the person has parental responsibility for the child.
- (3) For the purposes of this Ordinance, a parental responsibility agreement does not have effect unless—
 - (a) it is made in the prescribed form; and
 - (b) it is recorded in the prescribed manner.

- (4) For the purposes of this Ordinance, if a child's father has acquired parental responsibility for his child under subsection (1) and has not ceased to have it as provided in section 7(1), he is treated as a surviving parent of the child on the death of the child's mother.

7. Cessation of parental responsibility acquired under section 6(1)

- (1) A father who has acquired parental responsibility under section 6(1) ceases to have the parental responsibility only if the court so orders on an application made under subsection (2).
- (2) Subject to section 8(2), the court may make an order referred to in subsection (1) on an application—
 - (a) by a person who has parental responsibility for the child; or
 - (b) with the leave of the court, by the child himself or herself.
- (3) The court may grant leave under subsection (2)(b) only if satisfied that the child has sufficient understanding to make the application for an order under subsection (1).

8. Child arrangements orders and parental responsibility

- (1) If the court makes a child arrangements order and—
 - (a) the father of the child concerned is named in the order as a person with whom the child is to live; and
 - (b) the father would not otherwise have parental responsibility for the child,the court must also make an order under section 6(2) giving the father parental responsibility for the child, regardless of whether an application is made under that section.

- (2) The court must not make an order under section 7(1) at any time while the child arrangements order referred to in subsection (1) remains in force in so far as the child arrangements order provides for the child to live with the father.
- (3) If—
 - (a) the court makes a child arrangements order; and
 - (b) a person who is not a parent or guardian of the child concerned is named in the order as a person with whom the child is to live,that person is to have parental responsibility for the child while the order remains in force in so far as it provides for the child to live with that person.
- (4) If the court makes a child arrangements order and—
 - (a) a person who is not the parent or guardian of the child concerned is named in the order as a person with whom the child is to spend time or otherwise have contact; but
 - (b) the person is not named in the order as a person with whom the child is to live,the court may provide in the order for the person to have parental responsibility for the child while paragraphs (a) and (b) continue to be met in the person's case.
- (5) A person who is named in a child arrangements order as a person with whom the child concerned is to spend time or otherwise have contact has the right to act alone in respect of the day-to-day care of the child while the person spends time or otherwise has contact with the child in so far as it is in the best interests of the child.

9. Meeting of parental responsibility

- (1) If more than one person has parental responsibility for a child, each of them may act alone in meeting the parental responsibility in respect of the day-to-day care of the child in so far as it is in the best interests of the child.
- (2) The fact that a person has parental responsibility for a child does not entitle that person to act in any way that would be incompatible with an order made in respect of the child under this Ordinance or a deed conferring the rights specified in section 5(3).
- (3) This section does not affect the operation of any Ordinance that requires the consent of more than one person in a matter affecting the child.

10. Consent or notification required for certain acts relating to children

- (1) If a child arrangements order is in force with respect to a child, a parent having parental responsibility for the child may not do any act specified in subsection (2)—
 - (a) without the consent in writing of every other person who has parental responsibility for the child; or
 - (b) without the leave of the court.
- (2) The act is—
 - (a) causing the child to be known by a new surname;
 - (b) removing the child out of Hong Kong for more than 1 month; or
 - (c) removing the child permanently out of Hong Kong.
- (3) If a child arrangements order is in force with respect to a child, a parent having parental responsibility for the child must, before making a major decision in relation to the child, notify every other person who has parental responsibility for

the child of the parent's intention to make that major decision in writing within a reasonable time.

- (4) A court may vary or dispense with a consent under subsection (1)(a) or a notification under subsection (3).
- (5) In this section—

major decision (重大決定), in relation to a child—

- (a) means a decision of long term consequence for the child's health, development and general welfare (other than a decision in respect of an act specified in subsection (2)); and
- (b) includes a decision on—
 - (i) a major operation or long term medical or dental treatment for the child;
 - (ii) a major change in the child's schooling;
 - (iii) bringing the child up in a particular religion;
 - (iv) giving consent to the child's marriage;
 - (v) a change in the child's place of residence;
 - (vi) removing the child out of Hong Kong for not more than 1 month; or
 - (vii) a change in the child's domicile or nationality.

11. Delegation of parental responsibility

- (1) A person who has parental responsibility for a child—
 - (a) may not surrender or transfer any part of the parental responsibility to another person; but
 - (b) may arrange for some or all of the person's responsibilities for the child referred to in section 5(2)(a) to (d) to be met by one or more persons acting on the person's behalf.

- (2) The person with whom an arrangement is made under subsection (1)(b) may be a person who already has parental responsibility for the child concerned.
- (3) The making of the arrangement does not affect any liability of the person making it that may arise from a failure to meet any part of the person's parental responsibility for the child concerned.
- (4) If a court considers that giving effect to the arrangement will not be for the benefit of the child concerned, the court must not enforce it.

12. Continuing parental responsibility

- (1) An order made under section 20(4) or 28(1)(d) has the effect of depriving a person of a parental responsibility—
 - (a) only in so far as the order expressly so provides; and
 - (b) only to the extent necessary to give effect to the order.
 - (2) In making an order under section 7(1), 20(4) or 28(1)(d), the court may revoke a parental responsibility agreement in relation to the child concerned.
-

Part 3

Appointment and Powers of Guardian Taking Effect on or after Death of Parent or Guardian

Division 1—Guardians Appointed by Appointing Parent or Appointing Guardian

13. Interpretation of Division 1

In this Division—

appointing guardian (作委任監護人) means the guardian who appointed a person as the guardian of a child under section 14(2);

appointing parent (作委任父母) means the parent who appointed a person as the guardian of a child under section 14(1).

14. Power of parent and guardian to appoint guardian

- (1) A parent of a child may appoint a person to be, after the parent's death, a guardian of the child.
- (2) A guardian of a child may appoint a person to be, after the guardian's death, a guardian of the child.
- (3) An appointment under this section must be—
 - (a) in writing and dated;
 - (b) signed either by the person making the appointment or by another person at the direction, and in the presence, of the person making the appointment; and
 - (c) attested by 2 witnesses.

- (4) Despite subsection (3), a parent or guardian may appoint a guardian by a will executed in accordance with section 5 of the Wills Ordinance (Cap. 30).
- (5) In appointing a guardian of a child, a parent or guardian of the child is required to take into account the views of the child as far as practicable having regard to the child's age and understanding.
- (6) The validity of an appointment of a guardian is not affected by a failure to comply with subsection (5).
- (7) An appointment under this section may be made by 2 or more persons acting jointly.
- (8) An appointment under this section has no effect—
 - (a) unless the appointed person accepts the office either expressly or impliedly by conduct; and
 - (b) for an appointing parent who is a father referred to in paragraph (b) of the definition of *parent* in section 2, unless—
 - (i) the appointing parent, immediately before his death, was named in a child arrangements order as a person with whom the child was to live; or
 - (ii) the appointing parent had acquired parental responsibility for the child under section 6(1) and, immediately before his death, had not ceased to have it as provided in section 7(1).

15. Automatic guardianship on death of appointing parent or appointing guardian

- (1) This section applies if—
 - (a) the appointing parent or appointing guardian—
 - (i) was named in a child arrangements order as a person with whom the child was to live; or

- (ii) had the care of the child given by the Court of First Instance in the exercise of its jurisdiction relating to wardship,

immediately before the death of the appointing parent or appointing guardian, irrespective of whether, at that time, anyone else was also so named in the order or also so given the care of the child; or
 - (b) the appointing parent or appointing guardian was living with the child immediately before dying, and the child does not have any surviving parent or surviving guardian on the death of the appointing parent or appointing guardian.
- (2) A person appointed by an appointing parent or appointing guardian as the guardian of a child under section 14 automatically assumes guardianship over the child on the death of the appointing parent or appointing guardian.

16. Assumption of guardianship by application

- (1) Subject to section 15, a person appointed by an appointing parent or appointing guardian as the guardian of a child under section 14 may, after the appointing parent or appointing guardian dies, apply to the court to assume guardianship over the child.
- (2) On an application made under subsection (1), the court may order the applicant—
 - (a) to act jointly with the surviving parent or surviving guardian of the child;
 - (b) to act as the guardian of the child when the child no longer has any parent or guardian;
 - (c) to act as the guardian of the child at a time, or after the occurrence of an event, specified by the court;

- (d) to be removed as a guardian; or
- (e) to act as the guardian of the child to the exclusion of the surviving parent or surviving guardian.

17. Guardian appointed under section 14 to act jointly with surviving parent or surviving guardian

- (1) Subject to subsection (3) and section 16, a guardian appointed under section 14 must act jointly with the surviving parent or surviving guardian (if any) of a child on assuming guardianship over the child.
- (2) The surviving parent or surviving guardian, or the guardian appointed under section 14, may apply to the court for an order under subsection (3) if—
 - (a) the surviving parent or surviving guardian thinks the guardian appointed under section 14 is unfit to have guardianship; or
 - (b) the guardian appointed under section 14 thinks—
 - (i) the surviving parent is unfit to have parental responsibility for the child; or
 - (ii) the surviving guardian is unfit to have guardianship.
- (3) On an application under subsection (2), the court may order—
 - (a) the surviving parent or surviving guardian and the guardian appointed under section 14 to continue to act jointly;
 - (b) the surviving parent to exercise parental responsibility for the child, or the surviving guardian to act as the guardian of the child, to the exclusion of the guardian appointed under section 14; or

- (c) the guardian appointed under section 14 to act as the guardian of the child to the exclusion of the surviving parent or surviving guardian.

18. Revocation of guardian appointment

- (1) An appointment under section 14 (including one made in a will) revokes an earlier appointment under that section (including one made in a will) by the same person in respect of the same child, unless it is clear that the purpose of the later appointment is to appoint an additional guardian.
- (2) An appointment under section 14 (including one made in a will) is revoked if the person who made the appointment revokes it by a document that is—
 - (a) in writing and dated;
 - (b) signed either by the person who made the appointment or by another person at the direction, and in the presence, of the person who made the appointment; and
 - (c) attested by 2 witnesses.
- (3) An appointment under section 14 (other than one made in a will) is revoked if, with the intention of revoking the appointment, the person who made it—
 - (a) destroys the document by which it was made; or
 - (b) instructs any other person to destroy the document in the person's presence.
- (4) An appointment made under section 14 by 2 or more persons acting jointly may be revoked by any of them in accordance with subsection (2) or (3).
- (5) However, a revocation under subsection (4) has effect only if the person who revokes the appointment has notified all other persons who jointly made the appointment of the revocation.

- (6) To avoid doubt, an appointment made under section 14 in a will is revoked if the will is revoked.

19. Guardian may disclaim appointment

- (1) A guardian who wishes to disclaim an appointment under section 14 is required to disclaim the appointment by notifying the appointing parent or appointing guardian of the disclaimer.
- (2) If the appointing parent or appointing guardian has died, an appointed guardian who—
- (a) has not assumed guardianship under section 16; and
 - (b) wishes to disclaim the appointment,
- is required to disclaim the appointment by a written, dated and signed document.
- (3) A disclaimer referred to in subsection (2) does not take effect until the guardian has notified the following persons of it—
- (a) the executor or administrator of the appointing parent's or appointing guardian's estate under the Probate and Administration Ordinance (Cap. 10);
 - (b) the surviving parent; or
 - (c) other guardians.
- (4) If none of the persons mentioned in subsection (3)(a), (b) and (c) exists, or none of them can be located, the guardian must notify the Director of Social Welfare of the disclaimer.

Division 2—Guardians Appointed by Court

20. Power of court to appoint guardian

- (1) After a parent or guardian of a child has died, the court may, if it thinks fit, appoint a person to be a guardian of the child if—

- (a) no guardian has been appointed by the deceased parent or deceased guardian under section 14;
 - (b) the guardian appointed by the deceased parent or deceased guardian under section 14, or by the court under this section or section 25, has died; or
 - (c) the guardian appointed by the deceased parent or deceased guardian under section 14 has disclaimed the appointment.
- (2) On an application by any person, the court may, if it thinks fit, appoint the person to be the guardian of a child if—
 - (a) the person who is named in a child arrangements order as a person with whom the child is to live has died;
 - (b) the person who has the care of the child given by the Court of First Instance in the exercise of its jurisdiction relating to wardship has died; or
 - (c) the child does not have any parent, guardian or other person having parental responsibility for the child.
- (3) The power to make an appointment under subsection (2) may also be exercised in any children proceedings if the court thinks it appropriate even though no application has been made for it.
- (4) In making an appointment under subsection (1) or (2), the court may also make an order depriving a person of—
 - (a) some or all of the person's responsibilities for the child referred to in section 5(2)(a) to (d); or
 - (b) some or all of the person's rights for the child referred to in section 5(3)(a) to (d).

21. Guardian appointed by court to act jointly with surviving parent or surviving guardian

- (1) A guardian appointed by the court under section 20 or 25—

- (a) must act jointly with the surviving parent or surviving guardian (if any) of the child; and
 - (b) must continue to act after the surviving parent or surviving guardian has died.
- (2) If the surviving parent or surviving guardian of a child has appointed a guardian under section 14, the guardian appointed by the court under section 20 or 25 must act jointly with the guardian appointed by the surviving parent or surviving guardian.

Division 3—General

22. Abolition of common law right of father as natural guardian

The rule of law that a father is the natural guardian of his legitimate child is abolished.

23. Guardian to have parental responsibility

A person appointed as the guardian of a child under this Part has, on assuming guardianship, parental responsibility for the child.

24. Powers of guardians

- (1) Subject to subsection (2), a guardian of a child under this Ordinance—
- (a) is the guardian of the person of the child; and
 - (b) has all the rights, powers and duties of a guardian of the child’s estate, including the right to receive and recover, in the name of the guardian for the benefit of the child, property of whatever description and wherever situated to which the child is entitled to receive or recover.
- (2) Subsection (1) does not restrict or affect the power of the Court of First Instance to appoint a person to be, or to act as,

the guardian of a child's estate either generally or for a particular purpose.

- (3) Subsection (1)(b) does not apply to a guardian under this Ordinance so long as there is a guardian solely of the child's estate.

25. Removal of guardian

On being satisfied that it is in the best interests of the child, the court may, in its discretion—

- (a) remove any guardian appointed under this Part; and
- (b) appoint another person to replace that guardian.

26. Remuneration for guardian

The court may authorize a guardian appointed under this Part to be paid any remuneration for the guardianship service that it thinks fit.

27. Disputes between persons acting jointly

- (1) If—
- (a) 2 or more persons are to act jointly in respect of a child under this Part; and
 - (b) they are unable to agree on a question affecting the welfare of the child,
- any of them may apply to the court for its direction.
- (2) The court may make an order regarding the matters in difference as it thinks proper.
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Part 4

Orders with respect to Children in Children Proceedings

Division 1—General

28. Child arrangements order and other orders with respect to children

- (1) In the circumstances specified in section 29, the court may make the following orders with respect to a child—
 - (a) an order regulating arrangements relating to either or both of the following—
 - (i) the person with whom the child is to live, spend time or otherwise have contact;
 - (ii) when the child is to live, spend time or otherwise have contact with any person;
 - (b) an order that, without the consent of the court, a person is not to take any step that—
 - (i) could be taken by a parent to meet the parent's parental responsibility for the child; and
 - (ii) is of a kind specified in the order;
 - (c) an order giving directions for the purpose of determining a specific question that has arisen, or may arise, in connection with any aspect of parental responsibility for the child;
 - (d) an order depriving a person of—
 - (i) some or all of the person's responsibilities for the child referred to in section 5(2)(a) to (d); or

- (ii) some or all of the person's rights for the child referred to in section 5(3)(a) to (d).
 - (2) An order made under subsection (1) may—
 - (a) contain directions on how it is to be carried into effect;
 - (b) impose conditions that must be complied with by a person to whom the conditions are expressed to apply and—
 - (i) who is named in the order as a person with whom the child concerned is to live, spend time or otherwise have contact;
 - (ii) who is a parent of the child;
 - (iii) who is not a parent of the child but has parental responsibility for the child; or
 - (iv) with whom the child is living;
 - (c) be made to have effect for a specified period, or contain provisions that are to have effect for a specified period; and
 - (d) make incidental, supplemental or consequential provisions that the court thinks fit.
 - (3) In any proceedings under the Matrimonial Causes Ordinance (Cap. 179) or the Matrimonial Proceedings and Property Ordinance (Cap. 192) in which a question arises with respect to the best interests of a child, the court may decide not to make any order under subsection (1) if—
 - (a) the court considers that making no such order would be in the best interests of the child; and
 - (b) all the parties to the proceedings consent to no such order being made.

29. Power of court to make orders under section 28(1)

- (1) The court may make an order under section 28(1) with respect to a child, or vary, discharge, suspend or revive (after being so suspended) such an order, on an application by a person who—
 - (a) is entitled to make the application under subsection (3), (4), (5) or (6); or
 - (b) has obtained the leave of the court to make the application.
- (2) In any children proceedings in which a question arises with respect to the welfare of a child, the court may, even though no application under subsection (1) has been made, make an order under section 28(1), or vary, discharge, suspend or revive (after being so suspended) such an order, if the court considers it appropriate.
- (3) Any of the following persons is entitled to apply for an order under section 28(1) or for varying, discharging, suspending or reviving (after being so discharged) such an order—
 - (a) a parent or guardian of the child;
 - (b) a person who is named, in a child arrangements order that is in force with respect to the child, as a person with whom the child is to live;
 - (c) the Director of Social Welfare.
- (4) In addition, any of the following persons is entitled to apply for a child arrangements order or for varying, discharging, suspending or reviving (after being so discharged) such an order—
 - (a) a party to a marriage (whether or not subsisting) in relation to which the child is a child of the family;

- (b) a person with whom the child has lived for a period of at least 365 days;
 - (c) any of the following persons—
 - (i) if a child arrangements order is in force that regulates arrangements relating to the person with whom the child is to live or when the child is to live with any person—a person having the consent of each person named in the order as a person with whom the child is to live;
 - (ii) if the child is in the care of the Director of Social Welfare—a person having the consent of the Director;
 - (iii) in any other case—a person having the consent of each person who has parental responsibility for the child;
 - (d) a person who has parental responsibility for the child because of provisions made under section 8(4).
 - (5) A person, even if he or she is not entitled to make an application under subsection (3) or (4), is entitled to apply for varying, discharging, suspending or reviving (after being so discharged) an order under section 28(1) if—
 - (a) the order was made on the person’s application; or
 - (b) for a child arrangements order, the person is named in a provision of the order that regulates arrangements relating to—
 - (i) the person with whom the child is to spend time or otherwise have contact; or
 - (ii) when the child is to spend time or otherwise have contact with any person.

- (6) A person who falls within a category of persons prescribed by the rules of court is entitled to apply for an order under section 28(1) as may be prescribed in relation to that category of person.
- (7) The period mentioned in subsection (4)(b) need not be continuous but must not have begun more than 3 years before, or ended more than 3 months before, the making of the application.

30. Consideration in granting leave under section 29(1)(b)

- (1) If the person applying for leave under section 29(1)(b) is the child concerned, the court may only grant leave if it is satisfied that the child has sufficient understanding to make the proposed application for which leave is being applied.
- (2) If the person applying for leave under section 29(1)(b) is not the child concerned, the court must, in deciding whether or not to grant leave, have particular regard to—
 - (a) the nature of the proposed application for which leave is being applied;
 - (b) the applicant's connection with the child;
 - (c) any risk of that proposed application disrupting the child's life to an extent that the child would be harmed by it; and
 - (d) if the child is receiving care provided by the Director of Social Welfare—
 - (i) the Director's plans for the child's future; and
 - (ii) the wishes and feelings of the child's parents.
- (3) In subsection (2)(d), the reference to a child who is receiving care provided by the Director of Social Welfare is a reference to a child who—

- (a) is in the care of the Director under a care order or supervision order; or
- (b) is receiving residential child care service by a non-governmental organization that is commissioned by the Director.

31. Order for prohibiting removal of child out of Hong Kong

- (1) If a parent of a child is a party to any proceedings under section 28(1), that parent may apply to the court for an order that the removal of the child out of Hong Kong is prohibited unless the removal is made—
 - (a) with the leave of the court; or
 - (b) on compliance with the terms specified in the order.
- (2) If a parent of a child who is a child of the family is a party to any proceedings under the Separation and Maintenance Orders Ordinance (Cap. 16) or the Matrimonial Causes Ordinance (Cap. 179), that parent may apply to the court for an order that the removal of the child out of Hong Kong, or out of the care of a person named in the application is prohibited unless the removal is made—
 - (a) with the leave of the court; or
 - (b) on compliance with the terms specified in the order.
- (3) Unless the court directs otherwise, the application under subsection (1) or (2) may be made *ex parte*.

32. Duration of orders made under section 28(1)

An order made under section 28(1) ceases to have effect when the child reaches the age of 18 years.

33. Maintenance order against parents

- (1) The court may make one or more of the orders specified in subsection (2) with respect to a child on application by—
 - (a) a parent of the child;
 - (b) a guardian of the child;
 - (c) a person who is named in a child arrangements order as a person with whom the child is to live; or
 - (d) a person who has parental responsibility for the child.
- (2) The orders are—
 - (a) an order requiring either or both parents of a child to pay to the applicant a lump sum (whether in one amount or by instalments) for either or both of the following—
 - (i) the immediate and non-recurring needs of the child;
 - (ii) meeting any liabilities or expenses reasonably incurred in maintaining the child before the making of the order;
 - (b) an order requiring either or both parents of a child to make to the applicant periodical payments towards the maintenance of the child;
 - (c) an order requiring either or both parents of a child to secure to the applicant, to the satisfaction of the court, periodical payments towards the maintenance of the child;
 - (d) an order requiring either or both parents of a child to transfer to the applicant for the benefit of the child, or to the child, property to which the parent is entitled (either in possession or reversion); and
 - (e) an order requiring the settlement for the benefit of a child, to the satisfaction of the court, of property, being

property to which either or both parents of the child are entitled (either in possession or reversion).

- (3) The following sum, payments or property must be considered reasonable by the court after having regard to the means of either or both parents concerned—
- (a) the lump sum referred to in subsection (2)(a);
 - (b) the periodical payments referred to in subsection (2)(b) or (c); or
 - (c) the property referred to in subsection (2)(d) or (e).

34. Interim Order

- (1) On an application for an order under section 28(1) or 33, if the court adjourns the hearing of the application for more than 7 days, the court may—
- (a) make an interim order requiring either parent to pay to the other, or to a person who is named in a child arrangements order as a person with whom a child is to live, periodical payments towards the maintenance of the child that the court thinks reasonable having regard to the means of the parent against whom the order is made; and
 - (b) if the court thinks that special circumstances make it appropriate, make an interim order regulating arrangements relating to either or both of the following—
 - (i) the person with whom the child is to live, spend time or otherwise have contact;
 - (ii) when the child is to live, spend time or otherwise have contact with any person.

- (2) An interim order made under subsection (1) ceases to have effect when a final order is made or the application is dismissed.
- (3) If the District Court, under section 64(3), refuses to make an order on an application under section 29 or 33, the District Court may also make an interim order under subsection (1).
- (4) Despite section 63 of the District Court Ordinance (Cap. 336), no appeal lies from an interim order under this section if the appeal relates only to an order requiring payments to be made towards the maintenance of a child.

35. Variation, discharge or suspension of maintenance order under section 33 or interim order

- (1) The court may by order vary, discharge, suspend or revive (after being so suspended) the following orders on the application of a person specified in subsection (2)—
 - (a) an order under section 33(2)(a) for the payment of a lump sum by instalments if any instalment has not been paid;
 - (b) an order under section 33(2)(b) for periodical payments;
 - (c) an order under section 33(2)(c) for secured periodical payments;
 - (d) an order under section 33(2)(e) for settlement of property;
 - (e) an interim order under section 34.
- (2) The person is—
 - (a) a parent of the child concerned;
 - (b) (after the death of a parent of the child) a guardian of the child under this Ordinance; or

- (c) (before or after the death of a parent of the child) any other person who is named in a child arrangements order as a person with whom the child is to live or who has parental responsibility for the child.

36. Maintenance order against surviving parent

- (1) If the court makes—

- (a) an order under section 16(2)(e), 17(3)(c) or 27 that a person is to act as the guardian of a child to the exclusion of the surviving parent of the child; or
- (b) an order under section 16(2)(a) or (c), 17(3)(a) or 27 where one of the persons to act jointly is the surviving parent of a child,

the court may make one or more of the orders specified in subsection (2).

- (2) The orders are—

- (a) an order requiring the surviving parent to pay a lump sum (whether in one amount or by instalments) for either or both of the following—
 - (i) the immediate and non-recurring needs of the child;
 - (ii) meeting any liabilities or expenses reasonably incurred in maintaining the child before the making of the order;
- (b) an order requiring the surviving parent to make periodical payments towards the maintenance of the child;
- (c) an order requiring the surviving parent to secure, to the satisfaction of the court, periodical payments towards the maintenance of the child;

- (d) an order requiring the surviving parent to transfer for the benefit of the child, or to the child, property to which the surviving parent is entitled (either in possession or reversion); and
 - (e) an order requiring the settlement for the benefit of a child, to the satisfaction of the court, of property, being property to which the surviving parent is entitled (either in possession or reversion).
- (3) The following sum, payments or property must be considered reasonable by the court after having regard to the means of the surviving parent—
 - (a) the lump sum referred to in subsection (2)(a);
 - (b) the periodical payments referred to in subsection (2)(b) or (c); or
 - (c) the property referred to in subsection (2)(d) or (e).
- (4) The court may by order vary, discharge, suspend or revive (after being so suspended) the following orders—
 - (a) an order under subsection (2)(a) for the payment of a lump sum by instalments if any instalment has not been paid;
 - (b) an order under subsection (2)(b) for periodical payments;
 - (c) an order under subsection (2)(c) for secured periodical payments;
 - (d) an order under subsection (2)(e) for settlement of property.

37. Duration of maintenance order

- (1) This section applies to the following orders—
 - (a) an order under section 33(2)(a), 36(2)(a) or 52(1)(a) for payment of a lump sum by instalments;

- (b) an order under section 33(2)(b) or (c), 34(1)(a) or (3), 36(2)(b) or (c) or 52(1)(b) for periodical payments or secured periodical payments.
- (2) The term to be specified in an order in favour of a child—
 - (a) may begin with the date of the making of an application for the order or any later date; but
 - (b) subject to subsection (3), must not extend beyond the date when the child will attain the age of 18 years.
- (3) An order may extend beyond the date when the child will attain the age of 18 years if it appears to the court that—
 - (a) the child is, or will be, or if an order were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not the child is also, or will also be, in gainful employment; or
 - (b) there are special circumstances that justify the making of the order.
- (4) An order for periodical payments made under section 33(2)(b), 36(2)(b) or 52(1)(b) ceases to have effect, despite anything in the order, on the death of the person liable to make payments under the order.

38. Evidence on application under section 29, 33, 51 or 54(1)

- (1) In dealing with an application under section 29, 33, 51 or 54(1), the court may require the Director of Social Welfare to arrange for a person or organization specified in subsection (2) to make to the court a report in respect of a matter that appears to the court to be relevant to the application.
- (2) The person or organization is—
 - (a) an officer of the Social Welfare Department;
 - (b) a clinical psychologist; or

- (c) an organization that the Director of Social Welfare considers appropriate for making an international social welfare report.
- (3) A statement that is or purports to be a report made pursuant to subsection (1) must—
 - (a) be made orally before the court at a hearing of the application; or
 - (b) be made in writing.
- (4) If the statement is made in writing under subsection (3)(b), a copy of the report must be given to each party to the proceedings.
- (5) After the statement has been made orally under subsection (3)(a) or each party to the proceedings has been given the copy under subsection (4), the court must ask whether any party to the proceedings who is present or represented by counsel or a solicitor at the hearing objects to anything contained in the report.
- (6) If an objection is made under subsection (5)—
 - (a) the court must require the person by whom the statement was or was purported to be made to give evidence on or with respect to the matters referred to in the report; and
 - (b) any party to the proceedings may give or call evidence with respect to a matter referred to in the statement or in any evidence given by the person.
- (7) The court may, regardless of any enactment or rule of law concerning the admissibility of evidence, take account of—
 - (a) any statement made under subsection (3); and
 - (b) any evidence given under subsection (6)(a),in so far as that statement or evidence relates to a matter referred to in subsection (1).

Division 2—Enforcement of Maintenance Order

Subdivision 1—Attachment Order

39. Interpretation of Subdivision 1

In this Subdivision—

Amendment Ordinance (《修訂條例》) means the Attachment of Income Order (Application to Government and Miscellaneous Amendments) Ordinance 2007 (20 of 2007);

attachment order (扣押令) means an order made under section 41(1);

designated payee (指定受款人) in relation to a maintenance order, means the person named in that order as the person to whom the maintenance payments are to be made;

income source (入息來源) means a person who is to pay the income of the maintenance payer and includes the Government;

maintenance payer (贍養費支付人) in relation to a maintenance order, means the person against whom that order is made;

specified payee (指明受款人) in relation to an attachment order, means the person named in that order as the person who is to be paid an amount attached by that order.

40. Application of section 41

(1) Section 41 applies if a maintenance order has been made against a maintenance payer and—

(a) any of the following circumstances exists—

(i) a court is satisfied that the payer has, without reasonable excuse, failed to make a payment required by the maintenance order;

- (ii) a court is satisfied that there are reasonable grounds to believe that the payer will not make full and punctual payment in compliance with the maintenance order;
 - (iii) the payer and the designated payee agree to the making of an order under section 41; and
 - (b) income capable of being attached is payable to the payer.
 - (2) For the purposes of subsection (1)(a)(ii), in deciding whether reasonable grounds exist, the court must take into account all the circumstances of the case, including—
 - (a) the payer’s past record and conduct in discharging the payer’s reasonable financial obligation towards the designated payee before any maintenance order is made;
 - (b) the payer’s past record and conduct in making maintenance payments to the payee under the maintenance order or an undertaking in any proceedings; and
 - (c) the risk of the payer dissipating the payer’s property.
 - (3) Without limiting section 41—
 - (a) that section applies to income that is wages or salary payable to a maintenance payer by the Government; and
 - (b) paragraph (a) of the proviso to section 23(1) of the Crown Proceedings Ordinance (Cap. 300) does not preclude the court from making an attachment order in respect of such wages or salary.
 - (4) Without limiting section 41—
 - (a) that section applies to income that is wages payable to a maintenance payer by a person other than the Government; and

- (b) section 66 of the Employment Ordinance (Cap. 57) does not preclude the court from making an attachment order in respect of such wages.

41. Attachment of income to satisfy order

- (1) The court may, in accordance with rules made under section 42, order—
 - (a) any income capable of being attached to be attached to the whole or part of the amount payable under the maintenance order; and
 - (b) the amount so attached to be paid to the specified payee.
- (2) The court may make an attachment order at any time after a maintenance order has been made, including in the same hearing in which the maintenance order is made or varied.
- (3) An attachment order may be made by the court on its own motion or on an application by the maintenance payer or the designated payee (or both).
- (4) An attachment order is an authority to an income source to make the payment in accordance with the order, and the specified payee's receipt is a good discharge to that income source.
- (5) If—
 - (a) an attachment order requires an employer to make a deduction from the wages of an employee in a wage period; and
 - (b) that deduction, together with a deduction authorized to be made under section 32 of the Employment Ordinance (Cap. 57) by the employer from the employee's wages in the same wage period, would in total exceed the whole of the wages payable to the employee in respect of that wage period,

then the amount liable to be deducted by the employer under the attachment order is to be treated as being reduced by such an amount that the total of all deductions made by the employer does not exceed the whole of the wages payable to the employee in respect of that wage period.

42. Rule making power—attachment order

- (1) For the purpose of giving effect to section 41(1), the Chief Justice may make rules of court that the Chief Justice considers necessary or expedient.
- (2) Rules made under subsection (1) may in particular provide for—
 - (a) the matters to be contained in an application for an attachment order, and the manner of filing and service of the application;
 - (b) the compliance with an attachment order;
 - (c) the obligations of the income source;
 - (d) the obligations of the maintenance payer when an attachment order is in force or in the event of an attachment order ceasing to have effect for any reason;
 - (e) the recovery from the maintenance payer of the clerical and administrative costs incurred in complying with an attachment order;
 - (f) the variation or discharge of an attachment order;
 - (g) the enforcement of an attachment order.
- (3) Rules made under subsection (1) may empower the court to dispense with or relax any procedure or abridge any time limit specified in the rules if the court is satisfied that it is fair and reasonable to do so in the circumstances of the case.

- (4) Rules made under subsection (1) may provide that the contravention of such a rule constitutes an offence punishable by a fine at level 2 and by imprisonment for 1 month.
- (5) The Chief Justice may specify the form of any document filed in proceedings under section 41(1).

43. Transitional provision—attachment order

- (1) An attachment order—
 - (a) that is made by the court before the commencement date of the Amendment Ordinance in respect of the wages or salary payable to a maintenance payer by the Government; and
 - (b) that has not been discharged or declared invalid by the court as at that commencement date,

has effect from that commencement date as if it were made under section 41(1) as read with section 40(3).
- (2) An application—
 - (a) that is made for an attachment order in respect of the wages or salary payable to a maintenance payer by the Government;
 - (b) that is pending immediately before the commencement date of the Amendment Ordinance; and
 - (c) in which an attachment order has not been made as at that commencement date,

is to be determined in accordance with this Subdivision.

Subdivision 2—Arrears of Maintenance

44. Interpretation of Subdivision 2

In this Subdivision—

commencement date (生效日期) means 1 May 2005, being the date on which the Interest and Surcharge on Arrears of Maintenance Ordinance 2003 (18 of 2003) came into operation;

judgment creditor (判定債權人) means a person entitled to enforce a maintenance order;

judgment debtor (判定債務人) means a person liable to pay under a maintenance order.

45. **Interest on arrears of maintenance**

- (1) If a maintenance order has been made against a judgment debtor, and the judgment debtor fails to make full and punctual payment in compliance with the maintenance order, the judgment creditor is entitled to interest in respect of arrears of maintenance that accrue on or after the commencement date.
- (2) For the purposes of subsection (1)—
 - (a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum under a maintenance order are to be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);
 - (b) the interest under subsection (1) is to be calculated in accordance with that section; and
 - (c) for the purposes of that section, the date on which payment is due as specified by the maintenance order is to be treated as the date of the judgment.
- (3) The judgment debtor is liable to pay the interest under subsection (1).
- (4) If a payment under a maintenance order has not been paid and interest in respect of the arrears has accrued under subsection

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- (1), and subsequently the judgment debtor makes payment, the payment is taken to be made in the following order in or towards the discharge of—
- (a) interest accrued under subsection (1);
 - (b) any surcharge payable under section 46;
 - (c) the costs ordered by the court to be paid under any proceedings instituted for enforcing the maintenance order;
 - (d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);
 - (e) the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under an order in any proceedings instituted for enforcing the maintenance order.
- (5) A judgment debtor who considers that he or she has reasonable grounds not to pay the interest under subsection (1)—
- (a) may, within a reasonable time after having knowledge of the requirement to pay, apply by summons to the court for the debtor not to be required to pay the interest; and
 - (b) must set out the grounds in the application.
- (6) If an application is made under subsection (5), in deciding whether to require the judgment debtor to pay interest and, if so, the amount of interest, the court must take into account all the circumstances of the case, including—
- (a) whether the judgment debtor has a reasonable excuse for failing to comply with the maintenance order;

- (b) whether the judgment debtor has evaded the service of court documents;
 - (c) the judgment debtor's past record and conduct in making maintenance payments to the judgment creditor under the maintenance order or an undertaking in any proceedings;
 - (d) whether the judgment debtor has given the judgment creditor a reasonable explanation for failing to comply with the maintenance order; and
 - (e) the judgment debtor's ability to pay.
- (7) A judgment debtor who is aggrieved by a decision requiring the debtor to pay interest may appeal to the Court of Appeal against the decision under section 63 of the District Court Ordinance (Cap. 336).

46. Order for surcharge on arrears of maintenance

- (1) This section applies if—
- (a) a maintenance order has been made against a judgment debtor; and
 - (b) the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order.
- (2) The court may, on an application by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance that accrue on or after the commencement date.
- (3) The court must specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

47. Application for surcharge on arrears of maintenance

- (1) An application for a surcharge under section 46 may be made in proceedings instituted for enforcing the maintenance order.
- (2) The application must be made by a summons supported by an affidavit of the judgment creditor stating—
 - (a) the judgment creditor's name, and the judgment creditor's address for service of the documents relating to the application;
 - (b) the judgment debtor's name, and the judgment debtor's address for service or last known address;
 - (c) the particulars of the maintenance order;
 - (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrued;
 - (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under section 49(1);
 - (f) a request for fixing a date, time and place for the hearing of the application; and
 - (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

48. Service of summons and notice of hearing

- (1) On receipt of the summons and affidavit under section 47(2), the court must fix a date, time and place for the hearing of the application.
- (2) The judgment creditor must serve on the judgment debtor—
 - (a) a sealed copy of the summons;
 - (b) a copy of the affidavit; and
 - (c) a notice of the hearing.

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- (3) Without limiting any enactment relating to the service of documents and except as otherwise expressly provided, the summons, affidavit and notice may—
- (a) be personally served on the judgment debtor; or
 - (b) be sent—
 - (i) if the judgment debtor is represented—by post to the solicitor acting for that judgment debtor, or by leaving them with the solicitor; or
 - (ii) if the judgment debtor is unrepresented—by post to the address for service or the last known address of that judgment debtor, or by leaving them at the address for service or the last known address of that judgment debtor; or
 - (c) be served in any other manner that the court directs.
- (4) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (1), then—
- (a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;
 - (b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place that it thinks fit.
- (5) The judgment creditor must serve a notice of the adjourned hearing on the judgment debtor.
- (6) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (4)(b), the court may proceed to hear the application and may make an order

requiring the judgment debtor to pay a surcharge to the judgment creditor.

- (7) If the judgment debtor, within a reasonable time after having knowledge of the order made under subsection (4)(a) or (6), applies by summons to vary or set aside the order, the court may make the order on any terms that it thinks fit if it is satisfied that there is reasonable excuse for the judgment debtor's failure to—
 - (a) appear at the hearing; and
 - (b) make full and punctual payment in compliance with the maintenance order.

49. Surcharge on arrears of maintenance

- (1) The amount of surcharge payable by the judgment debtor must not exceed 100% of the total arrears of maintenance calculated—
 - (a) from the date on which the arrears first accrued; and
 - (b) to the date that the surcharge is paid.
- (2) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor.
- (3) An action under subsection (2) may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.
- (4) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against the order under section 63 of the District Court Ordinance (Cap. 336).

Subdivision 3—Miscellaneous

50. Person subject to maintenance order to notify change of address

- (1) A person (*payer*) who is obliged to make a payment under an order for the payment of money under this Ordinance must within 14 days of a change of address give notice of the payer's new address to any person specified in the order.
 - (2) The notice must be sent by registered post to—
 - (a) the last known address of the person specified in the order; or
 - (b) any address that the person specified in the order has given to the payer for the purposes of this section.
 - (3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable to a fine at level 2.
-

Part 5

Care Order and Supervision Order

51. Care order and supervision order in children proceedings

- (1) Where an application is made under this Ordinance relating to the care of a child—
 - (a) the court may make an order placing the child under the supervision of the Director of Social Welfare if—
 - (i) by an order made on that application, the child is committed to the care of a person; but
 - (ii) it appears to the court that there are circumstances specified in subsection (2) making it desirable that the child should be under the supervision of an independent person; or
 - (b) the court may make an order committing the child to the care of the Director if it appears to the court that there are circumstances specified in subsection (2) making it impracticable or undesirable for the child to be entrusted to either of his or her parents or to any other individual.
- (2) The circumstances are—
 - (a) any of the following conditions is met in respect of the child concerned—
 - (i) the child has been or is being assaulted, ill-treated, neglected or sexually abused;
 - (ii) the child's health, development or welfare has been or is being neglected or avoidably impaired;
 - (iii) the child's health, development or welfare appears likely to be neglected or avoidably impaired;

- (iv) the child is beyond control, to the extent that harm may be caused to the child or others; and
- (b) the child requires care or protection.

52. Maintenance order on making care order

- (1) If the court makes a care order, the court may make either or both of the following orders—
 - (a) an order requiring either parent to pay to the Director of Social Welfare, while the Director has the care of the child, a lump sum (whether in one amount or by instalments) for either or both of the following—
 - (i) the immediate and non-recurring needs of the child;
 - (ii) meeting any liabilities or expenses reasonably incurred in maintaining the child before the making of the order;
 - (b) an order requiring either parent to make to the Director, while the Director has the care of the child, periodical payments towards the maintenance of the child.
- (2) The lump sum referred to in subsection (1)(a) or periodical payments referred to in subsection (1)(b) must be considered reasonable by the court after having regard to the means of the parent concerned.

53. Additional provisions as to care orders

Before making a care order, the court must—

- (a) inform the Director of Social Welfare of the court's proposal to make the order; and
- (b) hear any representations from the Director, including representations in relation to making an order under section 52 for payment to the Director.

54. Variation, discharge or suspension of supervision order

- (1) The court may by order vary, discharge, suspend or revive (after being so suspended) a supervision order on the application of a person specified in subsection (2).
- (2) The person is—
 - (a) a parent of the child concerned;
 - (b) (after the death of a parent of the child) a guardian of the child under this Ordinance;
 - (c) (before or after the death of a parent of the child) any other person who is named in a child arrangements order as a person with whom the child is to live; or
 - (d) the Director of Social Welfare if the Director has the supervision of the child under the supervision order.

55. Variation, discharge or suspension of care order or maintenance order under section 52

- (1) The court may by order vary, discharge, suspend or revive (after being so suspended) the following orders on the application of a person specified in subsection (2)—
 - (a) a care order;
 - (b) an order under section 52(1)(a) for the payment of a lump sum by instalments if any instalment has not been paid;
 - (c) an order under section 52(1)(b) for periodical payments.
- (2) The person is—
 - (a) a parent of the child concerned;
 - (b) (after the death of a parent of the child) a guardian of the child under this Ordinance; or
 - (c) (before or after the death of a parent of the child) the Director of Social Welfare.

56. Parent or guardian of child in care to notify change of address

- (1) Each parent or guardian of a child for the time being in the care of the Director of Social Welfare under a care order must give notice to the Director of any change of address of that parent or guardian.
- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable to a fine at level 2.

57. Contact with child in care

- (1) Subject to subsections (3), (4) and (5), if a child is committed to the care of the Director of Social Welfare under a care order, the Director must allow the child reasonable contact with—
 - (a) the child's parents;
 - (b) the child's guardian (if any); and
 - (c) if a child arrangements order was in force with respect to the child immediately before the care order was made, any person named in the child arrangements order as a person with whom the child was to live.
- (2) If a child is committed to the care of the Director of Social Welfare under a care order, a court may, on an application by any of the following persons, make an order allowing the child reasonable contact with that person—
 - (a) a person specified in subsection (1)(a), (b) or (c);
 - (b) a person who has obtained the leave of the court to make the application.
- (3) The Director of Social Welfare may refuse to allow the contact that would otherwise be required under subsection (1) or an order made under subsection (2) if—

- (a) the Director is satisfied that it is necessary to do so in order to safeguard or promote the child's welfare; and
 - (b) the refusal—
 - (i) is decided on as a matter of urgency; and
 - (ii) does not last for more than 7 days.
- (4) On an application by the Director of Social Welfare, the court may make an order authorizing the Director to refuse to allow contact between the child and a person specified in subsection (1)(a), (b) or (c).
- (5) Even though no application for an order under subsection (2) or (4) has been made with respect to a child, the court may also make an order under subsection (4) in the following circumstances if it considers that the order should be made—
 - (a) when making a care order with respect to a child; or
 - (b) in any children proceedings in connection with a child who is in the care of the Director of Social Welfare.
- (6) The court may impose any conditions in an order made under this section that it considers appropriate.
- (7) The court may vary or discharge an order under this section on the application of the Director of Social Welfare or a person named in the order.

58. Child assessment procedure

- (1) If the Director of Social Welfare has reasonable cause to suspect that the circumstances referred to in section 51(2) exist, or are likely to exist, in respect of a child, the Director may—
 - (a) cause a notice to be served on a person having care of the child, requiring that person to produce the child for an assessment, by a medical practitioner, clinical psychologist or approved social worker, of—

- (i) the state of the child's health or development; or
 - (ii) the way in which the child has been treated; or
- (b) require such a person to allow the Director to observe the condition of the child.
- (2) A person who is served with a notice under subsection (1)(a) with respect to a child must take all reasonable steps to ensure that the child is produced for assessment at the time and place specified in the notice.
- (3) A notice under subsection (1)(a) is sufficient authority for the medical practitioner, clinical psychologist or approved social worker named in the notice, or any person assisting them or acting on their behalf, to make an assessment and report their assessment to the Director of Social Welfare.
- (4) For the purpose of an assessment referred to in subsection (1)(a), the Director of Social Welfare may remove the child if—
 - (a) the Director is unable to ascertain the identity or whereabouts of any of the persons on whom the notice under that subsection may be served; or
 - (b) a notice served under that subsection has not been complied with in producing the child at the time and place specified in the notice.
- (5) A child who has been removed under subsection (4) for the purpose of an assessment—
 - (a) is to be detained at a place of refuge or other place that the Director of Social Welfare considers appropriate; and
 - (b) subject to subsection (6), must not be detained for longer than 12 hours from the time of the child's removal.

- (6) The child may be detained for such further period or periods not exceeding 36 hours, excluding the 12 hours mentioned in subsection (5)(b), in total only if—
 - (a) in the opinion of the medical practitioner, clinical psychologist or approved social worker who is carrying out the assessment, the further period or periods are necessary for completing the assessment;
 - (b) that opinion is confirmed by a second opinion from another medical practitioner, clinical psychologist or approved social worker; and
 - (c) that opinion and the second opinion have been given in writing to the Director of Social Welfare.
- (7) If an application is made to a court under section 51, 54 or 55, the court may order that the child be assessed by a medical practitioner, clinical psychologist or an approved social worker as to—
 - (a) the state of the child's health or development; or
 - (b) the way in which the child has been treated.
- (8) In this section—

place of refuge (收容所) has the meaning given by section 2 of the Protection of Children and Juveniles Ordinance (Cap. 213).

59. Power of Director of Social Welfare etc. in relation to child assessment procedure

- (1) The Director of Social Welfare or any officer generally or specially authorized for that purpose in writing by the Director (*authorized officer*) may enter any premises for the purpose of—
 - (a) observing the condition of a child under section 58(1)(b); or
 - (b) removing a child under section 58(4).

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- (2) However, an entry under subsection (1) must not be effected by the use of force unless the Director of Social Welfare or authorized officer has first obtained a warrant issued by a magistrate or the District Court under subsection (3) for that purpose.
 - (3) On being satisfied by information on oath as to the condition specified in subsection (4), a magistrate or the District Court may issue a warrant to authorize the Director of Social Welfare or an authorized officer to enter, by the use of force if necessary, any premises for the purposes mentioned in subsection (1).
 - (4) The condition is that there are reasonable grounds for suspecting that—
 - (a) a child who is liable to be dealt with under section 58(1)(b) or (4) is in the premises; and
 - (b) the entry can only be effected by the use of force.
 - (5) A person who enters any premises under subsection (1) must—
 - (a) if so required, produce evidence of the person's identity; and
 - (b) if a warrant has been issued under subsection (3)—
 - (i) produce the warrant or a copy of the warrant; and
 - (ii) in effecting the entry, use only such force as is reasonably necessary.
-

Part 6

Views of Child and Separate Representation for Child

60. How views of child are expressed

A court may ascertain the views expressed by a child—

- (a) by having regard to anything contained in a report given to the court under section 38(1);
- (b) by making an order under section 62 for the child's interests in the proceedings to be independently represented by a solicitor, or by a solicitor and counsel; or
- (c) by any other means that the court thinks appropriate.

61. Child not required to express views

This Part does not permit the court or any person to require the child to express the child's views in relation to a matter.

62. Court order for independent representation for child's interests etc.

- (1) A court may make an order for the independent representation of a child's interests by a solicitor, or by a solicitor and counsel, in any proceedings relating to the parental responsibility for, or guardianship of, the child—
 - (a) on its own motion; or
 - (b) on the application by a person who—
 - (i) as provided in subsection (2), is entitled to apply for the order; or
 - (ii) has obtained the leave of the court to make the application.

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- (2) Any of the following persons is entitled to apply for an order under subsection (1) with respect to a child—
- (a) the child;
 - (b) a parent or guardian of the child;
 - (c) a person who is named, in a child arrangements order that is in force with respect to the child, as a person with whom the child is to live;
 - (d) a party to a marriage (whether or not subsisting) in relation to which the child is a child of the family;
 - (e) a person with whom the child has lived for a period of at least 365 days;
 - (f) any of the following persons—
 - (i) if a child arrangements order is in force that regulates arrangements relating to the person with whom the child is to live or when the child is to live with any person—a person having the consent of each person named in the order as a person with whom the child is to live;
 - (ii) if the child is in the care of the Director of Social Welfare—a person having the consent of the Director;
 - (iii) in any other case—a person having the consent of each person who has parental responsibility for the child;
 - (g) a person who has parental responsibility for the child because of provisions made under section 8(4).
- (3) The period mentioned in subsection (2)(e) need not be continuous but must not have begun more than 3 years before, or ended more than 3 months before, the making of the application.

- (4) In any proceedings in which—
 - (a) the court makes an order for the independent representation under subsection (1); or
 - (b) a person acts as a guardian ad litem for a child,the court may order any party to the proceedings to bear the costs of the independent representation or the costs incurred by the person acting as the guardian ad litem.

63. Circumstances in which child does not need next friend or guardian ad litem

- (1) Subject to subsection (2), a child may conduct proceedings without a next friend or guardian ad litem if—
 - (a) the proceedings are proceedings—
 - (i) under this Ordinance; or
 - (ii) relating to the exercise of the court’s inherent jurisdiction in relation to children; and
 - (b) either of the conditions set out in subsection (3)(a) and (b) is satisfied.
- (2) Subsection (1) does not apply if the child is the subject of, and a party to, any proceedings under the Adoption Ordinance (Cap. 290).
- (3) The conditions are—
 - (a) the child has obtained the permission of the court; and
 - (b) a solicitor—
 - (i) considers that the child is able, having regard to the child’s understanding, to give instructions in relation to the proceedings; and
 - (ii) has accepted instructions from the child to act for the child in the proceedings and, if the proceedings have begun, the solicitor is already acting.

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- (4) An application for a permission under subsection (3)(a) may be made by the child without notice to the other party.
 - (5) If a child—
 - (a) has a next friend or guardian ad litem in proceedings referred to in subsection (1)(a); and
 - (b) wishes to conduct the remaining stages of the proceedings without the next friend or guardian ad litem, the child may apply to the court, on notice to the next friend or guardian ad litem, for the court's permission for that purpose and for the removal of the next friend or guardian ad litem.
 - (6) On an application by the child, the court may grant the permission referred to in subsection (3)(a) or (5) if it considers that the child has sufficient understanding to conduct the proceedings concerned without a next friend or guardian ad litem.
 - (7) In exercising its power under subsection (6), the court may require the next friend or guardian ad litem to take any part in the proceedings that the court directs.
 - (8) The court may revoke a permission referred to in subsection (3)(a) if it considers that the child does not have sufficient understanding to participate as a party in the proceedings concerned without a next friend or guardian ad litem.
 - (9) If—
 - (a) a solicitor is acting for a child in proceedings without a next friend or guardian ad litem because of subsection (3)(b); and
 - (b) either or both of the conditions set out in subsection (3)(b)(i) and (ii) cease to be fulfilled, the solicitor must inform the court immediately.

(10) If—

- (a) the court revokes a permission under subsection (8); or
- (b) either or both of the conditions set out in subsection (3)(b)(i) and (ii) are no longer fulfilled,

the court may, if it considers it necessary in order to protect the interests of the child concerned, appoint a person to be that child's next friend or guardian ad litem.

Part 7

Procedure, Jurisdiction and Subsidiary Legislation

64. Procedure in District Court

- (1) Except otherwise expressly provided in this Ordinance, Part 4 of the District Court Ordinance (Cap. 336) applies to every proceeding before, and every order by, the District Court under this Ordinance.
- (2) An application under this Ordinance may be heard and determined otherwise than in open court.
- (3) If the District Court considers that the matter is one that could more conveniently be dealt with by the Court of First Instance—
 - (a) the District Court may refuse to make an order; and
 - (b) without limiting the general right of appeal conferred by Part 4 of the District Court Ordinance (Cap. 336), no appeal may lie from the decision of the District Court.
- (4) An order for the payment of money under this Ordinance is enforceable as a civil debt.

65. Transfer to Court of First Instance

If an application (*relevant application*) has been made under this Ordinance to the District Court, the Court of First Instance must, on an application by a party to the relevant application, order the relevant application—

- (a) to be transferred to the Court of First Instance; and
- (b) to be proceeded with on any terms as to costs that it thinks proper.

66. Saving for powers of Court of First Instance

This Ordinance does not restrict or affect the jurisdiction of the Court of First Instance to appoint or remove guardians or otherwise in respect of a child.

67. Jurisdiction over persons not domiciled in Hong Kong

The jurisdiction conferred on a court by this Ordinance is exercisable even if a party to the proceedings is not domiciled in Hong Kong.

68. Regulation making power

- (1) The Secretary of Labour and Welfare may make regulations for the better carrying out of the provisions of this Ordinance.
- (2) Without limiting subsection (1), the Secretary for Labour and Welfare may by regulation prescribe the form of a parental responsibility agreement and the manner in which the agreement must be recorded.

69. Rule making power

- (1) The Chief Justice may make rules for the better carrying out of the purposes and provisions of this Ordinance, including rules—
 - (a) on all matters of procedure under this Ordinance;
 - (b) to prescribe the forms to be used under this Ordinance; and
 - (c) to provide for the enforcement in the High Court of orders made under this Ordinance in the District Court.

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- (2) The Chief Justice, with the approval by resolution in the Legislative Council, may make rules prescribing the fees and costs to be paid, charged or allowed under this Ordinance.
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Part 8

Repeal, Transitional and Savings Provisions and Consequential or Related Amendments

70. Interpretation of Part 8

In this Part—

commencement date (生效日期) means the day on which this Ordinance comes into operation;

repealed Ordinance (《已廢除條例》) means the Guardianship of Minors Ordinance (Cap. 13) as in force immediately before section 71 comes into operation.

71. Guardianship of Minor Ordinance repealed

The Guardianship of Minors Ordinance (Cap. 13) is repealed.

72. Effect of repeal on subsidiary legislation

Any subsidiary legislation made under the repealed Ordinance and in force immediately before the commencement date, so far as it is not inconsistent with this Ordinance, continues in force and has effect for all purposes as if made under this Ordinance.

73. Consequential or related amendments

The enactments specified in the Schedule are amended as set out in the Schedule.

74. Transitional and savings

(1) This Ordinance does not affect any proceedings under the repealed Ordinance that were pending immediately before the commencement date.

(2) Despite the repeal under section 71—

- (a) an order made under the repealed Ordinance continues to have effect; and
 - (b) the repealed Ordinance continues to apply to the order.
- (3) Where an appointment of a person as a guardian of a minor was made under the repealed Ordinance, or under the Court of First Instance's inherent jurisdiction with respect to the minor—
 - (a) if the appointment was effective immediately before the commencement date, it is, on and after that date, taken to be an appointment made and having effect under this Ordinance; or
 - (b) if the appointment had not taken effect before that date, it is, on and after that date, to be governed by this Ordinance.
- (4) To avoid doubt, a guardian appointed under the repealed Ordinance has the same rights and responsibilities as a guardian appointed under this Ordinance.

75. Transitional for Marriage and Children (Miscellaneous Amendments) Ordinance 1997

- (1) The amendments made to section 19 of the repealed Ordinance by section 5 of the Marriage and Children (Miscellaneous Amendments) Ordinance 1997 (69 of 1997) (*amending Ordinance*) do not apply in relation to orders made before the commencement of the amending Ordinance.
 - (2) The provisions of the repealed Ordinance in force immediately before the commencement of the amending Ordinance continue to apply in relation to those orders as if the amending Ordinance had not been enacted.
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Schedule

[s. 73]

Consequential or Related Amendments

Part 1

Amendments to High Court Ordinance (Cap. 4)

- 1. Section 26 amended (wards of court)**
 - (1) Section 26(2), before “cease to be”—
Add
“, subject to subsection (4),”.
 - (2) After section 26(3)—
Add
“(4) An infant ceases to be a ward of court when the infant attains the age of 18 years.”.

Part 2

Amendments to Separation and Maintenance Orders Ordinance (Cap. 16)

- 2. Section 2 amended (interpretation)**

Section 2—
Add in alphabetical order

“child arrangements order (子女安排令) means an order made under section 28(1)(a) of the Children Proceedings (Parental Responsibility) Ordinance (of);”.

3. Section 5 amended (powers of District Court)

(1) Section 5(1)—

Repeal paragraph (b).

(2) Section 5(3)—

Repeal

“shall have regard primarily to the best interests of the children”

Substitute

“must regard the best interests of the children as the paramount consideration”.

(3) After section 5(3)—

Add

“(4) On any application under section 3, the District Court may also make an order under section 28(1) of the Children Proceedings (Parental Responsibility) Ordinance (of) with respect to any child of the marriage.”.

4. Section 7 amended (District Court may vary or discharge order)

(1) Section 7(4)(b)—

Repeal

“order ordering that the legal custody of the children of the marriage shall continue to be committed to the married person mentioned in subsection (3) until such children attain”

Substitute

“child arrangements order ordering the child of the marriage to continue to live with the married person mentioned in subsection (3), until the child attains”.

(2) Section 7(5)—

Repeal

“shall have regard primarily to the best interests of the children”

Substitute

“must regard the best interests of the children as the paramount consideration”.

5. Section 9 amended (power to order interim payments where application for maintenance is adjourned)

Section 9(1)—

Repeal

“in the applicant’s custody”

Substitute

“who are ordered to live with the applicant under a child arrangements order”.

6. Section 14 added

After section 13—

Add

“14. Transitional provision for Children Proceedings (Parental Responsibility) Ordinance

The amendments to sections 5, 7 and 9 of this Ordinance made by sections 3, 4 and 5 of the Schedule to the Children Proceedings (Parental Responsibility) Ordinance (of) do not apply in relation to an order made

before the commencement of the Children Proceedings (Parental Responsibility) Ordinance (of), and the provisions of this Ordinance in force immediately before that commencement continue to apply in relation to that order as if the Children Proceedings (Parental Responsibility) Ordinance (of) had not been enacted.”.

Part 3

Amendment to Insurance Companies Ordinance (Cap. 41)

7. Section 64A amended (interpretation (Part IXA))

Section 64A(1), definition of *guardian*—

Repeal

“the Guardianship of Minors Ordinance (Cap. 13)”

Substitute

“Part 3 of the Children Proceedings (Parental Responsibility) Ordinance (of)”.

Part 4

Amendment to Apprenticeship Ordinance (Cap. 47)

8. Section 9 amended (parties to contracts of apprenticeship)

Section 9(3)(b)—

Repeal

“the Guardianship of Minors Ordinance (Cap. 13)”

Substitute

“Part 3 of the Children Proceedings (Parental Responsibility) Ordinance (of)”.

Part 5

Amendment to Employment Ordinance (Cap. 57)

9. Section 32 amended (restriction on deductions from wages)

Section 32(3)—

Repeal

“section 20(1) of the Guardianship of Minors Ordinance (Cap. 13)”

Substitute

“section 42 of the Children Proceedings (Parental Responsibility) Ordinance (of)”.

Part 6

Amendment to Legal Aid Ordinance (Cap. 91)

10. Section 2 amended (interpretation)

Section 2(1), definition of *domestic proceedings*—

Repeal

“the Guardianship of Minors Ordinance (Cap. 13)”

Substitute

“the Children Proceedings (Parental Responsibility) Ordinance (of)”.

Part 7

Amendments to Births and Deaths Registration Ordinance (Cap. 174)

11. Section 7 amended (duty of parent or occupier to register birth)

Section 7—

Repeal

everything before “the occupier”

Substitute

“Any parent of a child born alive in Hong Kong, or in case of the death, illness, absence or inability of both parents of the child,”.

12. Section 12 amended (registration of father of illegitimate child)

Section 12(3)—

Repeal paragraph (b)

Substitute

“(b) an order of a court—

- (i) under section 6(2) of the Children Proceedings (Parental Responsibility) Ordinance (of) granting that person parental responsibility for the child;
- (ii) under section 28(1)(a) of the Children Proceedings (Parental Responsibility) Ordinance (of) in which that person is named as a person with whom the child is to live, spend time or otherwise have contact; or
- (iii) under section 33 of the Children Proceedings (Parental Responsibility) Ordinance (of)

requiring that person to make any lump sum or periodical payments in respect of the child.”.

Part 8

Amendments to Matrimonial Causes Ordinance (Cap. 179)

13. Sections 48, 48A, 48B and 48C repealed

Sections 48, 48A, 48B and 48C—

Repeal the sections.

14. Section 64 added

After section 63—

Add

“64. Transitional provision for Children Proceedings (Parental Responsibility) Ordinance

The repeal of sections 48, 48A, 48B and 48C of this Ordinance made by section 13 of the Schedule to the Children Proceedings (Parental Responsibility) Ordinance (of) does not apply in relation to an order made before the commencement of the Children Proceedings (Parental Responsibility) Ordinance (of), and the provisions of this Ordinance in force immediately before that commencement continue to apply in relation to that order as if the Children Proceedings (Parental Responsibility) Ordinance (of) had not been enacted.”.

Part 9

Amendments to Matrimonial Causes Rules (Cap. 179 sub. leg. A)

15. Rule 93 amended (further provisions as to orders under section 48 of the Ordinance)

- (1) Rule 93, heading—

Repeal

“section 48 of the Ordinance”

Substitute

“section 51(1)(a) of Children Proceedings (Parental Responsibility) Ordinance”.

- (2) Rule 93—

Renumber the rule as rule 93(1).

- (3) Rule 93(1)—

Repeal

“section 48 of the Ordinance”

Substitute

“section 54 of the Children Proceedings (Parental Responsibility) Ordinance (of).”

- (4) Rule 93(1)—

Repeal

“that section”

Substitute

“section 51(1)(a) of that Ordinance”.

- (5) Rule 93(1)—

Repeal

“shall, if practicable, notify any interested party”

Substitute

“must notify all of the parties to the proceedings in which the order was made”.

(6) After rule 93(1)—

Add

“(2) If the Director’s application is opposed by any of the parties referred to in paragraph (1)—

(a) an appointment is to be fixed for the hearing of the application; and

(b) notice of the date of the hearing is to be given to all of those parties.”.

16. Rule 105 amended (person under disability must sue by next friend, etc.)

Rule 105(2)—

Repeal

“A person”

Substitute

“Subject to section 63 of the Children Proceedings (Parental Responsibility) Ordinance (of), a person”.

17. Rule 108 repealed (separate representation of children)

Rule 108—

Repeal the rule.

Part 10

Amendments to Marriage Ordinance (Cap. 181)

18. Section 18A amended (District Judge may give consent)

- (1) Section 18A(1A), Chinese text—

Repeal

“父親或母親的其中一人同意，則只有在該方既無法取得其父親的該項同意亦無法取得其母親”

Substitute

“父母其中一人同意，則只有在該方無法取得其父母雙方”。

- (2) Section 18A—

Repeal subsection (3)

Substitute

“(3) In this section—

guardian (監護人) has the meaning given by Schedule 3;

parent (父母) has the meaning given by Schedule 3.”。

19. Schedule 3 amended (consent required to the marriage of a party of or over 16 and under 21 years of age)

- (1) Schedule 3—

Repeal

everything before “PART I”

Substitute

“(1) In this Schedule—

child arrangements order (子女安排令) means an order made under section 28(1)(a) of the Children Proceedings (Parental Responsibility) Ordinance (of);

father with parental responsibility (具有父母責任的父親), in relation to a party who is an illegitimate person, means the party's father who has acquired parental responsibility for the party under section 6(1) of the Children Proceedings (Parental Responsibility) Ordinance (of) and has not ceased to have it as provided in section 7(1) of that Ordinance;

guardian (監護人) includes—

- (a) any person (other than a parent) with whom the party is to live under a child arrangements order in force with respect to the party; and
- (b) all of the guardians, if more than one guardian is appointed to act jointly;

illegitimate person (非婚生人士) means a person who was born illegitimate and has not been legitimated under the Legitimacy Ordinance (Cap. 184) nor recognized as legitimated by or under any law;

parent (父母), in relation to an illegitimate person, includes a father with parental responsibility;

parental responsibility (父母責任) has the meaning given by section 5 of the Children Proceedings (Parental Responsibility) Ordinance (of).

- (2) For the purposes of this Schedule, an individual is regarded as not living with a party under a child arrangements order if—
 - (a) there is a child arrangements order in force with respect to the party regulating arrangements

relating to the person with whom the party is to live; and

- (b) the individual is not the person, or one of the persons, with whom the party is to live under such an order.
- (3) For the purposes of this Schedule, in relation to a party of or above 18 and under 21 years of age—
 - (a) a reference to a father with parental responsibility is a reference to a person who was a father with parental responsibility in relation to the party immediately before the party attained the age of 18 years;
 - (b) a reference to a guardian is a reference to a person who was a guardian of the party immediately before the party attained the age of 18 years;
 - (c) a reference to a child arrangements order in force is a reference to a child arrangements order that was in force with respect to the party immediately before the party attained the age of 18 years.”.
- (2) Schedule 3, Part I, item 1, paragraph (c)—

Repeal

“have been deprived of custody of the party by order of any court”

Substitute

“are not living with the party under a child arrangements order”.

- (3) Schedule 3, Part I, item 1—

Repeal

“(1) the parent to whose custody the party is committed by order of the court or by agreement; or

- (2) both parents, if they jointly have custody of the party by order of the court or by agreement; or”

Substitute

- “(1) the parent or both parents with whom the party is to live under a child arrangements order in force with respect to the party; or
- (2) the parent or both parents with whom the party is to live by agreement; or”.

- (4) Schedule 3, Part I, item 3—

Repeal everything in column 2

Substitute

- “(1) The other parent and any guardian acting jointly with that other parent in respect of the party; or
- (2) the other parent, if he or she is the only person having parental responsibility for the party; or
- (3) the guardian, if he or she acts as the guardian of the party to the exclusion of the other parent.”.

- (5) Schedule 3—

Repeal Part II

Substitute

“PART II

WHERE THE PARTY IS AN ILLEGITIMATE PERSON

Circumstances	Person or persons whose consent is required
1. Where the mother of the party is alive —	

Circumstances	Person or persons whose consent is required
(a) if there is not a father with parental responsibility in relation to the party	(1) The mother; or (2) if she is not living with the party under a child arrangements order, the guardian.
(b) if there is a father with parental responsibility in relation to the party	(1) Either the mother or the father with parental responsibility; or (2) if either of them is not living with the party under a child arrangements order, the other of them; or (3) if both of them are not living with the party under a child arrangements order, the guardian.
2. Where the mother of the party is dead—	
(a) if there is not a father with parental responsibility in relation to the party	The guardian.

Circumstances	Person or persons whose consent is required
(b) if there is a father with parental responsibility in relation to the party	<p>(1) The father with parental responsibility and any guardian acting jointly with him in respect of the party; or</p> <p>(2) the father with parental responsibility, if he is the only person having parental responsibility for the party; or</p> <p>(3) the guardian, if he or she acts as the guardian of the party to the exclusion of the father with parental responsibility.”.</p>

Part 11

Amendments to Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189)

20. Section 3C added

After section 3B—

Add

“3C. Disclosure of order relating to minor

In an application under section 3, 3A or 3B that concerns a minor, the parties to the application must inform the court of

any order made under section 28(1) of the Children Proceedings (Parental Responsibility) Ordinance (of) that is in force with respect to the minor.”.

21. Section 7A amended (court may vary or suspend custody or access order)

- (1) Section 7A, heading—

Repeal

“custody or access order”

Substitute

“order relating to minor”.

- (2) Section 7A(1)(b)—

Repeal

everything after “in force”

Substitute

“a court order made under section 28(1) of the Children Proceedings (Parental Responsibility) Ordinance (of) with respect to the minor,”.

- (3) Section 7A(3)(a)—

Repeal

“welfare of the minor as the first and”

Substitute

“best interests of the minor as the”.

- (4) Section 7A(3)—

Repeal paragraph (b)

Substitute

“(b) in determining what is in the minor’s best interests, have regard, in particular, to—

-
- (i) the ascertainable views of the minor concerned (considered in the light of the minor's age and understanding);
 - (ii) the minor's physical, emotional and educational needs;
 - (iii) the nature of the relationship of the minor with each of the minor's parents and with other persons;
 - (iv) the likely effect on the minor of any change in the minor's circumstances;
 - (v) the minor's age, maturity, sex, social and cultural background and any other characteristics of the minor that the court considers relevant;
 - (vi) any harm that the minor has suffered or is at risk of suffering;
 - (vii) any family violence involving the minor or a member of the minor's family;
 - (viii) how capable each of the minor's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the minor's needs;
 - (ix) the practical difficulty and expense of the minor having contact with a parent, and whether that difficulty or expense will substantially affect the minor's right to maintain personal relations and direct contact with both parents on a regular basis;
 - (x) the range of powers available to the court under the Children Proceedings (Parental Responsibility) Ordinance (of) in the proceedings in question; and
 - (xi) any other fact or circumstances that the court considers relevant.”.

Part 12

Amendments to Matrimonial Proceedings and Property Ordinance (Cap. 192)

- 22. Section 2 amended (interpretation)**
Section 2(1)—
Repeal the definition of *custody*.
- 23. Section 18 amended (restrictions on decrees for dissolution, annulment or separation affecting children)**
(1) Section 18(1)—
Repeal
“The court”
Substitute
“Except where the court decides to act under section 28(3) of the Children Proceedings (Parental Responsibility) Ordinance (of), the court”.
- (2) Section 18(1)(b)(i)—
Repeal
“are satisfactory or”.
- (3) After section 18(1)—
Add
“(1A) In considering whether to make an order declaring that it is satisfied as mentioned in subsection (1)(b) or (c), the court may have particular regard, on the evidence before it, to—
(a) the ascertainable views of the child concerned (considered in the light of the child’s age and

understanding) and the circumstances in which those views are expressed; and

- (b) the general principle that, in the absence of evidence to the contrary, the welfare of the child will be best served by—
 - (i) the child having regular contact with those who have parental responsibility for the child and with other members of the child’s family; and
 - (ii) the maintenance of as good a continuing relationship with the child’s parents as is possible.”.

- (4) Section 18(5)—

Repeal paragraph (a)

Substitute

“(a) any child of the family who at the date of the order under subsection (1) is under the age of 18; and”.

- (5) Section 18—

Repeal subsection (6)

Substitute

“(6) In this section, a reference to arrangements for the welfare of a child includes arrangements relating to—

- (a) the care, upbringing and education of the child;
- (b) the child’s contact with the parents;
- (c) the financial provision for the child; and
- (d) the child’s place of residence.”.

24. Section 19 repealed (orders for custody and education of children affected by matrimonial suits)

Section 19—

Repeal the section.

25. Section 20 amended (orders for custody of children in cases of neglect to maintain)

(1) Section 20, heading—

Repeal

“Orders for custody of”

Substitute

“Child arrangements orders for”.

(2) Section 20(1)—

Repeal

“such orders as it thinks fit with respect to the custody of”

Substitute

“, as it thinks fit, a child arrangements order with respect to”.

(3) Section 20—

Repeal subsection (2).

(4) At the end of section 20—

Add

“(3) In this section—

***child arrangements order* (子女安排令) means an order made under section 28(1)(a) of the Children Proceedings (Parental Responsibility) Ordinance (of).”.**

26. Section 34 added

After section 33—

Add

“34. Transitional provision for Children Proceedings (Parental Responsibility) Ordinance

The repeal of section 19 of this Ordinance by section 24 of the Schedule to the Children Proceedings (Parental Responsibility) Ordinance (of) and the amendment to section 20 of this Ordinance by section 25 of that Schedule do not apply in relation to an order made before the commencement of the Children Proceedings (Parental Responsibility) Ordinance (of), and the provisions of this Ordinance in force immediately before that commencement continue to apply in relation to that order as if the Children Proceedings (Parental Responsibility) Ordinance (of) had not been enacted.”.

Part 13

Amendments to Protection of Children and Juveniles Ordinance (Cap. 213)

27. Section 33A added

Before section 34—

Add

“33A. General principles

- (1) In determining a question in any proceedings under this Ordinance, a court must regard the best interests of a child as the paramount consideration.
- (2) In determining what is in the best interests of the child, the court must have regard, in particular, to—

- (a) the ascertainable views of the child concerned (considered in the light of the child's age and understanding);
- (b) the child's physical, emotional and educational needs;
- (c) the nature of the relationship of the child with each of the child's parents and with other persons;
- (d) the likely effect on the child of any change in the child's circumstances;
- (e) the child's age, maturity, sex, social and cultural background and any other characteristics of the child that the court considers relevant;
- (f) any harm that the child has suffered or is at risk of suffering;
- (g) any family violence involving the child or a member of the child's family;
- (h) how capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs;
- (i) the practical difficulty and expense of the child having contact with a parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;
- (j) the range of powers available to the court under this Ordinance in the proceedings in question; and
- (k) any other fact or circumstances that the court considers relevant.”.

28. Section 34 amended (powers of juvenile courts in relation to guardianship and custody and control of children and juveniles in need of care and protection)

- (1) Section 34, heading—

Repeal

“custody and control”

Substitute

“care and charge”.

- (2) Section 34(1)—

Repeal

everything before “being satisfied”

Substitute

“(1) In the circumstances specified in section 34AA, a juvenile court, on”.

- (3) Section 34(5)(a)—

Repeal

“custody and control”

Substitute

“care and charge”.

- (4) Section 34(5)(b)—

Repeal

“in whose custody the child or juvenile is or appears to be”

Substitute

“who has, or appears to have, the lawful care or charge of the child or juvenile”.

- (5) Section 34(6)—

Repeal

everything before “to have effect on the date”

Substitute

“(6) An order under subsection (1)(a), unless it previously ceases to have effect, ceases”.

(6) Section 34(6)—

Repeal

“21”

Substitute

“18”.

(7) Section 34—

Repeal subsection (6A).

(8) Section 34(6B)—

Repeal

everything before “to have effect on the date”

Substitute

“(6B) Any order under subsection (1)(b), (c) or (d), unless it previously ceases to have effect, ceases”.

(9) Section 34(6C)—

Repeal

“or juvenile” (wherever appearing).

(10) At the end of section 34—

Add

“(8) If an order under subsection (1)(a)—

(a) was in force immediately before the commencement of the Children Proceedings (Parental Responsibility) Ordinance (of);
or

- (b) is made on a motion or an application referred to in subsection (1) (as it was in force immediately before that commencement) that was made before that commencement,

the amendments to subsections (6) and (6C) made by section 28 of the Schedule to that Ordinance do not apply in relation to that order and those subsections in force immediately before that commencement continue to apply in relation to that order as if that Ordinance had not been enacted.”.

29. Sections 34AA and 34AAB added

After section 34—

Add

“34AA. Power of court to make orders under section 34(1)

- (1) A juvenile court may make an order under section 34(1) if—
 - (a) an application for the order has been made by a person who—
 - (i) is entitled to apply for the order with respect to the child or juvenile; or
 - (ii) has obtained the leave of the juvenile court to make the application; or
 - (b) the juvenile court considers that the order should be made even though no application has been made.
- (2) The following persons are entitled to apply for an order under section 34(1) with respect to a child or juvenile—
 - (a) the Director of Social Welfare;
 - (b) any person authorized by the Director specifically or generally for the purpose of the application;

- (c) any police officer;
- (d) a parent or guardian of the child or juvenile;
- (e) a person who is named, in a child arrangements order that is in force with respect to the child or juvenile, as a person with whom the child or juvenile is to live.

(3) In this section—

child arrangements order (子女安排令) means an order made under section 28(1)(a) of the Children Proceedings (Parental Responsibility) Ordinance (of).

34AAB. Contact with children in care

- (1) The power to make an order section 34(1)(a), (b), (c) or (d) includes the power to make an order allowing the child reasonable contact with the parent.
- (2) The court may impose any conditions in the order that the court considers appropriate.
- (3) The court may vary or discharge the order on the application of the Director of Social Welfare or the person named in the order.”.

30. Section 34C amended (discharge or variation of orders under section 34(1))

Section 34C(6)—

Repeal

“custody or control of or access to the child or juvenile”

Substitute

“arrangement as to a person with whom the child or juvenile is to live or spend time”.

31. Section 35 amended (power of Director of Social Welfare to protect children and juveniles from moral or physical danger)

- (1) Section 35, Chinese text, heading—

Repeal

“少年及兒童”

Substitute

“兒童及少年”.

- (2) Section 35(1)—

Repeal

“in the custody or control”

Substitute

“under the care or charge”.

- (3) Section 35(1)(a)—

Repeal

“control and custody”

Substitute

“care and residence”.

- (4) Section 35(1)(b)—

Repeal

“in whose custody the person endangered is or appears to be”

Substitute

“who has, or appears to have, the lawful care or charge of the person endangered”.

32. Section 36 amended (jurisdiction of Court of First Instance to remain unaffected)

Section 36—

Repeal

“custody or control of or access to”

Substitute

“the care arrangement of”.

33. Section 41 amended (power to recapture wards or persons escaping from detention in place of refuge)

Section 41—

Repeal

everything after “escapes from”

Substitute

“any place of refuge or other place where the child or juvenile is lawfully detained under this Ordinance may be retaken by any police officer and returned to the place from which the child or juvenile escaped.”.

34. Section 42 amended (penalty for inducing or assisting escape from custody or control imposed by or under Ordinance)

(1) Section 42, heading—

Repeal

“custody or control imposed by or under Ordinance”

Substitute

“detention in place of refuge”.

(2) Section 42—

Repeal

“custody or control lawfully imposed by or under this Ordinance or by”

Substitute

“place of refuge or other place where the child or juvenile is lawfully detained under this Ordinance or”.

35. Section 45 amended (power of Director of Social Welfare to require persons to attend inquiry)

Section 45(2)(c)—

Repeal

“any child or juvenile in his custody or control and being required by the Director of Social Welfare to produce him,”

Substitute

“the care or charge a child or juvenile and being required by the Director of Social Welfare to produce the child or juvenile,”.

36. Section 45A amended (child assessment procedure)

(1) Section 45A(1)(a)—

Repeal

“custody or control”

Substitute

“the care or charge”.

(2) Section 45A(1)(b)—

Repeal

“custody or control”

Substitute

“care or charge”.

Part 14

Amendments to Adoption Ordinance (Cap. 290)

37. Section 2 amended (interpretation)

- (1) Section 2, definition of *parent*—

Repeal

everything after “means—”

Substitute

- “(a) the child’s mother;
- (b) in the case of a child whose father has acquired parental responsibility for the child under section 6(1) of the Children Proceedings (Parental Responsibility) Ordinance (of), and has not ceased to have it as provided in section 7(1) of that Ordinance, the child’s father;”.

- (2) Section 2—

Add in alphabetical order

“*parental responsibility* (父母責任) has the meaning given by section 5(1) of the Children Proceedings (Parental Responsibility) Ordinance (of);”.

38. Section 5 amended (restrictions on making adoption orders)

- (1) Section 5(5B)—

Repeal

“parental rights, duties, obligations or liabilities”

Substitute

“parental responsibility”.

- (2) Section 5(5D)—

Repeal

“parental rights, duties, obligations and liabilities”

Substitute

“parental responsibility”.

- (3) Section 5(5E)(c)—

Repeal

“parental rights, duties, obligations and liabilities”

Substitute

“parental responsibility”.

- (4) Section 5(5E)(d)—

Repeal

“right, duty, obligation or liability”

Substitute

“parental responsibility”.

39. Section 5A amended (freeing infant for adoption)

Section 5A(4)(a)—

Repeal

“all rights, duties, obligations and liabilities”

Substitute

“any parental responsibility”.

40. Section 5B amended (revocation of section 5A order)

- (1) Section 5B(1)—

Repeal

“rights, duties, obligations and liabilities”

Substitute

“parental responsibility”.

- (2) Section 5B(3)(a)—

Repeal

“all rights, duties, obligations and liabilities”

Substitute

“any parental responsibility”.

- (3) Section 5B(3)(b)—

Repeal

“such rights, duties, obligations and liabilities, or any of them, were vested in the Director immediately before the order was made, such rights, duties, obligations and liabilities”

Substitute

“the parental responsibility was vested in the Director immediately before that order was made, it”.

- (4) Section 5B(3)—

Repeal

“right, duty, obligation or liability”

Substitute

“parental responsibility”.

41. Section 8 amended (functions of Court as to adoption orders)

- Section 8(1)(a)—

Repeal

“parental rights”

Substitute

“parental responsibility”.

42. Section 13 amended (rights and duties of parents and capacity to marry)

- (1) Section 13(1)(a)—

Repeal

everything before “, including”

Substitute

“(a) the parental responsibility of the parents (other than a parent referred to in section 5(1)(c) if the order is made under that section) or guardians for the infant”.

- (2) Section 13(1)(b)—

Repeal

“all the relevant matters”

Substitute

“the parental responsibility for the infant”.

- (3) Section 13(1)(c)—

Repeal

“relevant matters”

Substitute

“parental responsibility for the infant”.

- (4) Section 13(2)—

Repeal

“relevant matters, and for the purposes of the jurisdiction of any court whatsoever to make orders as to the custody and maintenance of and right of access to children”

Substitute

“parental responsibility for the infant, and for the purposes of the jurisdiction of any court to make an order under section

28(1) of the Children Proceedings (Parental Responsibility)
Ordinance (of)”.

Part 15

Amendments to Rules of the District Court (Cap. 336 sub. leg. H)

**43. Order 90, rule 4 amended (further provisions as to orders for
supervision or care of a child)**

(1) Order 90—

Renumber rule 4 as rule 4(1).

(2) Order 90, rule 4(1)—

Repeal

“Guardianship of Minors Ordinance (Cap. 13)”

Substitute

“Children Proceedings (Parental Responsibility) Ordinance
(of)”.

(3) Order 90, rule 4(1), after “made under”—

Add

“section 51 of”.

(4) Order 90, rule 4(1)—

Repeal

“shall, whenever practicable, notify any interested party”

Substitute

“must notify all of the parties to the proceedings in which the
order was made”.

(5) Order 90, after rule 4(1)—

Add

- “(2) If the Director’s application is opposed by any of the parties referred to in paragraph (1)—
- (a) an appointment is to be fixed for the hearing of the application; and
 - (b) notice of the date of the hearing is to be given to all of those parties.”.

44. Order 90, rule 5 amended (removal of a child out of Hong Kong)

- (1) Order 90, rule 5—

Repeal

“Guardianship of Minors Ordinance (Cap. 13)”

Substitute

“Children Proceedings (Parental Responsibility) Ordinance (of)”.

- (2) Order 90, rule 5—

Repeal paragraph (3).

Part 16

Amendment to Official Solicitor Ordinance (Cap. 416)

45. Schedule 3 amended (matters to be transferred to Official Solicitor)

Schedule 3, entry relating to Law Officer (Civil Law)—

Repeal paragraph (c)

Substitute

- “(c) as the next friend or guardian ad litem for any person,

whether or not by appointment under—

- (i) rule 105(4) of the Matrimonial Causes Rules (Cap. 179 sub. leg. A); or
- (ii) rule 108(1) of those Rules as in force immediately before the commencement of the Children Proceedings (Parental Responsibility) Ordinance (of).”.

Explanatory Memorandum

The main purpose of this Bill is to implement the recommendations made in the Report on Child Custody and Access published by the Law Reform Commission of Hong Kong. The Bill also repeals and re-enacts the Guardianship of Minors Ordinance (Cap. 13).

2. The Bill contains 8 Parts and 1 Schedule.

Part 1

3. Part 1 contains preliminary provisions. Clause 1 sets out the short title and provides for commencement. Clause 2 defines *child*, *child of the family*, *children proceedings*, *maintenance order*, *parent* and other expressions for the interpretation of the Bill.

Part 2

4. Clause 3 provides that a court must regard the best interests of a child as the paramount consideration in determining certain questions concerning a child. Clause 3(2) sets out a non-exhaustive list of factors for determining what is in the child's best interests.
5. Clause 4 provides for parents' parental responsibility for a child. If—
 - (a) the child's father and mother were married to each other at the time of the child's birth, they each have parental responsibility for the child;
 - (b) the child's father and mother were not married to each other at the time of the child's birth, the mother has parental responsibility for the child and the father has parental responsibility for the child as provided under clause 6(1).
6. Clause 5 provides for the meaning of parental responsibility.

7. Clause 6 provides for the ways that the unmarried father of a child may acquire parental responsibility for the child.
8. Clause 7 empowers the court to make an order that a father who has acquired parental responsibility under clause 6 ceases to have the parental responsibility.
9. Clause 8 provides that a person who is named in a child arrangements order is to have parental responsibility for a child in certain circumstances.
10. Clause 9 provides that if more than one person has parental responsibility for a child, a person may act alone in meeting the responsibility in respect of the day-to-day care of the child. However, the person must not act in any way that would be incompatible with a court order made under the Bill.
11. Clause 10 provides that if a child arrangements order is in force with respect to a child—
 - (a) a parent may not do certain acts without the consent of the court or every other person who has parental responsibility for the child; and
 - (b) a parent must notify within a reasonable time every other person who has parental responsibility for the child before making a major decision in relation to the child.
12. Clause 11 provides that a person who has parental responsibility for a child may arrange for some or all of the person's responsibilities in respect of the child to be met by other persons acting on the person's behalf.
13. Clause 12 provides for the effect of a court order depriving a person of a parental responsibility. In making the order, the court may also revoke a parental responsibility agreement in relation to the child concerned.

Part 3

14. Part 3 provides for the appointment and powers of guardians which take effect on or after the death of a parent or guardian. This Part is divided into 3 Divisions.

Division 1

15. Division 1 deals with guardians appointed by a appointing parent or appointing guardian.
16. Clause 14 provides that a parent or a guardian of a child may appoint a person to be, after the parent or guardian's death, a guardian of the child.
17. Clause 15 provides that a guardian assumes guardianship automatically if—
- (a) the appointing parent or appointing guardian, immediately before his or her death—
 - (i) was named in a child arrangements order as a person with whom the child is to live; or
 - (ii) had the care of the child given by the Court of First Instance; or
 - (b) the appointing parent or appointing guardian was living with the child immediately before dying and the child does not have any surviving parent or surviving guardian.
18. Clause 16 provides that a person appointed as the guardian of a child under clause 14 may apply to the court to assume guardianship over the child after the appointing parent or appointing guardian dies.
19. Clause 17 provides that a guardian appointed under clause 14 must act jointly with the surviving parent or surviving guardian. However, the court may, on application, order that the surviving

parent or surviving guardian, or the guardian appointed under clause 14, to act to the exclusion of the other.

20. Clause 18 provides for when and how an appointment of a guardian made under clause 14 is revoked.
21. Clause 19 provides for how a guardian appointed under clause 14 may disclaim the appointment.

Division 2

22. Division 2 deals with guardians appointed by the court.
23. Clause 20 empowers the court to appoint a guardian on the death of a parent or guardian of a child in certain circumstances.
24. Clause 21 provides that a guardian appointed by the court under clause 20 must act jointly with the surviving parent or surviving guardian.

Division 3

25. Division 3 deals with matters applicable to guardians generally. A person appointed as the guardian under Part 3 has parental responsibility for a child (clause 23) and the right, powers and duties of a guardian of the child's estate (clause 24). The court is empowered to remove a guardian for the best interests of a child concerned (clause 25) and authorize remuneration for the guardianship service (clause 26). The court is also empowered to make an order regarding matters in difference between persons acting jointly (clause 27).

Part 4

26. Part 4 provides for a new range of orders with respect to children in children proceedings.

Division 1

27. Clause 28 empowers the court to make the following orders with respect to a child—
- (a) an order (***child arrangements order***) regulating arrangement relating to either or both of the following—
 - (i) the person with whom a child is to live, spend time or otherwise have contact;
 - (ii) when a child is to live, spend time or otherwise have contact with any person;
 - (b) an order that, without the consent of the court, a person is not to take a step relating to the child;
 - (c) an order giving direction for the purpose of determining a specific question in connection with any aspect of parental responsibility for a child;
 - (d) an order depriving a person of some or all of the person's responsibilities and rights for the child.
28. Clause 29 provides for the circumstances in which a court may make an order under clause 28(1). Certain persons are entitled to apply for an order under section 28(1) while others may only apply with the leave of the court. Even though no application has been made, the court may also make an order under clause 28(1) in any children proceedings in which a question arises with respect to the welfare of a child.
29. Clause 30 provides for the considerations that the court must have regard to in granting leave under clause 29.
30. Clause 31 provides that a parent of a child who is a party to any proceedings under clause 28(1), or any proceedings under the Separation and Maintenance Orders Ordinance (Cap. 16) or the Matrimonial Causes Ordinance (Cap. 179), may apply for an order

that removal of the child out of Hong Kong is prohibited unless the removal is made—

- (a) with the leave of the court; or
- (b) on compliance with the terms specified in the order.

31. Clause 32 provides that an order made under clause 28(1) ceases to have effect when the child reaches the age of 18 years.
32. Clause 33 empowers the court, on an application, to make a maintenance order requiring either or both parents of a child to—
 - (a) pay to the applicant a lump sum (whether in one amount or by instalments) for either or both of the following—
 - (i) the immediate and non-recurring needs of the child;
 - (ii) meeting any liabilities or expenses reasonably incurred in maintaining the child before the making of the order;
 - (b) make to the applicant periodical payments towards the maintenance of the child;
 - (c) secure to the applicant periodical payments towards the maintenance of the child;
 - (d) transfer to the applicant for the benefit of the child, or to the child, property to which the parent is entitled;
 - (e) effect a settlement of property for the benefit of a child, being property to which either or both parents of the child are entitled.
33. Clause 34 empowers the court to make the following interim order in a hearing of an application made under clause 28(1) or 33—
 - (a) an order requiring either parent to pay periodical payments towards the maintenance of the child;

- (b) an order regulating arrangements relating to either or both of the following—
 - (i) the person with whom the child is to live, spend time or otherwise have contact;
 - (ii) when the child is to live, spend time or otherwise have contact with any person.

34. Clause 35 empowers the court to make an order to vary, discharge, suspend or revive (after being so suspended) certain orders made under Part 4 on an application.

35. Clause 36 empowers the court to make a maintenance order against a surviving parent in certain circumstances.

36. Clause 37 provides that an order for payment of a lump sum by instalments, or an order for periodical payments or secured periodical payments must not extend beyond the date when the child will attain the age of 18 years, unless it appears to the court that—
 - (a) the child is, or will be, or if an order were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation; or
 - (b) there are special circumstances that justify the making of the order.

37. Clause 38 empowers the court to require the Director of Social Welfare (**Director**) to arrange a report by any of the following persons in respect of a matter that appears to the court to be relevant to an application made under the Bill—
 - (a) an officer of the Social Welfare Department;
 - (b) a clinical psychologist;
 - (c) an organization that the Director considers appropriate for making an international social welfare report.

Division 2

38. Subdivision 1 of Division 2 relates to attachment orders. Clause 41 empowers a court, in the circumstances specified in clause 40, to order—
- (a) any income capable of being attached to be attached to the amount payable under a maintenance order; and
 - (b) the amount so attached to be paid to a specified payee.
39. Subdivision 2 of Division 2 relates to the making of an order for interests (clause 45) and surcharge (clause 46) on arrears of maintenance.
40. In Subdivision 3 of Division 2, clause 50 requires a person (*payer*) who is subject to a maintenance order to give notice of the payer's new address to any person specified in the order within 14 days of the change of address. A person who, without reasonable excuse, contravenes the requirement commits an offence.

Part 5

41. Clause 51 provides that, if an application is made under the Bill relating to the care of a child, the court may, if the child requires care or protection, make any of the following order—
- (a) an order placing the child under the supervision of the Director (*supervision order*);
 - (b) an order committing the child to the care of the Director (*care order*).
42. Clause 52 empowers the court to make a maintenance order in favour of the Director if a care order is made with respect to a child. Before making a care order, the court must inform the Director and hear any representations from the Director (clause 53).

43. The court is empowered to vary, discharge, suspend or revive (after being so suspended) a supervision order (clause 54) and a care order (clause 55) on an application.
44. Clause 56 requires each parent or guardian of a child in the Director's care under a care order to give notice to the Director of any change of address. A person who, without reasonable excuse, contravenes the requirement commits an offence.
45. Clause 57 provides that the Director must allow a child who is in the Director's care under a care order reasonable contact with certain persons. However, the Director may refuse to allow the contact in order to safeguard or promote the child's welfare.
46. Clause 58 empowers the Director to order assessment of a child by a medical practitioner, clinical psychologist or an approved social worker in certain circumstances. For the purpose of making an assessment under clause 58, the Director or any officer authorized by the Director is empowered to enter any premises (clause 59).

Part 6

47. Clause 60 specifies the ways that the court may ascertain the views expressed by a child. However, a child is not required to express his or her views (clause 61).
48. Clause 62 empowers the court to make an order for independent representation of a child's interest and to order a party to bear the costs of the independent representation or the costs incurred by a person acting as a guardian ad litem for a child.
49. Clause 63 allows a child to conduct proceedings that concern the child without a next friend or guardian ad litem if the child—
 - (a) has obtained the permission of the court; and
 - (b) has sufficient understanding to instruct a solicitor and counsel to represent him or her.

Part 7

- 50. Clause 64 deals with the proceedings before, and orders by, the District Court under the Bill. On an application by a party, the Court of First Instance must order the application to be transferred to the Court of First Instance (clause 65).
- 51. Clause 68 empowers the Secretary of Labour and Welfare to make regulation, in particular, to provide for the form of a parental responsibility agreement and the manner in which the agreement must be recorded.
- 52. Clause 69 empowers the Chief Justice to make rules for the better carrying out of the purposes and provisions of the Bill.

Part 8

- 53. Part 8 contains miscellaneous provisions.
- 54. Clause 71 repeals the Guardianship of Minors Ordinance (Cap. 13). Clause 72 provides that any subsidiary legislation made under that Ordinance and in force immediately before the commencement of the Bill continues in force.
- 55. Clause 73 and the Schedule deal with consequential or related amendments.
- 56. Clause 74 is a savings and transitional provision dealing with the proceedings, orders and appointments of guardians under the repealed Guardianship of Minors Ordinance (Cap. 13).
- 57. Clause 75 is a transitional provision in relation to orders made before the commencement of section 5 of the Marriage and Children (Miscellaneous Amendments) Ordinance 1997 (69 of 1997).

