

# CHILD PROTECTION BILL 1990

## ARRANGEMENT OF CLAUSES

### PART I

#### PRELIMINARY

Clause

1. Short title and commencement.
2. Interpretation.

### PART II

#### PROTECTORS, REGISTRAR AND REGISTER

3. Appointment of Protectors.
4. Appointment of Registrar.
5. Register.
6. Contents of Register,
7. Access to Register.
8. Offences in respect of Register.

### PART III

#### CO-ORDINATING COUNCIL FOR THE PROTECTION OF CHILDREN

9. Establishment of the Co-ordinating Council for the Protection of Children.
10. Membership of Council.
11. Sitting and conduct of proceedings of Council.
12. Establishment of Child Protection Teams.

### PART IV

#### TEMPORARY CUSTODY AND MEDICAL EXAMINATION AND TREATMENT

13. Taking a child into temporary custody.
14. Child in need of medical examination or treatment.
15. Medical examination and treatment.
16. Authorization of medical treatment.
17. No liability incurred for giving authorization.
18. Control over hospitalized children.
19. Duty of medical practitioner and power of medical officer.
20. Steps to be taken in respect of child after medical examination or treatment.

Clause

PART V  
COURT PROCEDURE

21. Production of children before Juvenile Court.
22. Powers of Juvenile Court.
23. Contribution order.
24. Revocation or variation of order.
25. Control over children placed in custody of fit person or place of safety.

PART VI  
OFFENCES IN RELATION TO THE HEALTH AND  
WELFARE OF CHILDREN

26. Abuse, neglect, exposure or abandonment of children.
27. Children not to be used for begging, etc.
28. Offence to leave child without reasonable supervision.

PART VII  
NOTIFICATION ON TAKING A CHILD INTO CARE,  
CUSTODY OR CONTROL

29. Application.
30. Notification of taking into care, custody or control.
31. Subsequent obligations.
32. Power of Protector to require child to be produced before him.

PART VIII  
TRAFFICKING IN CHILDREN

33. Unlawful transfer of possession, custody or control of child.
34. Importation of child by false pretences.
35. Power to examine children and persons in charge.
36. Power of Protector to require security.
37. Inspection.

PART IX  
MISCELLANEOUS

38. Power to search premises.
39. Obstructing Protector or police officer in performing his functions.
40. Removing or helping child to escape from custody.
41. General penalty.
42. Power to arrest without warrant.

Clause

43. Places of safety.
44. Power of Court to determine and declare age of child.
45. Protection of informants.
46. Protection of Director General, Protectors and police officers.
47. Certificate of Registrar to be evidence.
48. Power to make regulations.
49. Consequential amendments and repeal.



A BILL

*intituled*

An Act to make provision for the care and protection of children who are in need of protection, and for matters incidental thereto or connected therewith.

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BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

1. (1) This Act may be cited as the Child Protection Act 1990.

Short title and commencement.

(2) This Act shall come into operation on such date as the Minister may by notification in the Gazette appoint; and the Minister may appoint different dates for the coming into operation of this Act, or of different provisions thereof, in different States.

2. (1) In this Act, unless the context otherwise requires—

Interpretation.

"child" means a person under the age of eighteen years;

"Child Protection Team" means a team established by the Council under section 12;

"Council" means the Co-ordinating Council for the Protection of Children established under section 9;

"Deputy Director General" means the Deputy Director General of Social Welfare;

"Director General" means the Director General of Social Welfare;

"guardian" of a child means a parent of the child, or any person lawfully appointed by deed or will or by the order

of a competent Court to be the guardian of the child, or a person who has lawfully adopted the child, and includes any person who has lawful custody of the child;

"hospital" means any government hospital or any teaching hospital of a University;

"medical officer" means a registered medical practitioner in the service of the government and includes a registered medical practitioner in any teaching hospital of a University;

"place of safety" means any place or institution declared to be such under section 43, or such other place or home as the Protector deems suitable, the occupier of which is willing temporarily to receive a child;

*Act 344.* "police officer" has the meaning assigned thereto in the Police Act 1967;

"premises" includes any dwelling-house, building, shop, room, conveyance or any place whether open or enclosed;

"Protector" means—

- (a) the Director General;
- (b) the Deputy Director General;
- (c) a Divisional Director of Social Welfare, Ministry of National Unity and Community Development;
- (d) the State Director of Social Welfare of each of the States in West Malaysia;
- (e) the Director of Welfare Services, Sabah;
- (f) the Principal Welfare Officer, Sarawak;
- (g) the Director of Social Welfare of the Federal Territory of Kuala Lumpur and the Director of Social Welfare of the Federal Territory of Labuan,

and includes any public officer appointed under section 3;

"Register" means the Register kept and maintained under section 5;

*Act 50.* "registered medical practitioner" means a medical practitioner registered under the Medical Act 1971;

"Registrar" means the Registrar appointed under section 4;

"senior police officer" has the meaning assigned thereto in the Police Act 1967;

"social welfare officer" means any social welfare officer in the ministry or department responsible for welfare services.

(2) For the purposes of this Act, a child is in need of protection if—

- (a) the child has been or there is substantial risk that the child will be physically injured or emotionally injured or sexually abused by his guardian;
- (b) the child has been or there is substantial risk that the child will be physically injured or emotionally injured or sexually abused and his guardian, knowing of such injury or abuse or risk, has not protected or is unlikely to protect the child from such injury or abuse;
- (c) the guardian of the child is unfit, or has neglected or is unable, to exercise proper supervision and control over the child and the child is falling into bad association, or is exposed to moral danger, or is beyond control;
- (d) the guardian of the child has neglected or is unwilling to provide for him adequate care, food, clothing and shelter;
- (e) the child has no guardian, or has been abandoned by his guardian and after reasonable inquiries the guardian cannot be found, and no other suitable person is willing and able to care for the child;
- (f) the child needs to be examined, investigated or treated for the purpose of restoring or preserving his health and his guardian neglects or refuses to have him so examined, investigated or treated;
- (g) the child behaves in a manner that is, or is likely to be, harmful to himself or to any other person

and his guardian is unable or unwilling to take necessary measures to remedy the situation or the remedial measures taken by the guardian fail;

- (h) there is such a conflict between the child and his guardian, or between his guardians, that family relationships are seriously disrupted, thereby causing him emotional injury;
- (i) the child is a person in respect of whom any of the offences mentioned in Chapter XVI of the Penal Code or any offence of the nature described in Part VI has been or is believed to have been committed and his guardian is the person who committed such offence or is believed to have committed such offence or has not protected or is unlikely to protect him from such offence;
- (j) the child is—
  - (i) a member of the same household as the child referred to in paragraph (i); or
  - (ii) a member of the same household of the person who has been convicted of the offence referred to in paragraph (i),

and appears to be in danger of the commission upon or in respect of him of a similar offence and his guardian is the person who committed or is believed to have committed the offence or who is convicted of such offence or his guardian is unable or unwilling to protect him from such offence;

- (k) the child is found begging.

(3) For the purposes of this Act—

- (a) a child is physically injured if there is substantial and observable injury to any part of the child's body as a result of the non-accidental application of force or an agent to the child's body that is evidenced by, amongst other things, a laceration, a contusion, an abrasion, a scar, a fracture or other bone injury, a dislocation, a sprain,

haemorrhaging, the rupture of a viscus, a burn, a scald, the loss or alteration of consciousness or physiological functioning or the loss of hair or teeth;

- (b) a child is emotionally injured if there is substantial and observable impairment of the child's mental or emotional functioning that is evidenced by, amongst other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development;
- (c) a child is sexually abused if he has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance or for the purpose of sexual exploitation by any person for that person's or another person's sexual gratification.

## PART II

### PROTECTORS, REGISTRAR AND REGISTER

3. The Minister may appoint, by notification published in the *Gazette*, any officer in the public service to exercise the powers and perform the duties of a Protector under this Act subject to such conditions as may be specified in the notification. Appointment of Protectors.
4. The Minister may appoint a social welfare officer to be the Registrar of Children in Need of Protection. Appointment of Registrar.
5. The Registrar shall cause to be kept and maintained, in such form as he thinks fit, a register to be known as the Register of Children in Need of Protection. Register.
6. The Register shall contain details of every case or suspected case of a child in need of protection and such other matters in relation to such case or suspected case as the Director General may from time to time determine. Contents of Register.
7. (1) Details entered in the Register shall be furnished to any Court when there is before it any proceedings Access to Register.

concerning a child in need of protection, when so requested by the Court, and to—

- (a) the Director General;
- (b) a Protector;
- (c) any police officer; and
- (d) any member of a Child Protection Team,

when any of those persons requires such details for the purpose of any proceedings under this Act or for the purpose of taking action in respect of, or providing assistance to, a child in need of protection.

(2) Details contained in the Register may be furnished to—

- (a) persons engaged in *bona fide* research whose access to the Register is authorized by the Director General for that purpose; or
- (b) persons or classes of persons authorized by the Director General to have access to the Register on the grounds that their access to the Register will promote the protection of a child or children.

(3) Details furnished under this section shall not include any information which discloses or is likely to lead to the disclosure of the identity of any person who has made a notification that a child is in need of protection.

Offences in respect of Register.

8. Any person who furnishes to any other person any details contained in the Register other than pursuant to section 7 shall be guilty of an offence.

### PART III

#### CO-ORDINATING COUNCIL FOR THE PROTECTION OF CHILDREN

Establishment of the Co-ordinating Council for the Protection of Children.

9. (1) There shall be established a Council which shall be known as the Co-ordinating Council for the Protection of Children.

(2) The Council shall—

- (a) be responsible for advising the Minister on all aspects of child protection;

- (b) design an efficient and effective management system throughout the country incorporating information channels for reporting cases of children in need of protection;
- (c) recommend services that are specifically oriented to meet the needs of persons, children and families in need of child protection services;
- (d) co-ordinate the various resources of government departments which are involved with child protection;
- (e) develop programmes to educate the public in the prevention of child abuse and neglect;
- (f) supervise the management, operation and practice of Child Protection Teams throughout the country;
- (g) co-ordinate and advise on the development of training programmes for members of Child Protection Teams throughout the country;
- (h) resolve any conflict that may arise within Child Protection Teams; and
- (i) perform such other functions as may be prescribed by regulations made under this Act.

10. (1) The Council shall consist of the following members: Membership  
of Council.

- (a) the Director General who shall be the Chairman;
- (b) the Deputy Director General who shall be the Deputy Chairman;
- (c) two representatives from the Ministry of National Unity and Community Development;
- (d) two representatives from the Ministry of Health;
- (e) a representative from the Ministry of Education;
- (f) a representative from the Ministry of Human Resources;
- (g) a representative from the Ministry of Information;

- (h) a representative of the Attorney General;
- (i) a representative of the Inspector General of Police;
- (j) a representative of the ministry, in the State of Sabah, charged with the responsibility for welfare services;
- (k) a representative of the ministry, in the State of Sarawak, charged with the responsibility for welfare services;
- (l) not more than five other persons with appropriate experience, knowledge and expertise on matters relating to the welfare and development of children, to be appointed by the Minister; and
- (m) the Registrar who shall be the Secretary.

(2) Each member of the Council appointed under paragraph (1) (l) shall, unless he sooner resigns, hold office for a period not exceeding three years and shall be eligible for reappointment.

(3) The appointment of every member of the Council under paragraph (1) (l) shall be published in the *Gazette*.

Sitting and  
conduct of  
proceedings  
of Council.

**11.** (1) The Council shall meet at least four times in a year at such time and place as the Chairman may appoint.

(2) The Chairman or, in his absence, the Deputy Chairman or, in the absence of both, any member elected to preside over the meeting, and six other members, shall form a quorum at a meeting of the Council.

(3) Every meeting of the Council shall be presided over by the Chairman or, in his absence, by the Deputy Chairman or, in the absence of both, by a member elected by the members present from amongst themselves.

(4) If on any question to be determined there is an equality of votes, the Chairman, or the Deputy Chairman if he is presiding over the meeting, shall have a casting vote.

(5) Subject to this Act, the Council shall have the power to determine its own procedure.

(6) The Council may appoint such committees of its members with or without other persons as it may determine and each committee shall determine its own procedure.

**12.** (1) The Council shall establish throughout the country groups of persons, each group to be known as a "Child Protection Team", for the purpose of co-ordinating locally-based services to families and children where children are or are suspected of being in need of protection.

Establishment  
of Child  
Protection  
Teams.

(2) Each Child Protection Team shall consist of the following members:

(a) a chairman, who shall be—

- (i) in the case of a State in West Malaysia, the State Director of Social Welfare or the District Social Welfare Officer;
- (ii) in the case of Sabah, the Director of Welfare Services or the District Welfare Officer;
- (iii) in the case of Sarawak, the Principal Welfare Officer or the Divisional Welfare Officer; or
- (iv) in the case of the Federal Territory of Kuala Lumpur or the Federal Territory of Labuan, the Director of Social Welfare;

(b) a medical officer; and

(c) a senior police officer.

(3) Each Child Protection Team shall have the authority to co-opt from time to time such other persons as it may reasonably require to enable it to adequately perform its functions and duties or as the circumstances of each case may require, including any person qualified to advise on relevant indigenous, ethnic, cultural or religious factors.

#### PART IV

##### TEMPORARY CUSTODY AND MEDICAL EXAMINATION AND TREATMENT

**13.** (1) Any Protector or police officer who is satisfied on reasonable grounds that a child is in need of protection

Taking a  
child into  
temporary  
custody.

may take the child into temporary custody, unless such Protector or police officer is satisfied that the taking of proceedings in relation to such child is undesirable in the interests of such child or that proceedings are about to be taken by some other person.

(2) Subject to section 14, every child taken into temporary custody under subsection (1) shall be placed in a place of safety until such time as he can be brought before a Juvenile Court.

(3) If a child is placed in a place of safety under subsection (2), the person in charge of the place of safety shall have the like control of the child as the parent of the child and shall be responsible for the maintenance of the child, and the child shall continue in the care of such person notwithstanding that the child is claimed by his guardian or any other person.

(4) Any person who takes a child into temporary custody under this section shall forthwith upon such taking—

- (a) cause the guardian of the child to be notified of such taking; and
- (b) if such person is a police officer, notify a Protector of such taking.

Child in  
need of  
medical  
examination  
or treatment.

**14.** (1) If a Protector or police officer who takes a child into temporary custody under subsection 13 (1) is of the opinion that such child is in need of medical examination or treatment, such Protector or police officer may, instead of taking the child to a place of safety, present the child before a medical officer.

(2) If at the time of being taken into custody under subsection 13 (1) a child is a patient in a hospital, the Protector or police who takes the child into custody may leave the child in the hospital.

(3) If a Protector or police officer does not take a child into temporary custody under subsection 13(1) but he is satisfied on reasonable grounds that the child is in need of medical examination or treatment, he may direct in writing

the person who appears to have the care of the child for the time being to forthwith take the child to a medical officer.

(4) If the person referred to in subsection (3) fails to comply within forty-eight hours with a direction made under that subsection, a Protector or police officer may take the child into temporary custody for the purpose of presenting the child before a medical officer.

**15.** (1) A medical officer before whom a child is presented under subsection 14 (1) or 14 (4)—

Medical examination and treatment.

- (a) shall conduct or cause to be conducted an examination of the child;
- (b) may, in examining the child and if so authorized by a Protector or police officer, administer or cause to be administered such procedures and tests as may be necessary to diagnose the child's condition; and
- (c) may provide or cause to be provided such treatment as he considers necessary as a result of the diagnosis.

(2) If the medical officer who examines a child under subsection (1) is of the opinion that the hospitalization of the child is necessary for the purpose of medical care or treatment of the child, a Protector or police officer may authorize the hospitalization of the child.

**16.** (1) If, in the opinion of a medical officer, the child referred to in section 15 requires treatment for a minor illness, injury or condition, a Protector or police officer may authorize such treatment.

Authorization of medical treatment.

(2) If, in the opinion of a medical officer, the child referred to in section 15 is suffering from a serious illness, injury or condition or requires surgery or psychiatric treatment, a Protector or police officer shall immediately notify or attempt to notify and consult the guardian of the child or any person having authority to consent to such treatment and may with the written consent of the guardian or such person authorize such medical, surgical or

psychiatric treatment as may be considered necessary by a medical officer.

(3) If the consent referred to in subsection (2) cannot be obtained or if there is immediate risk to the health of the child, a Protector may authorize such treatment as may be considered necessary by a medical officer.

No liability incurred for giving authorization.

17. (1) If a child is examined or treated pursuant to section 15 or 16, the Protector or police officer who authorizes such examination or treatment, the medical officer who examines or treats such child, and all persons acting in aid of such medical officer, shall not incur any liability at law by reason only that a child is examined or treated pursuant to that section.

(2) Nothing contained in subsection (1) relieves a medical officer from liability in respect of the examination or treatment of a child which liability he would have been subject to had the examination or treatment been carried out or administered with the consent of the guardian of the child or person having authority to consent to the examination or treatment.

Control over hospitalized children.

18. If a child who is taken into temporary custody under subsection 13 (1) or subsection 14 (4) is hospitalized, the Director General shall have the like control over, and responsibility for the maintenance of, that child as a person in charge of a place of safety would have had if the child had been placed in that place of safety.

Duty of medical practitioner and power of medical officer.

19. (1) If a registered medical practitioner, including a medical officer, believes on reasonable grounds that a child he is examining or treating is a child in need of protection, he shall immediately notify any Protector.

(2) Any registered medical practitioner who fails to comply with subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit.

(3) If the registered medical practitioner referred to in subsection (1) is a medical officer, he may take the child referred to in that subsection into temporary custody until

such time as the temporary custody of the child is assumed by a Protector or police officer.

20. (1) A child who is taken into custody under subsection 13 (1) and who subsequently undergoes medical examination or treatment shall, upon the completion of such examination or treatment, or if such child is hospitalized, upon his discharge from the hospital, be placed in a place of safety until such time as he can be brought before a Juvenile Court.

Steps to be taken in respect of child after medical examination or treatment.

(2) A child who is taken into custody under subsection 14 (4) and who subsequently undergoes medical examination or treatment shall, upon the completion of such examination or treatment, or if such child is hospitalized, upon his discharge from the hospital, be returned to the person from whose care the child was taken.

## PART V

### COURT PROCEDURE

21. (1) Subject to subsections (2) and (3), every child who is taken into custody under subsection 13 (1) shall, within twenty-four hours of being so taken into custody, be brought before a Juvenile Court.

Production of children before Juvenile Court.

(2) Notwithstanding subsection (1), a child who is taken into custody under subsection 13(1) and is medically examined or treated under Part IV shall be produced before a Juvenile Court within twenty-four hours of the completion of such examination or treatment or, if such child is hospitalized, of his discharge from the hospital.

(3) Notwithstanding subsections (1) and (2), where it is not possible to bring a child who is taken into custody under subsection 13(1) before a Juvenile Court within the time prescribed in subsection (1) or (2), such child shall be brought before a Magistrate who may direct that he be placed in a place of safety or, notwithstanding subsection 13 (2), be committed to the care of a fit person until such time as he can be brought before a Juvenile Court.

Powers of  
Juvenile  
Court.

22. (1) If a Juvenile Court is satisfied that any child brought before it under section 21 is a child in need of protection, the Juvenile Court may—

- (a) order his guardian to enter into a bond to exercise proper care and guardianship for a period specified by the Juvenile Court, but that period shall not extend beyond the date on which the child attains the age of eighteen years;
- (b) make an order placing the child in the custody of a fit person for a period specified by the Juvenile Court but that period shall not extend beyond the date on which the child attains the age of eighteen years;
- (c) without making any other order or in addition to an order under paragraph (a) or (b), make an order placing the child under the supervision of a Protector, or some other person appointed for the purpose by the Juvenile Court, for a period specified by the Juvenile Court, but that period shall not extend beyond the date on which the child attains the age of eighteen years;
- (d) make an order placing the child in a place of safety for a period of three years from the date of the order or until he attains the age of eighteen years, whichever is the longer; or
- (e) make an order placing the child in the custody of a foster parent found to be suitable by the Director General, and pending such time place the child in a place of safety.

(2) A Juvenile Court may, in making any order under subsection (1), impose such conditions or give such directions as it may deem fit for the purpose of ensuring the safety and well-being of the child in respect of whom such order is made, and every person upon whom such conditions are imposed or to whom such directions are given shall comply with such conditions or directions.

(3) No order under subsection (1) shall be made without giving the guardian of the child an opportunity to attend and be heard.

(4) Notwithstanding subsection (3), an order under subsection (1) may be made if the guardian of the child, having been required to attend, has failed to do so or cannot be found within a reasonable time.

(5) Before making an order under subsection (1), the Juvenile Court shall endeavour to obtain such information as to the family background, general conduct, home surroundings, school record and medical history of the child as may enable it to deal with the case in the best interests of the child and may, for the purpose of obtaining such information or for any special medical examination or observation, from time to time adjourn the case for a period or periods not exceeding two months at a time and may make in respect of the child, as an interim order having effect only during the period of adjournment, any order which it could have made under subsection (1).

(6) In determining what order to be made under subsection (1), the Juvenile Court shall treat the welfare of the child as the paramount consideration.

(7) If the Juvenile Court is not satisfied that the child brought before it under section 21 is in need of protection, the Juvenile Court may order that the child be returned to the care and custody of his guardian.

23. (1) Where an order is made under section 22 placing a child in a place of safety or in the custody of a fit person, the Juvenile Court making the order may, at the same time or subsequently, make a contribution order requiring the guardian of the child to make such monthly contributions as the Juvenile Court, having regard to the means of the guardian, thinks fit and it shall be the duty of the guardian to comply with the order.

Contribution  
order.

(2) All sums payable under a contribution order shall be paid into such Court as the Juvenile Court making the order shall direct and the Juvenile Court making any such order may from time to time, on proof of any change in circumstances of the person against whom the order is made or for other good cause being shown to the satisfaction of the Juvenile Court, rescind, make anew, or vary the order as to it seems fit.

(3) No contribution order shall be made without giving the guardian of the child an opportunity to be heard, but a contribution order may be made against a guardian who, having been required to attend, has failed to do so.

(4) A contribution order shall remain in force so long as the order placing the child in a place of safety or in the custody of a fit person remains in force.

(5) If any person wilfully neglects to comply with a contribution order, a Magistrate may, for every breach of the order, by warrant direct the amount due to be levied in the manner provided by law for levying fines imposed by Magistrates, or may sentence the person to imprisonment for a term not exceeding one month for each month's contribution remaining unpaid.

Revocation  
or variation  
of order.

24. A Juvenile Court may on the application of a Protector, or the person in charge of a place of safety or the guardian of a child in respect of whom an order is made under section 22, revoke or vary such order upon proof that the circumstances under which the order was made have changed after the making of the order.

Control over  
children  
placed in  
custody of  
fit person  
or place of  
safety.

25. If an order is made under section 22 placing a child in a place of safety or in the custody of a fit person or in the custody of a foster parent, then the person in charge of the place of safety, such fit person or such foster parent shall have the like control of the child as the parent and shall be responsible for his maintenance, and the child shall continue in the care of such person notwithstanding that the child is claimed by his guardian or any other person.

## PART VI

### OFFENCES IN RELATION TO THE HEALTH AND WELFARE OF CHILDREN

Abuse,  
neglect,  
exposure or  
abandonment  
of children.

26. (1) Any person who, being a person having the care of a child, abuses, neglects, abandons or exposes the child in a manner likely to cause him unnecessary suffering or to injure his physical or mental health, or causes or permits him to be so abused, neglected, abandoned or exposed, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to

## CHILD PROTECTION

imprisonment for a term not exceeding five years or to both.

(2) The Court may, in lieu of or in addition to any punishment specified in subsection (1), order the person guilty of an offence under that subsection to execute a bond, with or without sureties, as the Court may determine, to be of good behaviour for such period as the Court thinks fit, and may include in such bond a condition requiring such person to undergo such counseling and psychotherapy as may be specified therein.

(3) If a person who is ordered to execute a bond of good behaviour under subsection (2) fails to comply with any of the conditions of such bond, he shall—

- (a) if such bond is in lieu of a penalty under subsection (1), be liable to the penalty provided for in that subsection; or
- (b) if such bond is in addition to a penalty under subsection (1), be liable to a further fine not exceeding ten thousand ringgit or to a further imprisonment not exceeding five years or to both.

(4) A parent or other person legally liable to maintain a child shall be deemed to have neglected him in a manner likely to cause him unnecessary suffering or to injure his physical or mental health if, being able to so provide from his own resources, he fails to provide adequate food, clothing, medical or dental treatment, lodging or care for such child.

(5) A person may be convicted of an offence against this section notwithstanding—

- (a) that suffering or injury to the health of the child in question or the likelihood of suffering or injury to the health of the child in question was avoided by the action of another person; or
- (b) that the child in question has died.

27. Any person who causes or procures any child or, being a person having the care of a child, allows that child

Children not to be used for begging.

to be on any street, premises or place for the purposes of begging shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Offence to leave child without reasonable supervision.

**28.** Any person who, being a guardian or a person for the time being having the care of a child, leaves that child, without making reasonable provision for the supervision and care of the child, for a period which is unreasonable or under conditions which are unreasonable having regard to all the circumstances shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

## PART VII

### NOTIFICATION ON TAKING A CHILD INTO CARE, CUSTODY OR CONTROL

Application and interpretation.

**29.** (1) This Part shall not apply to—

- (a) the taking of a child into the care, custody or control of his grandparent, his brother or sister by the whole or half blood, or a brother or sister by the whole or half blood of either of his parents;
- (b) the taking of a child into the care, custody or control of his guardian;
- (c) the taking of a child into the care, custody or control of any person in pursuance of an order of a Court of competent jurisdiction or in pursuance of an order under the Women and Girls Protection Act 1973;
- (d) the taking in of a child as an inmate of a place of safety or of an orphanage, hospital, home or institution maintained by the Government of Malaysia or by any of the State Governments or approved by the Minister;
- (e) the taking in of a child as a boarder at a school registered under any written law relating to education;

*Act 106.*

- (f) the taking of a child who is regularly attending a school registered under any written law relating to education into the custody of a friend or relative of his guardian with the consent of his guardian.

(2) In this Part, "guardian" of a child means a parent of the child, or any person lawfully appointed by deed or will or by the order of a competent Court to be the guardian of the child, or a person who has lawfully adopted the child.

**30.** (1) Where a person takes a child into his care, custody or control—

Notification of taking into care, custody or control.

- (a) that person; and  
 (b) the person in whose care the child was at the time of such taking,

shall, not later than one week thereafter, notify the Protector of such taking.

(2) On receiving any notification under this section, the Protector may make such inquiry as he thinks fit as to the reasons for the taking and as to the suitability for that purpose of the person who has taken the child into his care, custody or control and if, after such inquiry, the Protector deems it expedient in the interests of the child, he may either—

- (a) order that the child be returned to the care, custody or control of his guardian or the person in whose care he was at the time of such taking; or  
 (b) permit the taking of the child.

(3) A Protector, on receiving every notification under this section, shall record the particulars thereof in a register to be kept for that purpose.

(4) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Subsequent obligations.

**31.** (1) Where the taking of a child has been notified to and permitted by a Protector under section 30, the person who has taken such child shall, if at any subsequent time—

- (a) he intends to return the child to the care, custody or control of the guardian of the child or any other person from whom the child was taken; or
- (b) without his knowledge or consent, the child has left his care, custody or control,

report in person to a Protector and shall, whenever practicable, bring or cause to be brought before such Protector the child and the guardian of the child or any other person from whom the child was taken.

(2) On receiving a report under subsection (1), the Protector shall make a note thereof and shall—

- (a) if the child and the guardian of the child or any other person from whom the child was taken are present at the time such report is received, return the child to the guardian or such person, as the case may be; or
- (b) if the guardian of the child or any other person from whom the child was taken is not present at the time such report is received—
  - (i) take the child into temporary custody until he can be returned to his guardian or such person; and
  - (ii) forthwith send written information to the last known place of abode of his guardian or such person.

(3) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence.

Power of Protector to require child to be produced before him.

**32.** (1) Whenever a Protector has reason to believe that there is, within the area or the State within which he exercises jurisdiction, a child in respect of whose taking no notification has been made within one week after the taking, he may, by summons under his hand addressed to the person who has or is believed to have the care, custody or control of such child, require such person to appear

## CHILD PROTECTION

and to produce the child before him at the time and place specified in the summons.

(2) If a person on whom a summons has been served under subsection (1) fails to produce the child at the time and place specified therein, the Protector may issue a warrant authorizing any person named therein to search for such child and produce him before the Protector.

(3) Any child named or described in such warrant may be removed to a place of safety and there temporarily detained until the Protector has completed his inquiry under this Part or may, for the like period, be temporarily committed to the custody of a relative or other fit person on such terms and conditions as the Protector may require.

(4) The Protector may make such inquiry as he thinks fit as to the circumstances and the reasons for the taking of the child referred to in subsection (1) and as to the suitability of the person who has taken the child into his care, custody or control.

(5) If, after the inquiry mentioned in subsection (1), the Protector deems it expedient in the interests of the child, he may either—

- (a) order that the child be returned to the care, custody or control of his guardian or any other person from whom he was taken; or
- (b) permit the taking of the child on such terms and conditions as the Protector may require.

(6) If the taking of a child by any person has been permitted under paragraph (5) (b) subject to any term or condition and default is made in complying with such term or condition, the Protector may by warrant under his hand order that the child be taken out of the care, custody or control of such person and committed to a place of safety or to the custody of a relative or other fit person on such terms and conditions as the Protector may require until the child attains the age of eighteen years or for any shorter period.

## PART VIII

## TRAFFICKING IN CHILDREN

Unlawful transfer of possession, custody or control of child.

**33.** (1) Every person who takes any part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child for any valuable consideration shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Every person who without lawful authority or excuse harbours or has in his possession, custody or control any child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any other person within or without Malaysia shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(3) For the purposes of subsection (2), if any person harbours or has in his possession, custody or control any child without lawful authority or excuse, such child shall, until the contrary is proved, be presumed to be a child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration.

(4) It shall be a defence in any prosecution under this section to prove that the transfer took place in contemplation of or pursuant to a *bona fide* marriage or adoption and that at least one of the natural parents of the child or the guardian of the child was a consenting party to the marriage or to the adoption by the adopting party, and had expressly consented to the particular marriage or adoption.

Importation of child by false pretences

**34.** Any person who by or under any false pretence or representation, or fraudulent or deceitful means, made or used either within or without Malaysia, brings or assists in bringing any child into Malaysia shall be guilty of an offence and shall, on conviction, be liable to a fine not

exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

35. A Protector or any person authorized in that behalf in writing by a Protector may require any child who has entered or been brought into Malaysia and any person who may appear to have the custody or control of such child to appear before the Protector at any reasonable time and at any convenient place, and the Protector may examine such child as to his reasons for entering or being in Malaysia and may examine such person with respect to such child, and such person shall be legally bound to answer such questions truthfully to the best of his ability.

Power to examine children and persons in charge.

36. If a Protector has reasonable cause to suspect that any child—

Power of Protector to require security.

- (a) has been brought into Malaysia either after having been transferred for valuable consideration, or by fraud, misrepresentation or any false pretence;
- (b) has been transferred to the custody or control of any person for valuable consideration either within or without Malaysia; or
- (c) is being detained against his will by some person other than his parent or guardian,

he may either—

- (aa) require any person in whose custody or under whose control the child appears to be to furnish him with copies of such child's and such person's own photographs, and to furnish security to the satisfaction of the Protector that such child will not leave the area or the State in which he then is without the previous consent in writing of the Protector, and will not be transferred to the care or custody of any other person without the previous consent in writing of the Protector, and that he will be produced before the Protector whenever he requires it; or

(bb) in the first instance, or if default be made in complying with any order made under paragraph (aa), make an order that the child be taken out of the custody of the person in whose care, custody or control the child is and committed to a place of safety or, on such security and on such conditions as the Protector may require, to the custody of a relative or other fit person until the child attains the age of eighteen years or for any shorter period.

Inspection. 37. (1) A Protector, or any social welfare officer generally or specially authorized in that behalf in writing by the Protector, may at any time visit and inspect the place where any child in respect of whom security has been furnished under section 36 lives or is believed to live or to be.

(2) A Protector, or any officer authorized under subsection (1), may inquire into the condition and circumstances of the child referred to in subsection (1) and, for the purposes of such inquiry, the Protector or such officer may require any person to answer any questions he may think proper to ask and such person shall be legally bound to answer such questions truthfully to the best of his ability.

## PART IX

### MISCELLANEOUS

Power to  
search  
premises.

38. (1) Subject to subsection (2), any Protector or police officer may enter and search any premises for the purpose of ascertaining whether there is therein any child who is in need of protection or whether any offence under this Act is being, or has been, committed.

(2) A Protector or police officer shall not enter any premises by the use of force unless he has first obtained a warrant issued by a Magistrate.

(3) A Magistrate may issue a warrant to a Protector or police officer to enter by the use of force if necessary any

premises for the purposes mentioned in subsection (1) if that Magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that—

- (a) there is in such premises a child who is in need of protection; or
- (b) any offence under this Act is being, or has been, committed,

and that the entry can only be effected by the use of force.

(4) Notwithstanding subsection (2), if a Protector or police officer has reasonable grounds for believing that the object of the search mentioned in subsection (1) is likely to be frustrated by reason of the delay in obtaining a warrant under subsections (2) and (3), he may, without the warrant, enter by the use of such force as may be necessary any premises for the purposes mentioned in subsection (1).

(5) Any person who enters any premises under this section shall—

- (a) if so required, produce evidence of his identity; and
- (b) if a warrant has been issued under subsection (3)—
  - (i) produce the warrant or a copy thereof; and
  - (ii) use only such force as is reasonably necessary to effect entry.

(6) A Protector or police officer may, during or after any such search as is referred to in subsection (1), arrest or cause to be arrested any person reasonably suspected of having committed an offence against this Act, and may seize and detain any articles, books, documents or accounts which he may have reason to believe to relate to any offence against this Act.

(7) In carrying out any search under this section a Protector or police officer shall have power to put questions and to give any such order or direction as may be necessary to the occupants of any premises for the purpose of carrying out such search.

(8) The occupants of any premises being searched under this section shall answer truthfully all questions put to them by the Protector or police officer, and shall obey any order or direction given by him touching any matter or any person connected with such search.

(9) No person shall by force, restraint, threats, inducement or other means cause any child who is in need of protection to conceal himself in or to leave any premises being searched or about to be searched by a Protector or police officer under this section, with the intent that the search by such Protector or police officer may thereby be evaded or obstructed.

Obstructing Protector or police officer in performing his functions.

**39.** Any person who—

- (a) assaults, obstructs, hinders or delays any Protector or police officer in effecting any entry which he is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act;
- (b) refuses to answer, to the best of his knowledge and belief, any question which he is legally bound to answer and which is asked of him by any Protector or police officer or any other person authorized under this Act;
- (c) contravenes or fails to comply with any order, direction, summons or warrant lawfully issued or any condition lawfully imposed by any Protector, police officer or Court under this Act,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding three months or to both.

Removing or helping child to escape from custody.

**40.** (1) If a child is placed in a place of safety or in the custody of any person under this Act, any person who—

- (a) removes the child from such place of safety or such custody without lawful authority;
- (b) knowingly assists or induces, directly or indirectly, a child to escape from such place of safety or such custody; or

- (c) knowingly harbours, conceals, or prevents from returning to such place of safety or such custody, a child who has so escaped, or knowingly assists in so doing,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding three months or to both.

(2) If any child who is placed in a place of safety or in the custody of any person under this Act is removed without lawful authority, or escapes, from such place of safety or such custody, such child may be retaken by any Protector or police officer and returned to such place of safety or such custody.

**41.** Any person guilty of an offence under this Act for which no punishment is expressly provided shall be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

General penalty.

**42.** (1) Any police officer may arrest without a warrant any person whom he reasonably believes to have committed or to be committing an offence against this Act.

Power to arrest without warrant.

(2) Any person arrested under subsection (1) shall, after such arrest, be dealt with as provided for by the Criminal Procedure Code.

*F.M.S.  
Cap 6.*

**43.** (1) The Minister may, by notification in the *Gazette*, declare any place or institution to be a place of safety for the purposes of this Act.

Places of safety.

(2) The Minister may at any time direct the closing of any place of safety established under this Act.

(3) The Director General may order the transfer of children from one place of safety to another as and when the need arises.

**44.** If in any proceedings under this Act a person is alleged to be a child, the Court, after making such inquiry as it thinks fit as to the age of that person, may determine

Power of Court to determine and declare age of child.

and declare his age, and for the purposes of this Act the age so declared by the Court shall be deemed to be the true age of that person, unless and until the contrary is proved.

Protection of informants.

**45.** (1) No person who makes any notification that a child is in need of protection shall incur any liability for defamation or otherwise in respect of the making of such notification.

(2) The making of any notification that a child is in need of protection shall not, in any proceedings before any Court or in any other respect, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.

(3) Any person appearing as a witness in any proceedings in any Court or tribunal or before a person authorized by law to hear evidence—

(a) shall not be compelled to disclose and shall not disclose the identity of, or any information likely to lead to the disclosure of the identity of, any person who has made a notification that a child is in need of protection; and

(b) shall not be compelled to produce, and shall not produce, any report or document which identifies, or is likely to identify, any person who has made a notification that a child is in need of protection.

(4) Subsection (3) does not apply where a notification that a child is in need of protection is tendered in evidence, or evidence in respect of such notification is given, by the person who made such notification.

Protection of Director General, Protectors and police officers.

**46.** No action or prosecution shall be brought, instituted or maintained in any Court against the Director General or any Protector or social welfare officer or police officer in respect of anything done or omitted to be done by him in good faith in the execution or purported execution of his functions, powers and duties under this Act.

Certificate of Registrar to be evidence.

**47.** A certificate purporting to be under the hand of the Registrar as to any entry in the Register, or as to any matter

## CHILD PROTECTION

or thing, which he is authorized by this Act or any regulation made under this Act to do or to make shall be *prima facie* evidence of the entry having been done or made, and of the contents such entry, and of the matter or thing having been done or made.

48. The Minister may make such regulations as appear to him to be necessary or expedient for carrying out the provisions of this Act and in particular, but without prejudice to the generality of the foregoing provisions, such regulations may— Power to make regulations.

- (a) provide for the care, maintenance and education of children—
  - (i) placed in the custody or under the care or control; or
  - (ii) taken into the care, custody or control, of any person under the provisions of this Act, and the duties of such person;
- (b) provide for the control, care, detention, temporary absence, maintenance and education of children in places of safety;
- (c) regulate the management, visitation and inspection of places of safety;
- (d) require the person in charge of a place of safety to submit to the Director General returns, reports and information in respect of children placed therein;
- (e) regulate the procedure of admission to or discharge from a place of safety;
- (f) prescribe the particulars, photographs or other means of identification, to be furnished in relation to a child in need of protection;
- (g) prescribe the form of orders, warrants, summonses and bonds;
- (h) prescribe the records required to be kept in respect of a child in need of protection and the manner in which they shall be kept;

- (i) require the furnishing of information as to changes of address of every child in need of protection and of the persons having custody of the child, and the transfer of records and registers in such cases;
- (j) regulate the procedures and practice of Child Protection Teams;
- (k) make the contravention of or failure to comply with any regulation made under this Act an offence and may prescribe a fine not exceeding five thousand ringgit or imprisonment for a term not exceeding two years for such offence.

Consequential  
amendments  
and repeal.  
Act 90.

49. (1) The Juvenile Courts Act 1947 is amended—

(a) by deleting sections 35 and 36;

(b) in section 37A—

(i) by deleting the words "36 or" appearing after the words "makes an order under section";

(ii) by substituting for the words "subject to section 36 or 37, as the case may be" the words "subject to section 37",

Act 232.

(2) The Children and Young Persons Act 1947 is repealed.

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#### EXPLANATORY STATEMENT

This Bill seeks to make better provisions for the care and protection of children who need protection.

2. Part I contains preliminary matters and sets out the definitions of certain terms used in this Bill.

The term "child" is defined, in *clause 2*, to mean a person under the age of eighteen years. *Subclause 2 (2)* sets out the various circumstances which must exist in relation to a child before a child can be classified as a "child in need of protection".

3. Part II deals with the appointment of Protectors and Registrar of Children in Need of Protection as well as the keeping and maintenance of a Register of Children in Need of Protection.

*Clause 3* empowers the Minister to appoint Protectors.

*Clause 4* empowers the Minister to appoint a Registrar of Children in Need of Protection who, under the provisions of *clause 5*, has the duty to keep and maintain a Register of Children in Need of Protection. This Register shall contain details of every case and suspected case of a child in need of protection.

Under *clause 7* details in the Register may be furnished only to the Court and to certain persons for certain purposes only. *Clause 8* makes it an offence for such details to be furnished to other persons.

4. Part III provides for the establishment of a Co-ordinating Council for the Protection of Children and Child Protection Teams.

*Clauses 9, 10 and 11* deal with the establishment of the Council, the membership of the Council and the sitting and conduct of the Council's proceedings, respectively.

*Clause 12* seeks to require the Council to establish Child Protection Teams throughout the country for the purpose of coordinating locally-based services to families and children where children are or are suspected to be in need of protection.

5. Part IV deals with the temporary custody of children in need of protection and medical examination and treatment of such children.

*Clause 13* empowers a Protector or police officer to take into temporary custody any child whom he believes is in need of protection. Such child must be placed in a place of safety until he can be brought before the Juvenile Court.

*Clause 14* empowers a Protector or police officer to produce a child in need of protection before a medical officer if such Protector or police officer is of the opinion that the child needs medical examination or treatment.

*Clause 15* deals with the medical examination and treatment of children in need of protection who are brought before a medical officer under *clause 14*.

*Clause 16* enables a Protector or police officer to authorize the treatment of children in need of protection. If a child is suffering from a serious illness or requires surgery or psychiatric treatment, a Protector or police officer must endeavour to notify and consult the guardian and authorization may be given with the consent of such guardian. However if such consent cannot be obtained or there is immediate risk to the health of the child, the Protector may authorize any treatment considered necessary by a medical officer.

*Clause 17* seeks to make a Protector or police officer who authorizes the medical examination or treatment of a child under *clause 15 or 16* or a medical officer who examines or treats such child not liable at law by reason only that such child is examined or treated under such clause.

*Clause 18* seeks to confer upon the Director General control over all children in need of protection who are hospitalized and to impose a duty on him to maintain such children for the duration of such hospitalization.

*Clause 19* seeks to require every medical practitioner to notify a Protector if he believes on reasonable grounds that the child he is treating is a child in need of protection. Failure to do so is an offence. It also seeks to empower such medical practitioner, if he is a medical officer, to take such child into temporary custody until such time as the child can be handed over to a Protector.

*Clause 20* provides for certain steps to be taken in relation to children in need of protection, if they are taken into temporary custody and subsequently undergo medical examination or treatment, upon the completion of such medical examination or treatment.

6. Part V deals with court procedure.

*Clause 21* seeks to require the production before a Juvenile Court of every child taken into temporary custody under *clause 13*.

*Clause 22* seeks to empower a Juvenile Court, if it is satisfied that the child is a child in need of protection, to make any of the orders listed in that clause. However, if it is not in a position to decide whether any order should be made or what order should be made, it may make an interim order placing the child in a place of safety. Such order may not exceed two months at a time. In deciding what order to make, the Juvenile Court is required to treat the welfare of the child as the paramount consideration.

*Clause 23* seeks to empower the Court to make an order requiring the parent or guardian of the child to make such monthly contributions as the Court thinks fit, having taken into consideration the means of such parent or guardian.

*Clause 24* seeks to enable the Court to vary or revoke any order made by it in respect of a child if an application is made by a Protector or a person in charge of a place of safety or the parent or guardian of the child and if it is satisfied that the circumstances under which the order was made have changed.

*Clause 25* deals with the powers, rights and responsibilities of a person in whose custody a child is placed by a Juvenile Court.

7. Part VI deals with offences in relation to the health and welfare of children.

*Clause 26* seeks to make it an offence for a person who has the care of a child to abuse, neglect, abandon or expose such child in a manner likely to cause injury to his physical or mental health.

*Clause 27* seeks to make it an offence for any person who has the care of a child to cause the child to beg on any street, premises or place.

*Clause 28* seeks to make it an offence for a parent or guardian, or a person having the care, of a child to leave him without making reasonable provision for his supervision and care.

8. Part VII seeks to make provisions for the giving of notification to a Protector where a child is taken into the care, custody or control of someone other than, *inter alia*, his parent, guardian or immediate family.

Under *clause 30* the Protector may, after such inquiry as he deems fit and if he deems it expedient in the interests of the child, order that the child be returned to the custody of the parent or guardian, as the case may be.

*Clause 31* seeks to require a person who has taken a child into his care, custody or control to report to a Protector if he intends to return the child to the child's parents or guardian or if the child, without his knowledge or consent, has left his care, custody or control.

*Clause 32* seeks to empower a Protector, if he believes that any person has taken any child into his care, custody or control but has not, within one week of such taking, made any notification to a Protector, to require such person to appear before him and to produce such child.

9. Part VIII deals with the offence of trafficking in children.

*Clause 33* seeks to make it an offence for any person to take part in any transaction the object, or one of the objects, of which is to transfer or confer possession, custody or control of a child for any valuable consideration.

*Clause 34* seeks to make it an offence for any person to bring or to assist in bringing a child into Malaysia under false pretences or representation or through any fraudulent or deceitful means.

The penalty proposed for the offences mentioned above is a fine of not more than ten thousand ringgit and a term of imprisonment which may extend to five years or both.

10. Part IX deals with miscellaneous matters.

*Clause 38* empowers a Protector to enter and search any premises for the purpose of ascertaining whether in such premises there is a child in need of protection or whether any offence under the proposed Act is being or has been committed.

*Clause 39* seeks to make it an offence for any person to obstruct any Protector or police officer in the execution of any duty imposed or power conferred upon him, refuse to answer to the best of his knowledge or belief any questions which he is legally bound to answer, or fail to comply with any order, directions, summons or warrant lawfully issued by a Protector, police officer or Court.

*Clause 40* seeks to make it an offence for any person to remove any child, or help any child to escape, from lawful custody. It also seeks to empower a Protector or police officer to retake such child and return him to such lawful custody.

*Clause 41* seeks to provide for the general penalty while *clause 42* empowers any police officer to arrest without warrant any person whom he reasonably believes to have committed an offence against the proposed Act.

*Clause 43* seeks to empower the Minister to declare any place or institution to be a place of safety,

*Clause 44* seeks to allow the Court, after such inquiry as it deems fit, to declare the age of a person alleged to be a child.

*Clause 45* seeks to ensure that the identities of informants are not disclosed during any proceedings in any Court or tribunal or before any person authorized by law to hear evidence.

*Clause 46* contains indemnity provisions for the Director General and any Protector, social welfare officer and police officer.

*Clause 48* seeks to empower the Minister to make regulations.

*Clause 49* seeks to repeal sections 35 and 36 of the Juvenile Courts Act 1947 and the whole of the Children and Young Persons Act 1947 in view of the fact that the provisions contained in the sections and the Act to be repealed have, with some modifications, been included in this Bill.

#### FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN. (U<sup>2</sup>) 1387.]