

VOLUME 5

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CHAPTER 50
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CHAPTER 50 MARRIAGE

An Act to provide for the solemnisation of marriages; to provide for the validation of marriages already solemnised; and to provide for matters incidental to or connected with the foregoing. 10 of 1918
27 of 1930
11 of 1937

[1st October, 1918]

31 of 1941
35 of 1947
12 of 1949
36 of 1950
48 of 1953
6 of 1955
48 of 1963
57 of 1964
20 of 1966
21 of 1969
13 of 1994
*Government
Notices*
316 of 1964
493 of 1964
497 of 1964
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PART I

GENERAL

1. This Act may be cited as the Marriage Act.

Short title

2. In this Act, unless the context otherwise requires-

Interpretation

"district" means a marriage district constituted under section *three*;

"licensed minister" means any minister appointed under subsection (2) of section *five* to solemnise marriages in Zambia;

"Registrar" means a Registrar of Marriages appointed under section *four* and any person lawfully acting as such;

"Registrar-General" includes the Registrar-General of Marriages, the Deputy Registrar-General of Marriages and any person lawfully acting as the Registrar-General of Marriages or the Deputy Registrar-General of Marriages;

"special licence" means a special licence granted under section *twelve*.

(As amended by No. 11 of 1937, No. 48 of 1953
and G.N. No. 316 of 1964)

3. The Minister may, by statutory notice, divide Zambia into districts for the purposes of this Act and may, by like notice, from time to time alter such districts, either by change of boundaries or by union or subdivision of districts or by the formation of new districts.

Marriage
districts

(As amended by G.N. No. 316 of 1964)

4. The Minister may from time to time appoint a Registrar-General of Marriages for Zambia and Registrars of Marriages for any marriage district; and may also from time to time appoint a Deputy Registrar-General of Marriages, an Assistant Registrar-General of Marriages and Deputy Registrars of Marriages for any marriage district. The Assistant Registrar-General of Marriages and the Deputy Registrar of Marriages for any marriage district shall, in the absence or during the illness or incapacity of the Registrar-General or of the Registrar or Registrars of any marriage district respectively, have and exercise all the powers conferred by this Act upon the Registrar-General and the Registrars respectively.

Appointment of
Registrar-General
and Registrars

(No. 27 of 1930 as amended by No. 31 of 1941, No. 48 of 1953, G.N. No. 316 of 1964 and S.I. No. 72 of 1964)

5. (1) The Minister may, by *Gazette* notice, license any place of public worship to be a place for the solemnisation of marriages and may at any time, by like notice, cancel such licence.

Licensing of
places of public
worship

(2) The Minister may, by *Gazette* notice, appoint any minister of any church or religious body to solemnise marriages in Zambia and may at any time, by like notice, cancel such appointment.

(As amended by G.N. No. 316 of 1964)

PART II

PRELIMINARIES TO MARRIAGE

- | | |
|--|---|
| <p>6. No marriage shall be solemnised unless notice of the intended marriage shall have been given in the prescribed form by one of the parties thereto to the Registrar of the district in which the marriage is intended to take place not less than twenty-one days before the date of solemnisation.</p> | <p>Notice of intended marriage</p> |
| <p>7. If the person giving such notice is unable to write, it shall be sufficient if he place his mark or cross thereto in the presence of some literate person who shall attest the same, which attestation shall be in the prescribed form.</p> | <p>Signature of notice</p> |
| <p>8. Every Registrar shall supply forms of notice gratuitously to any persons applying for the same.</p> | <p>Forms of notice to be supplied</p> |
| <p>9. Upon receipt of such notice the Registrar shall cause the same to be entered in a book to be called the "Marriage Notice Book" which may be inspected during office hours without fee. He shall also publish such notice by causing a copy of the same to be affixed on the outer door of the office and to be kept exposed there until he grant his certificate as hereinafter mentioned or until three months shall have elapsed.</p> | <p>Entry in Notice Book and publication of notice</p> |
| <p>10. (1) The Registrar, at any time after the expiration of twenty-one days and before the expiration of three months from the date of the notice, upon payment of the prescribed fee, shall issue his certificate in the prescribed form:</p> | <p>Issue of certificate</p> |

Provided always that he shall not issue such certificate until he has been satisfied by affidavit-

- (i) that one of the parties has been resident within the district in which the marriage is intended to be solemnised for at least fifteen days immediately preceding the granting of the certificate;
- (ii) that each of the parties to the intended marriage (not being a widower or widow) is not less than twenty-one years old or that if he or she is under that age the consent hereinafter made requisite has been obtained (which consent must be in writing and annexed to such affidavit);
- (iii) that there is not any impediment of kindred or affinity or any other lawful hindrance to the marriage;
- (iv) that neither of the parties to the intended marriage is married by

African customary law to any person other than the person with whom such marriage is proposed to be contracted.

(2) Such affidavit may be sworn before the Registrar.

(3) The Registrar taking such affidavit shall explain to the person making the same what are the prohibited degrees of kindred and affinity and the penalties which may be incurred under the provisions of this Act.

(As amended by No. 48 of 1963)

11. If the marriage shall not take place within three months after the date of the notice, the notice and all proceedings consequent thereupon shall be void: and further notice must be given in accordance with section *six* before the parties can lawfully marry.

Marriage to take place within three months of date of notice

12. (1) The Minister or an authorised officer, upon proof being made to him by affidavit that there is no lawful impediment to a proposed marriage and that any necessary consent to such marriage has been obtained, may, if he shall think fit, dispense with the giving of notice and with the issue of the certificate of the Registrar and may, upon payment of the prescribed fee, grant a special licence in the prescribed form authorising the solemnisation of a marriage between the parties named in the special licence by a Registrar or by a licensed minister of some religious denomination or body and may further, if he shall think fit, authorise the solemnisation of a marriage at a place named in the special licence, not being a licensed place of worship or Registrar's office.

Issue of special licence

(2) In this section-

"authorised officer" means a public officer designated by the Minister as an authorised officer.

(As amended by No. 11 of 1937, G.N. No. 316 of 1964 and No. 21 of 1969)

13. Any person whose consent to a marriage is hereby required, or who may know of any just cause why the marriage should not take place, may enter a caveat against the issue of the Registrar's certificate by

Entry of caveat

writing at any time before the issue thereof the word "forbidden" opposite to the entry of the notice in the Marriage Notice Book and appending thereto his name and place of abode and the grounds upon or by reason of which he claims to forbid the issue of the certificate, and the Registrar shall not issue his certificate until such caveat shall be removed as hereinafter is provided.

14. Whenever a caveat is entered against the issue of a certificate, the Registrar shall refer the matter to the High Court, and that Court shall thereupon summon the parties to the intended marriage and the person by whom the caveat is entered and shall require the person by whom the caveat is entered to show cause why the Registrar should not issue his certificate and shall hear and determine the case in a summary way, and the decision of the High Court shall be final. Procedure on entry of caveat

15. If the High Court decides that the certificate ought to be issued, the Judge shall remove the caveat by cancelling the word "forbidden" in the Marriage Notice Book in ink and writing in such Marriage Notice Book immediately below such entry and cancellation the words "cancelled by order of the High Court" and signing his name thereto. The Registrar shall then issue his certificate and the marriage may proceed as if the caveat had not been entered, but the time that has elapsed between the entering and the removal of the caveat shall not be computed in the period of three months specified in section *ten*. Cancellation (or otherwise) of caveat

16. The High Court may, in its discretion if it shall consider that a caveat has been entered in any case without reasonable or probable cause, order the person entering the caveat to pay any reasonable costs incurred by either of the parties to the intended marriage by reason of the proceedings consequent on such caveat being entered. Costs of proceedings

PART III

CONSENT TO MARRIAGE IN CERTAIN CASES NECESSARY

17. If either party to an intended marriage, not being a widower or widow, is under twenty-one years of age, the written consent of the father, or if he be dead or of unsound mind or absent from Zambia, of the mother, or if both be dead or of unsound mind or absent from Zambia, of When consent to marriage is necessary

the guardian of such party shall be produced and shall be annexed to the affidavit required under sections *ten* and *twelve* and, save as is otherwise provided in section *nineteen*, no special licence shall be granted or certificate issued without the production of such consent.

(As amended by G.N. No. 316 of 1964)

18. (1) If the person required to sign such consent is unable to write, he shall sign such consent by placing his cross or mark thereto in the presence of one of the following persons: any Judge, District Secretary, Registrar of the High Court, Registrar of Deeds, Government Medical Officer, or minister of religion.

Signature to
consent and
attestation

(2) Such signature shall be attested by such person in the prescribed form.

(3) The provisions of section *two* of the Interpretation and General Provisions Act shall not apply to this section.

Cap. 2

(As amended by G.N. No. 493 of 1964)

19. (1) If any parent or guardian, whose consent to a marriage is required, refuses his consent, a Judge of the High Court may, on application being made, consent to the marriage, and the consent of the Judge so given shall have the same effect as if it had been given by the person whose consent is refused.

Consent in case
of refusal or
absence of
parent or
guardian

(2) If there be no parent or guardian of such party residing in Zambia and capable of consenting to the marriage, then any of the following persons, that is to say, the Minister, a Judge of the High Court, or a District Secretary may consent to such marriage in writing, upon being satisfied after due inquiry that there are no reasonable grounds in the interest of either party for withholding such consent, and such consent shall be as effectual for the purposes of this Act as if the father or mother had consented.

(As amended by No. 35 of 1947 and G.N. No. 316 of 1964)

PART IV

SOLEMNISATION OF MARRIAGE

- 20.** Marriages may be solemnised in any licensed place of worship by any licensed minister of the church, denomination or body to which such place of worship belongs and according to the rites and usages of marriage observed in such church, denomination or body, or with the consent of a recognised minister of the church, denomination or body to which such place of worship belongs by any licensed minister of any other church, denomination or body according to the rites and usages of marriage observed in any church, denomination or body. Every such marriage shall be solemnised with open doors between the hours of six o'clock in the forenoon and six o'clock in the afternoon, and in the presence of two or more witnesses besides the officiating minister.
(No. 11 of 1937 as amended by No. 48 of 1953)
- Solemnisation of marriage by ministers
- 21.** A minister shall not solemnise any marriage if he knows of any just impediment to such marriage nor until the parties deliver to him the Registrar's certificate or the special licence, as the case may be.
(As amended by G.N. No. 316 of 1964)
- Registrar's certificate or special licence to be provided to minister
- 22.** A minister shall not solemnise any marriage except in a building which has been duly licensed by the Minister or in such place as the special licence may direct.
(As amended by G.N. No. 316 of 1964)
- Marriage in licensed building
- 23.** The Minister shall cause to be printed and delivered to the several Registrars and to the licensed ministers of licensed places of worship books of marriage certificates in duplicate in the prescribed form with counterfoils. Such books shall be kept by the several Registrars and the licensed ministers for the time being of such places of worship under lock and key and be in the custody of such Registrars and ministers respectively.
(As amended by No. 11 of 1937 and G.N. No. 316 of 1964)
- Marriage books
- 24.** Immediately after the solemnisation of any marriage by a minister,
- Completion of

the officiating minister shall fill up in duplicate a marriage certificate with the particulars required by the said prescribed form and enter in the counterfoil the prescribed particulars.

marriage
certificate

25. The certificate shall then be signed in duplicate by the officiating minister, by the parties and by two or more witnesses to the marriage. The minister having also signed his name to the counterfoil shall sever the duplicate certificate therefrom and shall deliver one certificate to the parties and shall, within seven days thereafter, transmit the other to the Registrar for the district in which the marriage takes place who shall transmit the same to the Registrar-General within seven days of the receipt thereof.

Attestation of
marriage
certificate

26. After the issue of a certificate under section *ten* or *fifteen*, or of a special licence, the parties may, if they think fit, contract a marriage before a Registrar in the presence of two witnesses, in his office with open doors, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, in accordance with the prescribed procedure.

Marriage before
Registrar

(No. 36 of 1950 as amended by G.N. No. 316 of 1964)

27. The Registrar shall then fill up and he and the parties and witnesses shall sign the certificate of the marriage in duplicate and the Registrar shall then fill up and sign the counterfoil as hereinbefore provided in the case of a marriage by a minister and shall deliver one certificate to the parties and shall, within seven days, transmit the other to the Registrar-General.

Issue of
marriage
certificate by
Registrar

28. Whenever a special licence authorises the solemnisation of a marriage at a place other than a licensed place of worship or the office of a Registrar, the minister or Registrar solemnising such marriage shall observe strictly all the formalities hereinbefore provided as to marriage in a licensed place of worship or Registrar's office, as the case may be. The minister who has solemnised any such marriage shall deliver one certificate to the parties as in section *twenty-five* provided and shall, within seven days thereafter, forward to the Registrar for the district in which such marriage has been solemnised the other certificate of marriage and also a copy of the special licence pursuant to which the marriage has been solemnised. Within seven days of the receipt of such certificate and such copy, the Registrar shall forward them to the Registrar-General.

Marriage in
building other
than licensed
building or
Registrar's
office

(As amended by G.N. No. 316 of 1964)

PART V

REGISTRY AND EVIDENCE OF MARRIAGES

29. (1) The Registrar-General shall file in his office all certificates of marriage which shall be transmitted to him, and shall forthwith register in a book to be kept in his office for such purpose and to be called the "Marriage Register Book" in the prescribed form particulars of every certificate of marriage which shall be filed in his office, and every entry so made shall be dated on the day on which it is so entered and shall be signed by the Registrar-General, and such book shall be kept in such manner as is best suited for easy reference thereto.

Registration of marriages by Registrar-General

(2) Upon payment of the prescribed fees, the Registrar-General shall at all reasonable times allow searches to be made in the Marriage Register Book and shall give certified copies therefrom.

(3) Every Registrar and the licensed minister for the time being of every licensed place of worship shall, at all reasonable times upon payment of the prescribed fee, allow searches to be made in the counterfoils of his marriage certificate books.

(As amended by No. 11 of 1937)

30. The Registrar-General may correct any clerical error in any certificate of marriage filed in his office and in the Marriage Register Book upon production to him of the certificate delivered to the parties, and shall authenticate every such correction by his signature and the date of such correction.

Correction in Register of clerical errors

31. Every certificate of marriage which shall have been filed in the office of the Registrar-General, or a copy thereof purporting to be signed and certified as a true copy by the Registrar-General for the time being, and every entry in a Marriage Register Book or copy thereof certified as aforesaid, shall be admissible as evidence of the marriage to which it relates in any court of justice or before any person now or hereafter having by law or consent of parties authority to hear, receive and examine evidence.

Certificate of marriage to be evidence

32. (1) No marriage in Zambia shall be valid-

Invalid
marriages

(a) which if solemnised in England would, under the law relating to prohibited degrees of marriage for the time being in force in England, be null and void on the ground of kindred or affinity;

(b) where either of the parties thereto at the time of the celebration of such marriage is married by African customary law to any person other than the person with whom such marriage is had.

(2) A marriage shall be null and void if both parties knowingly and wilfully acquiesce in its solemnisation-

(a) in any place other than the office of a Registrar or a licensed place of worship or a place authorised by the special licence; or

(b) under a false name or names; or

(c) without the Registrar's certificate of notice or special licence having been duly issued; or

(d) by a person not being a licensed minister of some religious denomination or body or a Registrar.

*(As amended by No. 11 of 1937, No. 48 of 1963
and G.N. No. 316 of 1964)*

33. (1) A marriage between persons either of whom is under the age of sixteen years shall be void: Void marriages

Provided that this section shall not apply when a Judge of the High Court has, on application being made, and on being satisfied that in the particular circumstances of the case it is not contrary to the public interest, given his consent to the marriage.

(2) Nothing in this section shall affect any marriage already solemnised or contracted before the 20th May, 1949.

Exemption of
existing
marriages

(No. 12 of 1949 as amended by No. 6 of 1955)

34. Any person who is married under this Act or whose marriage is declared by this Act to be valid, shall be incapable during the continuance of such marriage of contracting a valid marriage under any African customary law, but, save as aforesaid, nothing in this Act contained shall affect the validity of any marriage contracted under or in accordance with any African customary law, or in any manner apply to marriages so contracted.

Marriage under African customary law

(No. 48 of 1963)

PART VI

VALIDATION OF MARRIAGES ALREADY SOLEMNISED

35. Every marriage solemnised in the portion of Zambia formerly known as North-Eastern Rhodesia before the 1st February, 1903, and every marriage solemnised in the portion of Zambia formerly known as Barotseland-North-Western Rhodesia before the 16th July, 1906, by any minister of any religious denomination or body, according to the rites in use by such religious denomination or body, shall be and shall be deemed to have been from the time of the solemnisation thereof, a legal and valid marriage:

Marriages already solemnised in Zambia

Provided that nothing herein contained shall legalise any marriage which has, before the commencement of this Act, been declared invalid by any competent court, nor any marriage, either party to which had at the time of its solemnisation a lawful wife or husband living, nor any marriage which was void by reason of kindred or affinity or fraud or incapacity to contract marriage, nor any marriage otherwise invalid, either party to which shall, before the commencement of this Act and in the lifetime of the other party thereto, have intermarried with any other person.

36. Every minister of religion or other person in Zambia who has in his custody or control any register, record or paper purporting to be such of marriage solemnised before the 1st February, 1903, in the portion of Zambia formerly known as North-Eastern Rhodesia, and before the 16th July, 1906, in the portion of Zambia formerly known as Barotseland' North-Western Rhodesia, shall forthwith deliver or transmit to the

Records and evidence of such marriages

Registrar-General the said register or official record or a copy thereof, unless a copy has already been transmitted pursuant to the provisions of the North-Eastern Rhodesia Marriage Regulations, 1903, or Proclamation No. 15 of 1906 omitting if desired any matter of a private nature with a certificate appended thereto in the following form:

I, A.B., (here describe place of abode and position) do certify that the annexed written pages contain the true record (excepting matters of a confidential nature) of the marriages heretofore solemnised in (here name church).

Dated the day of 19

(Signed A.B.)

37. The Minister may defray out of the general revenues of the Republic all proper expenses connected with the transmission or delivery of the said registers or which may otherwise become necessary to be incurred in carrying out the provisions of this Act.

Costs
transmission of
records, etc.

(As amended by G.N. No. 316 of 1964 and S.I. No. 72 of 1964)

PART VII

OFFENCES AND PENALTIES

38. Any person who-

(a) contracts a marriage under this Act, being at the time married in accordance with African customary law to any person other than the person with whom such marriage is contracted;

(b) having contracted a marriage under this Act, during the continuance of such marriage contracts a marriage in accordance with African customary law;

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years:

Contracting
marriage under
this Act when
married in
African
customary law
or contracting
marriage in
African
customary law
when married
under this Act

Provided that this section shall not extend to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually

absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time.

(No. 48 of 1963)

- 39.** Whoever being unmarried goes through the ceremony of marriage with a person whom he or she knows to be married to another person shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding five years. Accomplices
- 40.** Whoever in any affidavit, declaration, licence, document or statement by law, to be made or issued for the purposes of a marriage, swears, declares, enters, certifies or states any material matter which is false shall, if he does so without having taken reasonable means to ascertain the truth or falsity of such matter, be liable on conviction to imprisonment with or without hard labour for one year or shall, if he does so knowing that such matter is false, be liable on conviction to imprisonment with or without hard labour for a period not exceeding five years. False declarations, etc.
- 41.** Whoever endeavours to prevent a marriage by falsely pretending that his consent thereto is required by law, or that any person whose consent is so required does not consent, or that there is any legal impediment to the performing of such marriage, shall, if he does so knowing that such pretence is false or without having reason to believe that it is true, be liable on conviction to imprisonment with or without hard labour for a period not exceeding two years. False pretences in connection with consent to marriage
- 42.** Whoever performs the ceremony of marriage knowing that he is not duly qualified so to do, or that any of the matters required by law for the validity of such marriage has not happened or been performed, so that the marriage is void or unlawful on any ground, shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding five years. Illegal performance of ceremony
- 43.** Whoever, being under a duty to fill up the certificate of a marriage celebrated by him or the counterfoil thereof or to transmit the same to the Registrar, wilfully fails to perform such duty shall be liable on conviction to a fine not exceeding one thousand and five hundred penalty units or, alternatively or in default of payment of such fine or in addition thereto, to imprisonment with or without hard labour for a period not exceeding two years. Failure to fill up and transmit certificates

(As amended by Act No. 13 of 1994)

44. Whoever personates any other person in marriage, or marries under a false name or description with intent to deceive the other party to the marriage, shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding five years. Personation

45. Whoever goes through the ceremony of marriage, or any ceremony which he or she represents to be a ceremony of marriage, knowing that the marriage is void on any ground and that the other person believes it to be valid, shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding five years. False representation

PART VIII

MISCELLANEOUS

46. The Minister may, from time to time by statutory instrument, make, alter, amend or repeal such rules as may be necessary for the proper carrying out of the provisions of this Act and more especially may prescribe- Rules

- (a) the place or places at which shall be situate the offices of the Registrar-General and of the several Registrars;
- (b) the form and manner of giving any notice required by this Act and the particulars to be furnished;
- (c) the form of any attestation required by this Act;
- (d) the form of any certificate, licence, register or other document required for the purposes of this Act;
- (e) the conditions under which registers or other documents may be inspected;
- (f) the fees to be paid under the provisions of this Act in respect of anything required or permitted to be done or any document required to be executed and provision for their remission or reduction on account of the poverty of the parties or for other good reason;
- (g) the procedure to be followed when a marriage is contracted before a Registrar.

(As amended by No. 36 of 1950 and G.N. No. 316 of 1964)

47. Nothing herein contained shall preclude a minister from receiving the fees ordinarily paid to a minister of his denomination for the solemnisation of marriage. Ministers may receive fees

48. Where a marriage is intended to be solemnised or contracted in the United Kingdom between a British subject resident in England, Scotland or Ireland and a British subject resident in Zambia, the latter may give notice of the intended marriage to the Registrar of the marriage district in which he resides and a certificate for marriage may be issued by such Registrar in like manner as if the marriage was to be solemnised or contracted in Zambia under circumstances requiring and authorising the issue of such a certificate by him. Notice when solemnisation intended in United Kingdom

49. Any marriage solemnised before the 23rd July, 1937, by a recognised minister, according to the rites and usages of marriage observed in the church, denomination or body to which he belongs, in any licensed place of worship not of the same church, denomination or body as that to which the minister belongs, shall be, and shall be deemed always to have been, as valid as if the minister belonged to the church, denomination or body of such place of worship, and had solemnised the marriage according to the rites or usages of marriage observed in such last mentioned church, denomination or body. Validation of certain marriages

(No. 11 of 1937)

SUBSIDIARY LEGISLATION

SECTION 3-MARRIAGE DISTRICTS (DIVISION) ORDER Order by the Prime Minister

1. This Order may be cited as the Marriage Districts (Division) Order. Title
2. The Republic is hereby divided for the purposes of the Act into districts the names and boundaries of which shall be identical with the names and boundaries of the administrative districts of the Republic as set out in the Second Schedule to the Provinces and Districts (Division) Act. Districts for purposes of Act Cap. 286

Order,

SECTION 46-THE MARRIAGE (PROCEDURE) RULES

Rules by the Minister

Government
Notice
45 of 1951

- | | |
|---|--|
| <p>1. These Rules may be cited as the Marriage (Procedure) Rules.</p> | Title |
| <p>2. Marriages contracted before a Registrar by virtue of the provisions of section <i>twenty-six</i> of the Act shall be in accordance with the procedure set out in the Schedule.</p> | Marriages contracted before Registrar |
| <p>3. Prior to the celebration of the marriage, the Registrar shall inspect the certificate of licence and shall point out to the parties that the place in which they are met has been duly sanctioned for the celebration of marriages according to law. He shall insist upon the seemly behaviour of the parties and witnesses as befitting the importance of the occasion.</p> | Preliminaries to celebration of marriage |
| <p>4. The Registrar shall himself recite the declaration and the form of contracting words, in order that the parties may repeat them, and he shall insist upon the parties repeating the words in a serious and proper manner and with as distinct an enunciation of the words as possible. The full import of the declaratory and contracting words and the penalty for any falsity therein shall be clearly explained to the parties by the Registrar whenever the parties appear to be either ignorant or careless in that respect.</p> | Procedure |
| <p>5. In the case of deaf and dumb persons, they shall be requested to bring with them an interpreter who understands the language of the deaf and dumb; otherwise the words of declaration and contract shall be written out and signed by the parties in token of their assent.</p> | Special cases |
| <p>6. The Registrar shall not allow any religious service whatever to be used at the celebration of a marriage in his office. For the purposes of this rule the giving and receiving of a ring shall not be deemed to constitute a religious ceremony.</p> | No religious service to be used |

SCHEDULE

(Rule 2)

PROCEDURE FOR MARRIAGES CONTRACTED BEFORE A REGISTRAR

Each of the parties must, in the presence of the Registrar and the witnesses, declare as follows:

"I do solemnly declare that I know not of any lawful impediment why I (*naming himself or herself*) may not be joined in matrimony to (*naming the other party*)."

And each of the parties must also say to the other:

"I call upon these persons here present to witness that I (*naming himself or herself*) do take thee (*naming the other party*) to be my lawful wedded (*wife or husband*)."

SECTION 46-THE MARRIAGE (FORMS AND FEES) RULES

Rules by the Minister

Government Notices
73 of 1918
95 of 1918
144 of 1926
216 of 1945
189 of 1949
199 of 1953
316 of 1964
497 of 1964
Statutory Instruments
72 of 1964
282 of 1967
77 of 1982
180 of 1987
63 of 1994
Act No.
13 of 1994

1. These Rules may be cited as the Marriage (Forms and Fees) Rules. Title
(No. 189 of 1949)

2. Every notice of an intended marriage given pursuant to the provisions of section *six* of the Act shall be in Form 1 in the First Schedule. Notice of intended marriage

3. Every attestation to a signature under the provisions of the Act shall be in Form 2 in the First Schedule. Attestation

4. Every certificate issued by a Registrar under the provisions of section *ten* of the Act shall be in Form 3 in the First Schedule. Certificate

5. Every special licence granted under the provisions of section *twelve* of the Act shall be in Form 4 in the First Schedule. Licence

(As amended by No. 316 of 1964)

6. Every marriage certificate shall be in either Form 5 or 6 in the First Schedule. Marriage certificate

(As amended by No. 199 of 1953)

7. The marriage register book shall be in Form 7 in the First Schedule. Marriage register

8. The affidavit for the satisfaction of the Registrar under the provisions of section *ten* of the Act shall be in Form 8 in the First Schedule. Affidavit

(No. 189 of 1949)

9. (1) The fees specified in the Second Schedule shall be paid for the several matters to which they are applicable: Prescribed fees

Provided that the Minister or an authorised officer, on account of the poverty of the parties or for any other reason he deems adequate, may reduce the amount of any such fees or remit them altogether, or, if they have been paid, direct the refund of the whole or any part thereof.

(2) For the purposes of this rule, "authorised officer" means-

(a) the Registrar-General;

(b) any Resident Secretary;

(c) the Permanent Secretary, Ministry of Local Government.

*(As amended by No. 144 of 1926, No. 316 of 1964
and No. 282 of 1967)*

FIRST SCHEDULE

PRESCRIBED FORMS

FORM 1
(Rule 2)

NOTICE OF MARRIAGE

To the Registrar of Marriage for the District of
Zambia.

I hereby give you notice that a marriage is intended to be had within
three months from the date hereof between me, the undersigned, and the
other party herein named.

Names and Surnames	Condition	Occupation, Rank or Profession	Age	Dwelling or Place of Abode	Consent (if any) and by whom given

Witness my hand this day of 19

.....

FORM 2
(Rule 3)

FORM OF ATTESTATION

Signed by the said at on
the day of..... 19 this Notice (or Co

He (she) seemed to understand the same and made his (her) mark
thereto in my presence.

..... (Signature)

FORM 3
(Rule 4)

REGISTRAR'S CERTIFICATE

I,....., Registrar of Marriages for the District of Zambia, do hereby certify that on the.....day of 19, Notice was duly entered in the Marriage Notice Book of this District, of the marriage intended between the parties herein named and described, such Notice being delivered under the hand of one of the parties, that is to say:

Name	Condition	Occupation Rank or Profession	Age	Consent	Dwelling	Length of Residence

Date of Notice entered 19.....
 Date of Certificate given 19.....
 No Caveat has been entered against the issue of this Certificate (or a Caveat was entered against the issue of this Certificate on the of 19....., but it has been cancelled).
 Witness my hand this day of 19.....

.....
Registrar

Note.-This Certificate will be void unless the marriage is solemnised on or before the day of 19

.....

FORM 4
(Rule 5)

REPUBLIC OF ZAMBIA
SPECIAL LICENCE

WHEREAS desire to intermarry, and sufficient cause has been shown to me why the preliminaries required by the Marriage Act should be dispensed with;

NOW THEREFORE, in pursuance of the said Act, I do dispense with the giving of Notice and the issue of the Certificate thereby prescribed, and do hereby authorise any Registrar of Marriages or minister appointed to solemnise marriages under section 5 of the said Act to solemnise a marriage between the said
atwithin days from the date hereof.

Such marriage may be solemnised by a Registrar of Marriages or by a minister appointed to solemnise marriages as above mentioned between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon.

Given under my hand at this day of
19.....

.....
Minister of Local Government/Authorised Officer
(As amended by No. 316 of 1964)

FORM 5
(Rule 6)

REPUBLIC OF ZAMBIA

Marriage celebrated in the at in Zambia.

CERTIFICATE OF MARRIAGE

Under the provisions of the Marriage Act.

	No.	When Married	Names and Surnames	Full Age or Minor	Condition	Rank or Profession	Residence at time of Marriage	Father's Name and surname	Occupation, Rank or Profession of Father
No. Date 19									

Name of Husband

Name of Wife

Witnesses

Married at by (Signature)
Minister (or Registrar)

This marriage was celebrated between us

{ }
.....

in the presence of us

{ }
.....

Witnesses

(As amended by S.I. No. 72 of 1964)

FORM 6
(Rule 6)

REPUBLIC OF ZAMBIA

Marriage celebrated in theat in Zambia.

CERTIFICATE OF MARRIAGE

Under the provisions of the Marriage Act.

No.	Date	Full Names	Full Age or Minor	Con- dition	Rank or Pro- fession	Residnce at time of Marriage	Father's Full Name	Occupation, Rank or Profession of Father

Witnesses (*Full names*)

Married at by

(Signature)

Minister (or Registrar)

This marriage was celebrated between us:

(Signatures)

{

in the presence of
us

}

Witnesses

(Signatures)

(As amended by S.I. No. 72 of 1964)

FORM 7
(Rule 7)

MARRIAGE REGISTER

When and where Married	Names and Surnames	Whether Full Age or Minor	Condition	Occupation	Residence	Father's Name and Occupation

Entered this day of 19....

.....

Registrar-General

FORM 8
(Rule 8)

AFFIDAVIT

(Section 10 (1))

I

1. That I have been a resident of
within Zambia since

Witness my hand this day of 19.....

.....
Registrar of Marriages
.....

NOTE.-This Certificate will be void unless the marriage is
solemnised on or before the day of 19

2. That I myself am not less than twenty-one years old. *Or* That I being
under the age of twenty-one years the written consent of my lawful guardian
has been obtained and is attached hereto marked "A". *Or* That I being under
the age of twenty-one years am a widower (widow).

3. That is not less than twenty-
Or That being under the age of twenty-one years the consent in writing of the
being under the age of twenty-one years is a widower (widow).

4. That we are not related to one another within the prohibited degrees of
kindred or affinity.

5. That both myself and
the age of sixteen years. *Or* That
below the age of sixteen years the consent to the marriage of a Judge of the
High Court has been obtained in accordance with section 33 of the Marriage
Act and is attached hereto marked "C".

6. That my attention has been drawn to section 33 of the Marriage Act as
endorsed hereon.

7. That there is no other lawful hindrance to our intended marriage.
(Deponent's Signature)

Sworn before me at this
of 19.....

.....
Registrar

NOTE 1. Insert name of intended spouse in paragraphs 3 and 5.

NOTE 2. Should either or both of the parties to an intended marriage be under 21 years of age and not be a widower or widow the consent in writing of the father must be obtained-if alive, of sound mind and within Zambia-and attached to this affidavit. If the father be dead or be of unsound mind or not be within Zambia, then the mother; if she be dead, etc., then the guardian; or if no guardian is resident and capable, then the Minister of Local Government, a Judge of the High Court, or a District Secretary.

NOTE 3. See section 33 of the Marriage Act printed on the back of this form.

(No. 189 of 1949 as amended by No. 316 of 1964 and S.I. No. 72 of 1964)

THE MARRIAGE ACT

33. (1) A marriage between persons either of whom is under the age of sixteen years shall be void:

Provided that this section shall not apply when a Judge of the High Court has, on application being made, and on being satisfied that in the particular circumstances of the case it is not contrary to the public interest, given his consent to the marriage.

(2) Nothing in this section shall affect any marriage already solemnised or contracted before the 20th May, 1949.

SECOND SCHEDULE

(Rule 9)

PRESCRIBED FEES

	<i>Fee Units</i>
Special Licence	30
Search fees	20
Alteration of Register	2
Affidavit in support of an application for a Registrar's certificate	2
Marriage Certificate	1

(As amended by Act No. 13 of 1994)

CHAPTER 51

THE BIRTHS AND DEATHS REGISTRATION ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Districts
4. Appointment of Registrar-General and Registrars, etc.
5. Registration of births and deaths
6. Prescribed forms
7. Registrars to forward notices to Registrar-General
8. Registers of births and deaths
9. Penalty for failing to give notice
10. Registers may be inspected
11. Certified copies of entries
12. Evidence of certified copy
13. Clerical errors in registers may be corrected
14. Responsibility for giving notice
15. Notice of birth of illegitimate child
16. Notice of birth of abandoned child
17. Alteration of name of child
18. Who is to give notice of death
19. Notice by person finding an exposed body
20. Penalties
21. Rules
22. Repeals and savings

BIRTHS AND DEATHS REGISTRATION

21 of 1973
13 of 1994

An act to provide for a uniform law for the registration of all births and deaths in Zambia, without distinction of origin or descent; and to provide for matters incidental thereto.

[23rd March, 1973]

1. This Act may be cited as the Births and Deaths Registration Act. Short title

2. In this Act, unless the context otherwise requires- Interpretation

"child" includes an illegitimate child;

"district" means any one of the districts into which Zambia shall be divided pursuant to the provisions of this Act;

"Registrar" means the person appointed to be Registrar of Births and Deaths for a district and shall include an Acting Registrar;

"Registrar-General" means the person appointed to be Registrar-General of Births and Deaths for Zambia and shall include an Acting Registrar-General;

"still-born" shall apply to any child which has issued forth from its mother after the twenty-eighth week of pregnancy and which did not at any time after being completely expelled from its mother, breathe or show any other signs of life.

3. The Minister may from time to time by statutory instrument divide Zambia into districts for the purposes of this Act or alter such districts. Districts

4. There shall be appointed a Registrar-General of Births and Deaths for Zambia, and a Registrar of Births and Deaths for each district, and, if the Minister so considers necessary, a Deputy Registrar-General of Births and Deaths and an Assistant Registrar-General of Births and Deaths, who shall all be public officers: Appointment of Registrar-General and Registrars, etc.

Provided that in any district in which there is for the time being no Registrar, the Minister may by statutory instrument confer the powers and duties of a Registrar of Births and Deaths under this Act on any person, whether he is a public officer or not.

- | | |
|---|---|
| <p>5. The birth of every child born and the death of every person dying in Zambia after the commencement of this Act shall be registered in accordance with the provisions of this Act.</p> | <p>Registration of births and deaths</p> |
| <p>6. Every person giving notice of the birth of a child born or of the death of a person dying, as the case may be, after the commencement of this Act shall, to the best of his knowledge and ability, give such notice in the prescribed form or forms furnishing therein the prescribed particulars and shall certify to its or their correctness either by signing, or, if he be illiterate, by affixing his mark to the prescribed form or forms upon which notice shall be given.</p> | <p>Prescribed forms</p> |
| <p>7. A Registrar shall sign and forward forthwith by registered post to the Registrar-General all notices of birth or death and all medical certificates of the cause of death received by him.</p> | <p>Registrars to forward notices to Registrar-General</p> |
| <p>8. The Registrar-General shall keep alphabetical registers in the prescribed form-</p> <p>(a) of the birth of every child, whether born alive or still-born;</p> <p>(b) of the death of every person dying;</p> <p>after the commencement of this Act, of which birth or death he shall receive notice in the prescribed form.</p> | <p>Registers of births and deaths</p> |
| <p>9. Any person who, being under obligation to give notice of the birth of any child or the death of any person, fails to do so within the period herein provided or refuses or neglects to state any of the particulars in the form prescribed by rules made under the provisions of this Act, or who wilfully gives any false information or particulars for the purpose of registration, shall be guilty of an offence and shall be liable to a fine not exceeding two hundred penalty units or to imprisonment not exceeding one month with or without hard labour, or to both.</p> | <p>Penalty for failing to give notice</p> |

Provided that no person shall be charged with an offence under this section-

(i) for having failed to give notice of the birth of any child or the death of any person, if, having regard to all the circumstances of the case, it was not reasonably practicable for him to have given such notice or where such notice could not be given without causing unnecessary hardship or expense to such person;

(ii) where, having regard to the education, knowledge and understanding of the person and to the social environment of the locality in which he resides, he could not reasonably be expected to have sufficient knowledge of his obligations under this Act.

(As amended by Act No. 13 of 1994)

- | | |
|--|--|
| <p>10. Any register in the custody of the Registrar-General shall, upon payment of such fee as may be prescribed, be open to inspection.</p> | <p>Registers may be inspected</p> |
| <p>11. The Registrar-General shall, upon payment of such fee as may be prescribed, furnish a certified copy of any entry in any register in his custody.</p> | <p>Certified copies of entries</p> |
| <p>12. The copy of any entry in any register certified under the hand of the Registrar-General, Deputy Registrar-General or Assistant Registrar-General to be a correct copy shall be <i>prima facie</i> evidence in all courts of the dates and facts therein stated.</p> | <p>Evidence of certified copies</p> |
| <p>13. The Registrar-General may, subject to any rules made under this Act, correct any error in any register, but corrections shall be made without erasing the original entry and shall be authenticated by the signature of the Registrar-General.</p> | <p>Clerical errors in registers may be corrected</p> |
| <p>14. (1) In the case of every child, whether born alive or still-born, it shall be the duty of the father and the mother, and in default of the father or the mother the duty of-</p> <p>(a) the occupier of the house in which, to his knowledge, such child is born or the person in charge of any hospital or other institution in which such child is born; and</p> | <p>Responsibility for giving notice</p> |

(b) each person present at the birth; and

(c) in the case of a child born alive, the person having charge of the child;

to give notice in the prescribed form containing the prescribed particulars of the birth within one month thereof to the Registrar of the district in which such child is born.

(2) Any person giving notice under the provisions of subsection (1) of the birth of a still-born child shall, upon giving such notice, either-

(a) deliver to the Registrar to whom the said notice is given a written certificate that the child was not born alive, signed by a registered medical practitioner or certified midwife who was in attendance at the birth or who has examined the body of such child; or

(b) make a declaration in the prescribed form to the effect that no registered medical practitioner or certified midwife was present at the birth, that it has not been possible for such practitioner or midwife to examine the body of the child, and that the child was not born alive.

15. No person shall be bound as father to give notice of the birth of an illegitimate child, and no person shall be registered as the father of such child except on the joint request of the mother and himself and upon his acknowledging himself in writing to be the father of the child in the presence of the Registrar. Notice of birth of illegitimate child

16. If any new-born living child is found exposed after the commencement of this Act, it shall be the duty of the person finding such child and of any person in whose charge it may be placed to give notice of the birth in the prescribed form, furnishing as many of the prescribed particulars as possible to the Registrar of the district in which such child was found. Notice of birth of abandoned child

17. When the birth of a child has been registered before it has received a name or the name by which it was registered is altered, the parent or guardian of such child may, within two years of the registration on payment of the prescribed fee and on providing such evidence as the Registrar-General may think necessary, register the name or altered name that has been given to the child. Alteration of name of child

18. (1) In the case of every person dying after the commencement of this Act, it shall be the duty of every relative present at the death of or in attendance during the last illness of such person, and, if there be no such relatives, of every relative dwelling within the district in which such person died, and, if there be no such relatives, then of each person present at the death and of the occupier and every inmate of the house in which to his knowledge the death took place, and of any person who has buried or caused to be buried the body of any person so dying, to give notice of the death of such person in the prescribed form or forms containing the prescribed particulars to the Registrar of the district in which such person died within one calendar month of such death, or, if the Registrar is satisfied that such notice could not be given within the said period and that no undue delay has taken place, within three months after the death.

Who is to give notice of death

(2) The custodian or person having the charge or control of any burial place shall from time to time furnish to the Registrar returns showing the full name, the date of death and of burial and such other particulars as may be prescribed in respect of any person dying after the commencement of this Act whose body shall be buried in such burial place.

(3) In the case of every person dying who has been attended during his last illness by a registered medical practitioner, that practitioner shall, unless he shall believe that death was not the result of natural causes, sign and give to some person required by this Act to give notice of the death a certificate stating to the best of his knowledge and belief the cause of the death.

(4) If any medical practitioner shall believe that the death of any person attended by him was not the result of natural causes, he shall forthwith report to a magistrate his inability to give a certificate as required by subsection (3).

(5) The person required to give notice of the death who receives the medical certificate of the cause of death shall, within forty-eight hours from the receipt thereof, despatch or deliver the certificate to the Registrar of the district where the death occurred.

(6) Every Registrar, upon receiving a notice of death accompanied by a medical certificate of the cause of death, shall forthwith give to the person giving notice of the death a permit authorising burial or other disposal of the body of the deceased.

(7) Where no certificate of the cause of death is produced, the Registrar shall forthwith notify the nearest magistrate or police officer, forwarding with the notification such of the prescribed particulars as he may have received.

(8) (a) On the receipt of a notice from a Registrar under subsection (7), the magistrate or a police officer, or any person specially empowered by the Minister in that behalf, shall cause such inquiries to be made as to the cause of the death as he may think fit or as may be prescribed.

(b) If the case does not appear from such inquiries to be one to which section *four* or *ten* of the Inquests Act applies, the magistrate or police officer or other person as aforesaid shall issue a permit authorising burial or other disposal of the body of the deceased and shall send a copy thereof to the Registrar.

Cap. 37

(9) When a medical certificate of the cause of the death has been given or when, in the absence of such certificate, the cause of the death has been determined by a coroner's inquest, the cause of the death to be recorded by the Registrar-General in the Register of Deaths shall be the cause stated in the medical certificate or determined by the inquest, as the case may be.

(10) Where it is not practicable to obtain a permit authorising the burial or other disposal of the body of a person dying, the person causing the body to be buried or otherwise disposed of shall, as soon as is reasonably possible, notify the Registrar.

19. Any person finding exposed the body of a person and any person taking charge of a body so found and any person causing such body to be buried shall give notice of the death of such person in the prescribed form or forms containing the prescribed particulars to the Registrar of the district in which such body was found, taken charge of or buried, as the case may be, within one calendar month of finding, taking charge of or burying it, as the case may be, or, if the Registrar is satisfied that

Notice by
person finding
an exposed
body

notice could not be given within the said period and that no undue delay has taken place, then within three calendar months of such finding, taking charge of or burying, as the case may be.

20. Any person who acts in contravention of or fails to comply with any of the provisions of this Act or any rules made thereunder shall, save where some other penalty is expressly provided, be liable to a fine not exceeding four hundred penalty units or to imprisonment for a term not exceeding six months, or to both. Penalties

(As amended by Act No. 13 of 1994)

21. (1) The Minister may by statutory instrument make rules for the proper carrying out of the provisions of this Act. Rules

(2) Without prejudice to the generality of the foregoing power, such rules may prescribe-

(a) the place or places at which shall be situate the office of the Registrar-General and of any Registrar respectively, and the hours at which notices of birth and death respectively may be given;

(b) the form and manner of giving any notice or return required by this Act and the particulars to be furnished therein;

(c) the form and manner in which registration of births and deaths respectively shall be effected;

(d) the form of all registers and other documents required for the purposes of this Act;

(e) the conditions under which registers and other documents may be inspected;

(f) the places at which notices of births and deaths occurring on board vessels while within the waters of the Republic shall be given;

(g) the fees to be paid under the provisions of this Act.

22. (1) The Births and Deaths Registration Act, Chapter 210 of the Repeals and

Revised Edition, and the Notification of the Births of the Children of Africans Act, Chapter 215 of the Revised Edition, are hereby repealed. savings

(2) Every notice, register, certified copy of entries or other document which was valid immediately prior to the commencement of this Act and-

(a) that was issued, made, granted or given under the laws repealed by this Act; or

(b) the effect of which was preserved under the laws repealed by this Act;

shall be given effect as if issued, made, granted or given under this Act.

SUBSIDIARY LEGISLATION

BIRTH AND DEATHS REGISTRATION

CAP. 51

SECTION 3-THE BIRTHS AND DEATHS REGISTRATION DISTRICTS ORDER Order by the Minister

Statutory
Instrument
209 of 1973

1. This Order may be cited as the Births and Deaths Registration Districts Order.

Title

2. Zambia is hereby divided, for the purposes of the Act, into districts, the names and boundaries of which shall be identical with those of the administrative districts of Zambia as defined in the Provincial and District Boundaries Act.

Registration
districts
Cap. 286

THE BIRTHS AND DEATHS REGISTRATION (GENERAL) RULES [ARRANGEMENT OF RULES]

PART I

PRELIMINARY

Rule

1. Title
2. Interpretation

PART II

PRESCRIBED FORMS AND REGISTERS

3. Prescribed forms
4. Registers

PART III

BIRTH AND DEATH CERTIFICATES

5. Issue of birth and death certificates

PART IV

APPOINTMENT OF REGISTRARS, DEPUTY REGISTRARS AND ASSISTANT REGISTRARS: DUTIES OF DEPUTY REGISTRARS AND ASSISTANT REGISTRARS

6. Appointment of Registrars, Deputy Registrars and Assistant Registrars of Births and Deaths
7. Duties of Deputy Registrars
8. Duties of Assistant Registrars
9. Duality of functions
10. General conduct of registration officers
11. Statistical returns
12. Inspection of registers

PART V

GENERAL PROVISIONS RELATING TO ENTRIES IN REGISTRARS

13. Registration in more than one place
14. Cancellation of entry space
15. Signature by mark or in foreign characters

PART VI

REGISTRATION OF BIRTHS

Rule

16. Particulars to be registered
17. Particulars as at date of birth
18. Manner of registration
19. Completion of Vital Statistics Form
20. Verification of particulars
21. Signatures
22. Signature of Registrar
23. Registration after one month but within twelve months
24. Registration after twelve months
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PART VII

RE-REGISTRATION OF BIRTHS OF LEGITIMATED PERSONS

26. Re-registration to be in accordance with section three and the Schedule to the Legitimacy Act

PART VIII

BIRTH ENTRIES OF ADOPTED CHILDREN

27. Making of birth entry of adopted child

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REGISTRATION OF STILL-BIRTHS

28. Application to still-births of certain provisions relating to births
29. Manner of registration
30. Entry of nature of evidence of still-birth
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32. Exposed child

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REGISTRATION OF DEATHS

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34. Procedure where medical certificate of cause of death is produced
35. Verification of particulars
Rule
36. Registration of death after inquest
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PART XI

DISPOSAL OF BODIES OF

DECEASED PERSONS

- 38. Disposal certificate
- 39. Notification of disposal
- 40. Inquiry in default of notification of disposal
- 41. Exposed body of deceased person

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PART XIII

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- 43. Prescribed fees
- 44. Notice of birth or death on board ship

FIRST SCHEDULE-Prescribed forms

SECOND SCHEDULE-Prescribed fees

SECTION 21-THE BIRTHS AND DEATHS REGISTRATION (GENERAL) RULES Rules by the Minister

Statutory
Instrument
246 of 1973
66 of 1982
1 of 1990
32 of 1995
101 of 1996
Act No.
13 of 1994

PART I

PRELIMINARY

1. These Rules may be cited as the Births and Deaths Registration (General) Rules. Title

2. In these Rules, unless the context otherwise requires- Interpretation

"Assistant Registrar" means the registration officer designated as such at a sub-centre by the Minister;

"birth" does not include still-birth;

"Deputy Registrar" means a person designated as such by the Minister to assist a Registrar in the discharge of his functions;

"disposal certificate" means a certificate issued by a Registrar, police officer or magistrate under section *eighteen* (6) and (8) of the Act;

"entry" means a record of the particulars relating to a birth, still-birth or death appearing in the appropriate district or central register;

"maiden surname", in relation to a woman, includes the surname under which she contracted her marriage (or where she has married more than once, her first marriage);

"medical practitioner" means a registered medical practitioner;

"midwife" means a midwife registered under the provisions of the Nurses and Midwives Act; Cap. 300

"name", in relation to a person, includes all names by which he is known and called;

"nationality of parents" means nationality of the parents at the time of birth or death of the child, as the case may be;

"notification of disposal" means a notification as to the date, place and means of disposal of the body of a deceased person which a person

effecting the disposal is required by section *eighteen* (2) of the Act to deliver to the Registrar;

"occupation" includes rank or profession;

"registration office" means part of the District Secretary's office or other office set aside in the sub-centres for the registration of births and deaths.

PART II

PRESCRIBED FORMS AND REGISTERS

3. The forms set out in the First Schedule are hereby prescribed for the respective purposes mentioned in each form. Prescribed forms
4. The Registrar-General shall keep registers of births, still-births and deaths in accordance with the forms prescribed in the First Schedule. Registrars

PART III

BIRTH AND DEATH CERTIFICATES

5. When an application is made by any person to the Registrar-General for a certificate containing particulars of information which has been registered in regard to the birth or death of any person, the Registrar-General shall issue a certificate in the form prescribed for the purpose in the First Schedule: Issue of birth and death certificates

Provided that if an applicant wishes to have the shortened form of birth certificate instead of the full form of birth certificate, he may be issued

with the shortened form of birth certificate in the form prescribed for the purpose in the First Schedule.

PART IV

APPOINTMENT OF REGISTRARS, DEPUTY REGISTRARS AND ASSISTANT REGISTRARS: DUTIES OF DEPUTY REGISTRARS AND ASSISTANT REGISTRARS

6. (1) All District Secretaries for the existing administrative districts of Zambia shall be deemed to have been appointed Registrars of Births and Deaths for their respective districts.

Appointment of Registrars. Deputy Registrars and Assistant Registrars of Births and Deaths

(2) All Assistant District Secretaries shall be deemed to have been appointed Deputy Registrars of Births and Deaths for their respective districts:

Provided that where in any district there are more than one Assistant District Secretary, the Minister shall designate one of the Assistant District Secretaries as Deputy Registrar of Births and Deaths.

(3) The Minister shall appoint suitable persons as Assistant Registrars of Births and Deaths at the sub-centres.

7. (1) Subject to the provisions of rule 9, a Deputy Registrar may in the absence of a Registrar perform any of the functions of a Registrar under the Act, notwithstanding that his absence may not be unavoidable or occasioned by illness; and a Deputy Registrar shall-

Duties of Deputy Registrars

- (a) carry out any of the duties of a Registrar as may be delegated to him from time to time;
- (b) register a birth, still-birth or death in respect of which a Registrar acts as informant;
- (c) call at the offices of Assistant Registrars in his district at fortnightly intervals for the purpose of collecting notices of births and deaths for entry into the district registers and for onward transmission to the Registrar-General.

8. It shall be the duty of Assistant Registrars to-

Duties of Assistant Registrars

- (a) assist informants within their areas to complete and sign notices of births, still-births and deaths;
- (b) issue general receipts for all payments made in respect of births and deaths certificates; and
- (c) render fortnightly accounts to the Deputy Registrar for all moneys, receipts and documents collected during that period.

9. A Registrar shall not register a birth, still-birth or death of which he is an informant.

Duality of functions

10. (1) A Registrar, Deputy Registrar or Assistant Registrar shall not, while discharging his official duties with any person attending upon him at his office or otherwise coming into communication with him in his official capacity, transact or attempt to transact or to further the transaction of any business of a private nature, either on his own behalf or on behalf of any other person or body.

General conduct of registration officers

(2) A Registrar, Deputy Registrar or Assistant Registrar shall not, without the express authority of the Registrar-General, publish or communicate to any person, otherwise than in the ordinary course of the performance of his official duties, any information acquired by him while performing those duties.

(3) A Registrar, Deputy Registrar or Assistant Registrar shall comply with any instruction or direction, whether particular or general, given to him by the Registrar-General in any matter relating to the due

performance of his duties.

11. Every Registrar or Deputy Registrar shall at such times and in such manner as the Registrar-General may direct send to the Registrar-General such statistical returns concerning births, still-births and deaths as he may require to be extracted from the records kept by such Registrar or Deputy Registrar, as the case may be.

Statistical
returns

12. Every Registrar, Deputy Registrar or Assistant Registrar shall submit all books and forms in his possession to inspection by any person authorised in that behalf by the Registrar-General and shall, if so required by the Registrar-General, give him a statement as to the books and forms in his possession.

Inspection of
registers

PART V

GENERAL PROVISIONS RELATING TO ENTRIES IN REGISTERS

13. (1) A Registrar or Deputy Registrar shall not register a birth, still-birth or death which has already been registered unless the Registrar-General gives his authority so to do.

Registration in
more than one
place

(2) Where a birth, still-birth or death is re-registered on the authority of the Registrar-General, the Registrar making the new entry and the Registrar having custody of the register in which the original entry was made shall make such notes (if any) in the margin of the respective entries as the Registrar-General may direct.

14. Where, during the registration of a birth, still-birth or death, it becomes necessary to cancel an entry space on the appropriate form or register, the Registrar or Deputy Registrar, as the case may be, shall draw a line in ink through that space before calling upon the informant to certify the entry.

Cancellation of
entry space

15. Where a person who is required under any provision of these Rules to sign his name in a register or form makes a mark or signs in characters other than those used in the English language, the Registrar shall write against the mark or signature the words "The mark (or signature) of" inserting the name of the person.

Signature by
mark or in
foreign
characters

PART VI

REGISTRATION OF BIRTHS

16. The particulars concerning a birth to be registered pursuant to section *six* of the Act shall be the particulars required on Reg-Gen Form No. 14.

Particulars to be
registered

17. Subject to the provisions of rule 18, particulars to be recorded in respect of the parents of a child shall be the particulars prescribed in Reg-Gen Form No. 14 appropriate as at the date of birth of the child.

Particulars as at
date of birth

18. (1) On receiving from an informant information of the particulars required by rule 16, the Registrar shall register the birth in the presence of the informant by inserting in Reg-Gen Form No. 14 the particulars required thereon.

Manner of
registration

(2) With respect to spaces 1 and 2 (Date of Birth) and (Place of Birth)-

(a) if more than one living child is born at a confinement, the Registrar shall enter the time of birth after the date of birth in each entry respectively;

(b) if the birth is that of a new-born child found exposed and the date and place of birth are unknown, the Registrar shall enter the words "on or about" and the approximate date of birth followed by the words "Found at on", with the relevant place and date.

(3) With respect to space 3 (Names and Surname of Child), the surname to be entered shall be the surname by which at the date of the registration

of the birth it is intended that the child shall be known and, if a Christian name is not given, the Registrar shall enter the surname preceded by a horizontal line.

(4) With respect to spaces 5 and 6 (Names and Surname of Father) and (Occupation of Father)-

(a) if after the child's birth the father acquired a surname different from that borne by him at the date of the birth, the Registrar shall enter the name and surname as at the date of the birth, followed by the acquired surname preceded by the word "now" or, if the father is deceased, by the word "afterwards";

(b) if the child was illegitimate, the Registrar shall not complete space 6 unless the names and surname of a person acknowledging himself to be the father of the child have been entered in space 5 pursuant to section *fifteen* of the Act (which makes provision as to the father of an illegitimate child);

(c) if the father is deceased, the Registrar shall enter below the particulars in space 6 the word "deceased";

(d) if the father has changed his occupation since the birth of the child, the Registrar shall enter in space 6 after the occupation as at the date of the birth, the occupation as at the date of registration preceded by the word "now".

(5) With respect to space 8 (Names and Surname of Mother)-

(a) if after the birth of the child the mother acquired by marriage or otherwise a surname different from that borne by her at the date of birth, the Registrar shall enter the name and surname as at the date of the birth, followed by the acquired surname preceded by the word "now" or, if the mother is deceased, by the word "afterwards";

(b) if the child was illegitimate and the mother was engaged before the birth in gainful employment, the Registrar shall enter particulars of the occupation unless, pursuant to sub-rule (4), an entry is made of the father's occupation.

(6) With respect to space 12 (Date of Parents' Marriage)-

(a) where the date of parents' marriage is unknown, the Registrar shall enter the words "on or about", followed by the approximate date of marriage;

(b) where the marital status of the parents of a child to be registered is doubtful, and where it appears to the Registrar that the father of the child is also married to another woman in a polygamous union, the Registrar shall satisfy himself of the subsistence of a valid statutory or customary marriage, as the case may be, before registering the child:

Provided that a child born outside marriage shall not be registered as legitimate.

(7) With respect to space 15 (Residential Address of Informant)-

(a) the address required shall be the address as at the date of registration of the birth;

(b) if, pursuant to section *fifteen* of the Act, an entry has been made in the name of the person acknowledging himself to be the father of the child, the Registrar shall enter that person's address followed by the mother's address, if different.

19. Before completing Reg-Gen Form No. 2 relating to vital statistics, the Registrar shall explain to the informant that the particulars required thereon are for statistical purposes only; and after completion the Registrar shall forward the form together with Reg-Gen Form No. 14 (duly completed) to the Registrar-General.

Completion of
Vital Statistics
Form

20. After completing spaces 1 to 16 (excluding space 13), the Registrar shall call upon the informant to verify the particulars entered; and, if it appears that any error has been made in those particulars, the Registrar shall thereupon in the presence of the informant make the necessary correction.

Verification of
particulars

21. (1) The Registrar shall call upon the informant to sign the entry in space 13, or, if he be illiterate, to affix his mark thereto.

Signatures

(2) If, in pursuance of section *fifteen* of the Act, an entry has been made of the name of the person acknowledging himself to be the father of an illegitimate child, the Registrar shall call first upon that person and then upon the mother to sign the entry or, if they be illiterate, to affix their marks thereto.

22. When the Registrar has signed the entry in space 17, his name stamp shall be impressed under the signature. Signature of Registrar

23. Subject to the provisions of section *nine* of the Act a Registrar may in appropriate cases register the birth of a child which has occurred more than one month previously upon payment by the informant of a late registration fee of one kwacha, provided that twelve months have not expired since the birth of the child occurred. Registration after one month but within twelve months

24. (1) Where a Registrar is informed that a birth which occurred more than twelve months previously has not been registered, he shall make a report to the Registrar-General stating to the best of his knowledge and belief the particulars required to be registered concerning the birth, the source of his information and the name and address of any informant available to give information for the registration. Registration after twelve months

(2) Where an informant attends to give information for the registration of a birth which occurred more than twelve months previously, the written authority of the Registrar-General for registering the birth shall be obtained and the fact that such authority has been given shall be entered in the register and endorsed on the notice of birth.

(3) Before the Registrar-General gives written authority for the registration of a birth which has occurred more than twelve months previously, the informant shall furnish for the Registrar-General's consideration an affidavit in duplicate in the form set out in Reg-Gen Form No. 12, supported by a baptismal certificate or a certificate from the hospital where the child was born naming the mother and the date of the birth, or, where the child was not born in a hospital, by two affidavits from two reliable witnesses to the birth.

(4) Upon giving written authority for the late registration of a birth under sub-rule (3), the Registrar-General shall forward the affidavit in

duplicate to the Registrar of the district in which the birth occurred and on receipt of the affidavit the Registrar shall retain the top copy and return the duplicate copy together with the notice of birth completed by the parents of the child to the Registrar-General.

25. An entry in pursuance of section *seventeen* of the Act shall be made by the Registrar-General in the main birth register followed by the surname recorded in space 3 of Reg-Gen Form No. 14 and-

Alteration of name after registration

(a) if the entry is made on production of a certificate of baptism, add the words "by baptism on", inserting the date on which the child was baptised;

(b) if the entry is made on production of a certificate that a name was given otherwise than in baptism, add the words "on certificate of naming dated", inserting the date on which the certificate was signed.

PART VII

RE-REGISTRATION OF BIRTHS OF LEGITIMATED PERSONS

26. (1) The birth of a legitimated person whose birth has already been registered in Zambia shall be re-registered in accordance with section *three* and the Schedule to the Legitimacy Act.

Re-registration to be in accordance with section 3 and the Schedule to the Legitimacy Act.
Cap. 52

(2) Information required for such re-registration shall be furnished by the parents of the legitimated person within three months of the date of the parents' marriage to the Registrar-General who shall authorise such re-registration if he considers that the information as furnished by the parents of the legitimated person is satisfactory.

PART VIII

BIRTH ENTRIES OF ADOPTED CHILDREN

27. The Registrar-General shall, in compliance with an adoption order issued by the High Court, make an appropriate entry in the Adopted Children Register, maintained under the provisions of section *eleven* of the Adoption Act, and insert the word "Adopted" against the previous entry in the register of births relating to the adopted child.

Making of birth entry of adopted child.

Cap. 54

PART IX

REGISTRATION OF STILL-BIRTHS

28. (1) The provisions of section *sixteen* of the Act which require the finder of an exposed child to furnish the prescribed particulars for purposes of registration shall apply to a still-born child as they apply to a live-born child.

Application to still-births of certain provisions relating to births

(2) The particulars to be registered are those prescribed on Reg-Gen Form No. 15.

29. In the case of any still-birth with respect to which there has been delivered to the Registrar- Manner of registration

(a) a written certificate of a medical practitioner or registered midwife referred to in section *fourteen* (2) (a) of the Act; or

(b) a declaration as referred to in section *fourteen* (2) (b) of the Act;

the Registrar, on receiving from an informant at any time within one month after the date of the still-birth, information of the particulars required by rule 28 (2), shall register the still-birth in the presence of the informant.

30. (1) Where the still-birth is registered on the production of a written certificate of a medical practitioner or a registered midwife, the Registrar shall enter in space 4 the cause of death precisely as stated therein, followed by the words "Certified by" and the name and qualification of the medical practitioner or, as the case may be, the name of the midwife and the words "Registered Midwife". Entry of nature of evidence of still-birth

(2) Where the still-birth is registered on the production of a declaration as referred to in section *fourteen* (2) (b) of the Act, the Registrar shall enter in space 4 the words "Declaration by informant".

31. (1) After completing registration of the still-birth, the Registrar shall issue a disposal certificate for the purpose of burial of the still-birth. Disposal certificate

(2) Where the Registrar has reason to believe that the child was born alive, he shall report the matter of the still-birth to a coroner or police officer for investigation.

32. (1) Where a new-born living or still-born child is found exposed and if the date of birth of the child is unknown, references in these Rules to the doing of anything within a specified period after the birth shall be construed as references to the doing thereof within the same period after the child was found. Exposed child

(2) If the place of birth of the new-born living or still-born child is unknown, references in these Rules to the place where a birth or still-birth occurred shall be construed as references to the place where the child was found.

PART X

REGISTRATION OF DEATHS

33. The particulars concerning a death required to be registered pursuant to section *eighteen* (1) of the Act shall be the particulars required in spaces 1 to 13 on Reg-Gen Form No. 22; and a certificate of cause of death issued under the provisions of section *eighteen* (3) of the Act shall be in the form prescribed in Medical Form No. 14.

Particulars to be registered and certificate of cause of death

34. (1) In the case of any death which occurred in the Registrar's district with respect to which a medical certificate of cause of death has been delivered to the Registrar at any time within twelve months of the date of death, the Registrar shall register the death in the presence of the informant.

Procedure where medical certificate of cause of death is produced

(2) Where the death relates to a dead body in relation to which the date and place of death are unknown, the Registrar shall enter in spaces 1 and 2 the words "Dead body found on" and the date of finding the body, followed by "at" and the place of finding.

(3) Where the deceased was a child under the age of fifteen, the Registrar shall enter in space 7 the words "son (or daughter) of" and the name and occupation of the father.

(4) The Registrar shall enter in space 9 the cause of death precisely as certified in the medical certificate, followed by the words "Certified by....." and the name and qualification of the medical practitioner who gave the medical certificate.

(5) Subject to the provisions of rules 36 and 38, no Registrar shall

register a death with respect to which no medical certificate of cause of death has been delivered to him.

35. (1) After completing spaces 1 to 14 (excluding space 10) on Reg-Gen Form No. 22, the Registrar shall call upon the informant to verify the particulars, and, if it appears that any error has been made in those particulars, the Registrar shall thereupon in the presence of the informant make the necessary correction.

Verification of particulars

(2) The Registrar shall then call upon the informant to sign the entry in space 10 and, when the Registrar has signed the entry in space 16, he shall impress his name stamp under his signature.

(3) The Registrar shall thereafter send the notice of death together with the medical certificate or a coroner's certificate of cause of death to the Registrar-General.

36. Where a Registrar receives a coroner's certificate upon an inquest with reference to a death, he shall register the death on Reg-Gen Form No. 22:

Registration of death after inquest

Provided that in space 10 in place of "signature or mark", he shall enter the words "Certificate received from" and the name and description of the coroner, and the words "Inquest held" and the date of the inquest as stated in the certificate.

37. Where a Registrar is informed that the death of a person who died more than twelve months previously has not been registered, the Registrar shall seek and obtain the Registrar-General's authority before registering the death in the presence of the informant.

Registration after twelve months

PART XI

DISPOSAL OF BODIES OF DECEASED PERSONS

- 38.** A Registrar shall give a disposal certificate for the disposal of the body of a deceased person on a form provided by the Registrar-General-
- (a) where the death is one which is not required to be reported to the coroner and a certificate of cause of death has been delivered to him; or
- (b) where a magistrate or the police are satisfied that the case is not one to which section *four* or *ten* of the Inquests Act applies;
- (c) with respect to cases falling under paragraph (b) the police shall furnish the prescribed particulars to the Registrar.
- Disposal certificate
Cap. 37
- 39.** A person effecting the disposal of the body of a deceased person shall write, sign and date a notification of disposal which shall be delivered to the Registrar immediately after the disposal of the body.
- Notification of disposal
- 40.** Where the notification required under section *eighteen* (2) of the Act has not been delivered to the Registrar within a period of thirty days, the Registrar shall make necessary inquiries from the custodian or other person having charge or control of the place of disposal.
- Inquiry in default of notification of disposal
- 41.** (1) Where the body of a deceased person is found exposed, and if the date of death of the deceased person is unknown, references in these Rules to the doing of anything within a specified period after the death shall be construed as references to the doing thereof within the same period after the body of the deceased person was found.
- Exposed body of deceased person
- (2) If the place of death of the deceased person is unknown, references in these Rules to the place where the death occurred shall be construed as references to the place where the body of the deceased person was found.

PART XII

REGISTRATION OFFICES

- 42.** The place in each district at which births and deaths may be registered and registers inspected shall be the registration office in each district, and the hours at which registration and inspection may be
- Registration offices

effected shall be the normal Government office hours and such other times as may be convenient to the officer in charge of the registration office.

PART XIII

FEEES

43. (1) No fee is chargeable for the registration of a birth or death if notice is given in the prescribed form containing the prescribed particulars of the birth within one month thereof. Prescribed fees

(2) The several fees specified in the Second Schedule shall be payable in respect of matters therein specified.

44. Notice of a birth or a death on board ship while within the territorial waters of Lake Tanganyika shall be given to the Registrar of the Mbala Registration District. Notice of birth or death on board ship

FIRST SCHEDULE

(Rule 3)

PRESCRIBED FORMS

REG-GEN FORM No. 14

NOTICE OF BIRTH

No. District

WARNING-In terms of section 9 of the Births and Deaths Registration Act, any person who is obliged to make a registration and refuses or neglects to state any particular required on this form or gives any false information for the purpose of registration shall be guilty of an offence and may, on conviction, be imprisoned for one month and/or fined two hundred penalty units.

Child:

Date of Birth

Place of Birth

(to be printed)

Names and Surname of Child

Sex

Parents of Child:

Names and Surname of Father

Occupation of Father

Z.N.P.F. or any other Social Security Scheme Number, if any

Names and Surname of Mother

Maiden Surname of Mother

Mother's Z.N.P.F. or any other Social Security Scheme Number, if any

Nationality of Parents: (Father) (Mother)

Date of Parents' Marriage

Informant:

Signature or Mark

(Name to be printed in addition to his/her signature)

Relationship to Child

(see Note 1 below)

Residential Address of Informant

Postal Address of Informant

Date of Giving Notice.

Signature of Assistant Registrar (where applicable)
(Name stamp to be impressed under signature)

Signature of Registrar
(Name stamp to be impressed under signature)

NOTE 1-The informant should be the father or mother of the child and only if neither is able to give the necessary information is one of the following persons entitled to give notice:

- (a) the occupier of the house or the person in charge of the hospital or institution where the child was born;
- (b) a person present at the birth; or
- (c) the person now having charge of the child.

NOTE 2-In terms of section 15 of the Act, a Registrar shall not enter in the Births Register the name of any person as father of an illegitimate child except at the joint request of the mother and the person acknowledging himself in writing in the presence of the Registrar to be the father of the child.

NOTE 3-If you are a member of the Zambia National Provident Fund or any other Social Security Scheme please quote your Social Security Number as this will assist the Fund or Scheme in the payment of benefits.

(As amended by Act No. 13 of 1994)

REG-GEN FORM No. 15

NOTICE OF BIRTH OF A STILL-BORN CHILD

No. District

WARNING-In terms of section 9 of the Births and Deaths Registration Act, any person who is obliged to make a registration and refuses or neglects to state any particular required on his form or gives any false information for the purpose of registration shall be guilty of an offence and may, on conviction, be imprisoned for one month and/or fined two hundred penalty units

Child:

Surname

Date of Birth Sex

Cause of Death and Nature of Evidence that Child was still-born.

Parents of Child:

Names and Surname of Father

Occupation of Father

Z.N.P.F. or any other Social Security Scheme Number, if any

Names and Surname of Mother .

Maiden Surname of Mother

Mother's Z.N.P.F. or any other Social Security Scheme Number, if any

Nationality of Parents

Date of Parents' Marriage

Informant:

Signature or Mark

(Name to be printed in addition to his/her signature)

Relationship to Child

Residential Address

Postal Address

Date of Giving Notice

Signature of Assistant Registrar (where applicable)

(Name stamp to be impressed under signature)

Signature of Registrar

(Name stamp to be impressed under signature)

NOTE 1-The informant should be the father or mother of the child and only if neither is able to give the necessary information should one of the following persons be entitled to give notice:

- (a) the occupier of the house or the person in charge of the hospital or the institution where the child was born; or
- (b) a person present at the birth.

NOTE 2-In terms of section 15 of the Act, a Registrar shall not enter in the Births Register the name of any person as father of an illegitimate child except at the joint request of the mother and the person acknowledging himself in writing in the presence of the Registrar to be the father of the child.

NOTE 3-If you are a member of the Zambia National Provident Fund or any other Social Security Scheme please quote your Social Security Number as this will assist the Fund or Scheme in the payment of benefits.

NOTE 4-In terms of section 14 (2) of the Act, this notice must be accompanied either by a written certificate that the child was not born alive, signed by a registered medical practitioner or certified midwife who was in attendance at the birth or who has examined the body of the child, or in default thereof the informant should complete the following declaration:

I, (name of person giving notice)
of
do solemnly and sincerely declare that no medical practitioner or midwife was present at the birth or has examined the body and that the child was not born alive. And that I make this declaration, conscientiously believing the same to be true.

Declared at this . day
of, 19

Signature of Mark

Before me

Registrar/Deputy Registrar

REG-GEN FORM No. 16

REGISTER OF BIRTHS

No.	Date and place of birth	Names and surname of Child	Sex	Names and surname of Father	Names, surname, maiden surname and social security number of Mother	Occupation and social security number of Father	Name description and residence of informant

REG-GEN FORM No. 18

BIRTH CERTIFICATE

No. District
Date of Birth
Place of Birth
Names and Surname of Child
Names and Surname of Father
Occupation of Father
Father's Z.N.P.F. or any other Social Security Scheme Number
Names and Surname of Mother
Mother's Maiden Surname
Mother's Z.N.P.F. or any other Social Security Scheme Number
Name of Informant
Informant's Residential Address

Postal Address

Date of Registration
Name of Registrar

I hereby certify that the above certificate is a true copy of the particulars recorded in relation to the birth of the said child in the Register of Births kept at Lusaka.

Dated this day of, 19.....

Registrar-General/Deputy Registrar-General

REG-GEN FORM No. 19

SHORTENED FORM OF BIRTH CERTIFICATE

This is to certify that the following information in respect of the record of birth of is a true extract from the Register of Births kept at Lusaka.

Christian Name(s) Sex

Date of Birth Place of Birth

Extracted this day of

.....

Registrar-General/Deputy

Registrar-General

REG-GEN FORM No. 21

STILL-BIRTH CERTIFICATE

No.	Date and place of birth	Surname	Sex	Cause of death	Names and surname of Father of Mother	Names, surname, maiden surname and social security number of Mother	Occupation and social security number information	Name, description, residence information

I hereby certify that the above certificate is a true copy of the birth of the said child in the

Dated this

.....

Registrar

REG-GEN FORM No. 22

NOTICE OF DEATH

No.

District

WARNING-In terms of section 9 of the Births and Deaths Registration Act, any person who is obliged to make a registration and refuses or neglects to state any particulars required on this form or gives any false information for the purpose of registration shall be guilty of an offence and may, on conviction, be imprisoned for one month and/or fined two hundred penalty units

Deceased:

Date of Death

Place of Death

Nationality of Deceased

Names and Surname

Sex

Age

Occupation

Z.N.P.F. or other Social Security Scheme Number :

Cause of Death

Informant:

Signature or Mark

(Name to be printed in addition to his/her signature)

Relationship to Deceased.

(See Note 1 below)

Residential Address

Postal Address

Date of Registration

Signature of Assistant Registrar (where applicable)

(Name stamp to be impressed under signature)

Signature of Registrar

(Name stamp to be impressed under signature)

NOTE 1-The informant should be a relative present at the death, or in attendance during the last illness of the deceased, and in default thereof the next person from the following list:

- (a) a relative living in the district where the deceased died;
- (b) a person present at the death;
- (c) the occupier or an inmate of the house or the person in charge of the hospital or institution where the death occurred;
- (d) the undertaker.

NOTE 2-The Medical Certificate showing the Cause of Death must be attached to this form.

NOTE 3-The informant should be asked to complete a vital statistics card. The information is required for purely statistical purposes.

NOTE 4-If deceased was a member of the Zambia National Provident Fund or any other Social Security Scheme, please quote his/her Social Security Number as this will assist the Fund or Scheme in the payment of benefits.

REG-GEN FORM No. 23

REGISTER OF DEATHS

No.	Death and place of death	Names and surname	Sex	Age	Occupation and social security number	Cause of death	Name, description and residence of informant

REG-GEN FORM No. 25

DEATH CERTIFICATE

No. District
Date of Death
Place of Death
Names and Surname of Deceased
Sex Age
Nationality
Occupation
Z.N.P.F. or any other Social Security Scheme Number .. :
Cause of Death

Name of Informant
Relationship to Deceased

Date of Registration
Name of Registrar

I do hereby certify that the above certificate is a true copy of the particulars registered in relation to the death of the person named in the Register of Deaths kept at Lusaka.
Dated this day of

Registrar-General/Deputy Registrar-General

REG-GEN FORM No. 26

PERMIT FOR THE BURIAL OR OTHER DISPOSAL OF A BODY

In accordance with *subsection (6) of section 18 of the Births and Deaths Registration Act,
I hereby authorise the burial or disposal by
..... of the body of .
who died at on the
day of, 19.....

**Registrar
Magistrate
Police Officer
Other officer specially empowered*

*Delete whichever is not applicable.

SECOND SCHEDULE

(Rule 6)

PRESCRIBED FEES

	Fee units
Birth Certificate	10
Search Fee	6
Change of Name(s)	14
Alteration of Register	9
Adoption Certificate	556
Special Licence	84
Affidavit in support of an application for Registrar's Certificate	14
Death Certificate	3

**SECTION 21-THE BIRTHS AND DEATHS
REGISTRATION (AIRCRAFT) RULES
Rules by the Minister**

Statutory
Instrument
247 of 1973

1. These Rules may be cited as the Births and Deaths Registration (Aircraft) Rules.

Title

2. In these Rules, unless the context otherwise requires-

Interpretation

"aircraft" includes all balloons, whether captive or free, gliders, airships and flying machines;

"journey" is deemed to commence when a traveller enters an aircraft registered in Zambia for the purpose of the journey and to continue until that traveller alights therefrom on completion of the journey, notwithstanding any intermediate stop or break in the journey;

"person in command of an aircraft" means, in a case where a person other than a pilot is in command of the aircraft, that person, and in any other case, the pilot;

"traveller", in relation to an aircraft, includes a member of the crew.

3. (1) The owner of an aircraft registered in Zambia, or if he be not resident in Zambia, his agent in Zambia, shall, as soon as practicable but not later than six months after the occurrence in any part of the world of a birth or death in the aircraft, or of a death outside Zambia of a traveller in the aircraft who is killed on the journey in consequence of an accident, transmit to the Registrar-General a return of such birth or death in the form, in accordance with the instructions, and containing the particulars prescribed in the First Schedule in the case of a birth or in the Second Schedule in the case of a death:

Returns relating
to births and
deaths by
owners of
aircraft

Provided that if such particulars are not known to the owner of the aircraft or his agent, he shall transmit as aforesaid so many of such particulars as he is reasonably able to ascertain having regard to the circumstances of the birth or death.

(2) To facilitate the rendering of returns in accordance with this rule, the person in command of an aircraft registered in Zambia shall forthwith, on the occurrence in any part of the world of a birth or death in the aircraft, or of the death outside Zambia of a traveller in the aircraft who is killed on the journey in consequence of an accident, record in the journey log book, or other appropriate document relating to that aircraft, the particulars of the birth or death mentioned in sub-rule (1) and shall make such record available to the owner or his agent as soon as practicable:

Provided that if all such particulars are not known to the person in command of an aircraft and cannot be readily ascertained by him, he shall record and make available as aforesaid so many of such particulars as are readily ascertainable.

(3) Where any aircraft has been *bona fide* demised, let or hired out for a period exceeding fourteen days to any other person by the owner thereof, and no pilot, commander, navigator or operative member of the crew of the aircraft is in the employment of the owner, the provisions of this rule shall have effect as though for references to the owner there were substituted references to the person to whom the aircraft has been so demised, let or hired out.

(4) For the purposes of this rule, a person shall be deemed to be dead if there are reasonable grounds for believing that he has died in consequence of an accident.

4. In the case of the birth of an illegitimate child, the name of any person as father of such child shall not be entered in any return or record of particulars of the birth of such child unless the mother of the child and the person acknowledging himself to be the father of the child shall have signed a completed form of return as informants. Saving for father of illegitimate child

FIRST SCHEDULE

(Rule 3 (1))

REG-GEN FORM No. 30

REPUBLIC OF ZAMBIA

THE BIRTHS AND DEATHS REGISTRATION ACT

BIRTH

RETURN FOR THE PURPOSES OF RULE 3 (1) OF THE BIRTHS
AND
DEATHS REGISTRATION (AIRCRAFT) RULES

1. Registration marking of aircraft
2. Date of birth (*a*)
3. Place of birth (*b*)
4. Name (*c*)
5. Sex (*d*)
6. Name, surname, usual residence and nationality of father (*e*)

7. Name, surname, maiden surname, usual residence and nationality of mother (*f*)

8. Date and place of marriage of parents

9. Profession or occupation of father, and rank or title (if any) (*e*)

10. Name, description and home address of informant (if any) (*g*)

11. Signature of informant(s)

Signature and rank of person completing the return

Date (*a*)

NOTES

(*a*) Day and month in words, year in figures.

- (b) Approximate position, e.g. "25 kilometres west of Lusaka", "over Nairobi", "over Zimbabwe".
- (c) Full Christian names of child.
- (d) "Boy" or "girl", as the case may be.
- (e) Christian names in full and followed by surname; surname to be written in BLOCK CAPITALS. If child is illegitimate (*see* rule 4), the particulars relating to the father must not be recorded in the return unless at the joint request of the mother and of the person acknowledging himself to be the father of the child, in which case such person shall, as well as the mother, sign a completed form of return as informant.
- (f) Christian names in full and married surname followed by the word "formerly" and the maiden surname.
- (g) The informant's full names, relationship (if any) to the child, and full postal address should be stated.

Except in the circumstances mentioned in Note (e), only one person (usually the mother or father) should act as informant.

SECOND SCHEDULE

(Rule 3 (1))

REG-GEN FORM No.31

REPUBLIC OF ZAMBIA

THE BIRTHS AND DEATHS REGISTRATION ACT

DEATH

RETURN FOR THE PURPOSES OF RULE 3 (1) OF THE BIRTHS
AND
DEATHS REGISTRATION (AIRCRAFT) RULES

1. Registration marking of aircraft
2. Date of death (*a*)
3. Place of death (*b*)
4. Name and surname (*c*)
5. Usual residence at time of death (*d*)

6. Sex (*e*)
7. Age (*f*)
.....
8. Profession or occupation, rank or title (if any) and nationality (*g*)

9. Cause of death
10. Name, description and home address of informant (if any) (*h*)

11. Signature of informant

Signature and rank of person completing the return

Date (*a*)

NOTES

- (*a*) Day and month in words, year in figures.
- (*b*) Actual position if known. Otherwise approximate position, e.g. "25 kilometres west of Lusaka", "over Nairobi", "over Zimbabwe".

- (c) Christian names in full, followed by surname. Surname to be written in BLOCK CAPITALS.
- (d) The full postal address should be stated.
- (e) "Male" or "female".
- (f) To be recorded in complete years, or in months or days.
- (g) *Women and children*

In the case of a married woman or a widow, the words "wife of" or "widow of" shall be entered, followed by the name, profession or occupation, rank and title, and nationality of the husband. In the case of an unmarried woman, there shall be inserted (i) the word "spinster", followed by her profession or occupation (if any), rank or title (if any) and her nationality, and (ii) the words "daughter of" followed by the name, profession, etc., of her father.

In the case of children under the age of sixteen years, the words "son of" or "daughter of" shall be followed by the name, profession, etc., of the father.

- (h) The informant's full name, relationship (if any) to deceased, and full postal address should be stated.

CHAPTER 52

THE LEGITIMACY ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Legitimation by subsequent marriage
4. Legitimacy of children of certain void marriages
5. Legitimacy of children of voidable marriages
6. Declaration of legitimation
7. Rights of legitimated persons, etc., to take interests in property
8. Succession on intestacy of legitimated persons and their issue
9. Application to illegitimate person dying before marriage of parents

10. Personal rights and obligations of legitimated persons
11. Duties
12. Provisions as to persons legitimated by extraneous law
13. Right of illegitimate child and mother of illegitimate child to succeed on intestacy of the other
14. High Court may make orders as to custody of illegitimate children
15. Applications for affiliation orders
16. Savings

SCHEDULE-Re-registration of births of legitimated persons

CHAPTER 52

LEGITIMACY

An Act to amend the law relating to children born out of wedlock; and to provide for matters incidental thereto.

[27th December, 1929]

40 of 1929
 22 of 1930
 74 of 1965
 13 of 1994
 8 of 1996
 Government
 Notice
 497 of 1964
 Statutory
 Instrument
 152 of 1965

1. This Act may be cited as the Legitimacy Act.

Short title

2. In this Act, unless the context otherwise requires-

Interpretation

"appointed date" means the 1st January, 1966;

"date of legitimation" means-

- (a) in the case of a legitimated person whose father or mother was married to a third person when he was born, the date of the marriage leading to legitimation, or where the marriage occurred before the appointed date, the appointed date; or
- (b) in any other case, the date of the marriage leading to the legitimation, or where the marriage occurred before the

commencement of this Act, the commencement of this Act;

"disposition" means an assurance of any interest in property by any instrument whether *inter vivos* or by will;

"intestate" includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate;

"legitimated person" means a person legitimated by this Act;

"Registrar-General" means the Registrar-General of Births and Deaths appointed under the provisions of section *three* of the Births and Deaths Registration Act; Cap. 51

"will" includes a codicil.

(No. 74 of 1965)

3. (1) Subject to the provisions of this section, where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in the Republic, render that person, if living, legitimate- Legitimation by subsequent marriage

(a) in the case of an illegitimate person whose father or mother was married to a third person when he was born, from the appointed date or from the date of the marriage whichever last happens; or

(b) in any other case, from the commencement of this Act, or from the date of the marriage, whichever last happens.

(2) The legitimation of a person under this Act does not enable him or his spouse, children or remoter issue to take any interest in real or personal property save as is hereinafter in this Act expressly provided.

(3) The provisions contained in the Schedule shall have effect with respect to the re-registration of the births of legitimated persons.

(As amended by No. 74 of 1965)

4. (1) Subject to the provisions of this section, the child of a void Legitimacy of

marriage, whether born before or after the appointed date, shall be treated as the legitimate child of his parents if at the time of the act of intercourse resulting in the birth (or at the time of the celebration of the marriage if later) both or either of the parties reasonably believed that the marriage was valid.

children of
certain void
marriages

(2) This section shall apply, and only apply, where the father of the child was domiciled in the Republic at the time of the birth or, if he died before the birth, was so domiciled immediately before his death.

(3) The provisions of this section shall not affect-

(a) any rights under the intestacy of a person who died before the appointed date;

(b) the operation or construction of any disposition coming into operation before the appointed date.

(4) In this section, "void marriage" means a marriage, not being voidable only, in respect of which the High Court has or had jurisdiction to grant a decree of nullity, or would have or would have had such jurisdiction if the parties were domiciled in the Republic.

(No. 74 of 1965)

5. Where a decree of nullity is granted in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if it had been dissolved, instead of being annulled, at the date of the decree shall be deemed to be their legitimate child notwithstanding the annulment.

Legitimacy of
children of
voidable
marriages

(No. 74 of 1965)

6. (1) A person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may, whether domiciled in the Republic or elsewhere, apply by petition to the High Court praying the Court for a decree declaring that the petitioner is the legitimated child of his parents; and the High Court shall have jurisdiction to hear and determine such application and to make such decree as to the Court may seem just; and such decree shall be binding to all intents and purposes on all persons whomsoever:

Declaration of
legitimation

Provided that the decree of the said Court shall not in any case prejudice any person, unless such person has been cited or made a party to the proceedings or is the heir-at-law or next of kin, or other real or personal representative of or derives title under or through a person so cited or made a party; nor shall such sentence or decree of the Court prejudice any person if subsequently proved to have been obtained by fraud or collusion.

(2) Every petition under this section shall be accompanied by such affidavit verifying the same, and of the absence of collusion, as the Court may by any general rule direct.

(3) In all proceedings under this section the Court shall have full power to award and enforce payment of costs to any persons cited, whether such persons shall or shall not oppose the declaration applied for, in case the said Court shall deem it reasonable that such costs should be paid.

(4) A copy of every petition under this section, and of the affidavit accompanying the same, shall, one month at least previously to the presentation or filing of such petition, be delivered to the Attorney-General, who shall be a respondent upon the hearing of such petition and upon every subsequent proceeding relating thereto.

(5) Where any application is made under this section to the said Court, such person or persons (if any) besides the said Attorney-General as the Court shall think fit shall, subject to the rules made under this section, be cited to see proceedings or otherwise summoned in such manner as the Court shall direct, and may be permitted to become parties to the proceedings, and oppose the application.

(6) No proceeding to be had under this section shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

(As amended by No. 22 of 1930 and S.I. No. 152 of 1965)

7. (1) Subject to the provisions of this Act, a legitimated person and his spouse, children or more remote issue shall be entitled to take any interest-

Rights of legitimated persons, etc., to take interests in

property

- (a) in the estate of an intestate dying after the date of legitimation;
- (b) under any disposition coming into operation after the date of legitimation;
- (c) by descent under an entailed interest created after the date of legitimation;

in like manner as if the legitimated person had been born legitimate.

(2) Where the right to any property, real or personal, depends on the relative seniority of the children of any person, and those children include one or more legitimated persons, the legitimated person or persons shall rank as if he or they had been born on the day when he or they became legitimated by virtue of this Act, and, if more than one such legitimated person became legitimated at the same time, they shall rank as between themselves in order of seniority.

(3) Where property real or personal or any interest therein is limited in such a way that, if this Act had not come into operation, it would (subject or not to any preceding limitations or charges) have devolved (as nearly as the law permits) along with a dignity or title of honour, then nothing in this Act shall operate to sever the property or any interest therein from such dignity, but the same shall go and devolve (without prejudice to the preceding limitations or charges aforesaid) in like manner as if this Act had not come into operation. This subsection applies, whether or not there is any express reference to the dignity or title of honour and notwithstanding that in some events the property, or some interest therein, may become severed therefrom.

(4) This section applies only if and so far as a contrary intention is not expressed in the disposition and shall have effect subject to the terms of the disposition and to the provisions therein contained.

8. Where a legitimated person or a child or remoter issue of a legitimated person dies intestate in respect of all or any of his real or personal property, the same persons shall be entitled to take the same interests therein as they would have been entitled to take if the legitimated person had been born legitimate.

Succession on
intestacy of
legitimated
persons and
their issue

9. Where an illegitimate person dies after the commencement of this Act and before the marriage of his parents, leaving any spouse, children or remoter issue living at the date of such marriage, then, if that person would, if living at the time of the marriage of his parents, have become a legitimated person, the provisions of this Act with respect to the taking of interests in property by, or in succession to, the spouse, children and remoter issue of a legitimated person shall apply as if such person as aforesaid had been a legitimated person and the date of the marriage of his parents had been the date of legitimation.

Application to illegitimate person dying before marriage of parents

(As amended by Act No. 8 of 1996)

10. A legitimated person shall have the same rights, and shall be under the same obligations in respect of the maintenance and support of himself or of any other person as if he had been born legitimate, and, subject to the provisions of this Act, the provisions of any Act relating to claims for damages, compensation, allowance, benefit, or otherwise by or in respect of a legitimate child shall apply in like manner in the case of a legitimated person.

Personal rights and obligations of legitimated persons

11. Where a legitimated person or any relative of a legitimated person takes any interest in real or personal property, any succession, legacy or other duty which becomes leviable after the date of legitimation shall be payable at the same rate as if the legitimated person had been born legitimate.

Duties

12. (1) Where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, and the father of the illegitimate person was or is, at the time of the marriage, domiciled in a country, other than the Republic, by the law of which the illegitimate person became legitimated by virtue of such subsequent marriage, that person, if living, shall in the Republic be recognised as having been so legitimated from the commencement of this Act or from the date of the marriage, whichever last happens, notwithstanding that his father was not at the time of the birth of such person domiciled in a country in which legitimation by subsequent marriage was permitted by law.

Provisions as to persons legitimated by extraneous law

(2) All the provisions of this Act relating to legitimated persons and to the taking of interests in property by or in succession to a legitimated person and the spouse, children and remoter issue of a legitimated person shall apply in the case of a person recognised as having been

legitimated under this section, or who would, had he survived the marriage of his parents, have been so recognised; and, accordingly, this Act shall have effect as if references therein to a legitimated person included a person so recognised as having been legitimated.

(3) For the purposes of this section, "country" includes any part of the Commonwealth, as well as a foreign country.

(As amended by S.I. No. 152 of 1965)

13. (1) Where, after the commencement of this Act, the mother of an illegitimate child, such child not being a legitimated person, dies intestate as respects all or any of her real or personal property, and does not leave any legitimate issue her surviving, the illegitimate child, or, if he is dead, his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had been born legitimate.

Right of illegitimate child and mother of illegitimate child to succeed on intestacy of the other

(2) Where, after the commencement of this Act, an illegitimate child, not being a legitimated person, dies intestate in respect of all or any of his real or personal property, his mother if surviving shall be entitled to take any interest therein to which she would have been entitled if the child had been born legitimate and she had been the only surviving parent.

(3) This section does not apply to or affect the right of any person to take by purchase or descent any entailed interest in real or personal property.

14. (1) The High Court may, upon the application of either parent of an illegitimate infant, make such order as it may think fit relating to the custody of such infant and the right of access thereto of either parent.

High Court may make orders as to custody of illegitimate children

(2) Where, upon the hearing of an application under this section, the custody of an illegitimate infant is in question, the Court, in deciding that question, shall regard the welfare of such infant as the first and paramount consideration and shall not take into consideration whether from any other point of view the claim of the father in respect of such

custody is superior to that of the mother, or the claim of the mother is superior to that of the father.

(3) The High Court may, upon the application of either parent, alter, vary or discharge any order made under this section and in every case may make such order respecting the costs of the mother and the liability of the father for the same or otherwise as to costs as it may think just.

(No. 74 of 1965)

15. An application under section 3 of the Bastardy Laws Amendment Act, 1872, of the United Kingdom, may be made by a woman who was a single woman at the date of the birth of the child, whether or not she is a single woman at the time of the application. Applications for affiliation orders

(No. 74 of 1965)

16. (1) Nothing in this Act shall affect the succession to any dignity or title of honour or render any person capable of succeeding to or transmitting a right to succeed to any such dignity or title. Savings

(2) Nothing in this Act shall affect the operation or construction of any disposition coming into operation before the commencement of this Act or affect any rights under the intestacy of a person dying before the commencement of this Act.

(3) Nothing in any written law by which this Act is amended shall (unless expressly provided to the contrary therein) affect-

(a) the operation or construction of any disposition coming into operation before the commencement of such written law; or

(b) any rights under the intestacy of a person dying before the commencement of such written law.

(As amended by No. 74 of 1965)

SCHEDULE

(Section 3)

RE-REGISTRATION OF BIRTHS OF LEGITIMATED

PERSONS

1. The Registrar-General may, on production of such evidence as appears to him satisfactory, authorise at any time the re-registration of the birth of a legitimated person whose birth is already registered under the Births and Deaths Registration Act, and such re-registration shall be effected in such manner and at such place as the Registrar-General may by regulation prescribe:

Cap. 52

Cap. 52

Cap. 52

Provided that the Registrar-General shall not authorise the re-registration of the birth of any such person in any case where information with a view to obtaining such re-registration is not furnished to him by both parents, unless-

- (i) the name of the person acknowledging himself to be the father of the legitimated person has been entered in the register in pursuance of section 15 of the Births and Deaths Registration Act; or
- (ii) the paternity of the legitimated person has been established by an affiliation order or otherwise by a decree of a court of competent jurisdiction; or
- (iii) a declaration of the legitimacy of the legitimated person has been made by the High Court under section 6.

2. It shall be the duty of the parents of legitimated person, or in the cases where re-registration can be effected on information furnished by one parent and one of the parents is dead, of the surviving parent, within the time hereinafter specified, to furnish to the Registrar-General information with a view to obtaining the re-registration of the birth of that person: that is to say-

- (a) if the marriage took place before the commencement of this Act, within six months of such commencement;
- (b) if the marriage takes place after the commencement of this Act, within three months after the date of the marriage.

3. Where the parents, or either of them, fail to furnish the necessary information within the time limited for the purpose, the Registrar-General may, at any time after the expiration of that time, require the parents of a person whom he believes to have been legitimated by virtue of this Act, or either of them, to give him such information concerning the matter as he may consider necessary, verified in such manner as he may direct, and for that purpose to attend personally either at his office or at any other place appointed by him within such time, not being less than seven days after the receipt of the notice, as may be specified in the notice.

4. The failure of the parents or either of them to furnish information as required by this Schedule in respect of any legitimated person shall

not affect the legitimation of that person.

5. No fee for re-registration under this Schedule shall be charged if the necessary information for the purpose is furnished within the time above specified; but in any other case there shall be charged in respect of such re-registration such fees, not exceeding in the aggregate 15 fee units, as may be prescribed by regulations under this Schedule.

6. This Schedule shall be construed as one with the Births and Deaths Registration Act.

7. If any parent-

(a) refuses or neglects to comply with or acts in contravention of any of the provisions of this Schedule or any regulations made thereunder: or

(b) being a person required under this Schedule or any regulations made thereunder to make, sign or deliver any document, makes, signs or delivers, or causes to be made, signed or delivered a false document; or

(c) refuses to answer, or wilfully gives a false answer to any question necessary for obtaining the information required to be obtained under this Schedule;

such parent shall be guilty of an offence against this Act and shall for each offence be liable to a penalty not exceeding 1500 penalty units.

(As amended by No. 22 of 1930 and Act No. 13 of 1994)

SUBSIDIARY LEGISLATION

LEGITIMACY

SECTION 3 (3)-THE RE-REGISTRATION OF BIRTH (LEGITIMATED PERSONS) REGULATIONS

Regulations by the Registrar-General

Government
Notices
99 of 1953
497 of 1964
Act No.13 of
1994

1. These Regulations may be cited as the Re-registration of Birth (Legitimated Persons) Regulations.

Title

2. In these Regulations, "informant" means a parent of a legitimated child whose duty it is to give information with a view to the re-registration of the birth of such child.

Interpretation

3. Where re-registration is authorised by the Registrar-General, the informant, or, if there are two informants, such one of them as the Registrar-General may direct, shall, subject as hereinafter provided, attend personally at the office of the Registrar of Births and Deaths of the district in which the birth took place within such time as the Registrar-General may specify, and sign a notice of birth in the presence of the Registrar.

Attendance of informant before Registrar

4. (1) The Registrar of the district in which the birth took place, on receiving the Registrar-General's written authority to re-register the birth of a legitimated person, shall in the presence of the informant, fill in a new notice of birth, in the manner provided in Form 1 of the First Schedule to the Births and Deaths Registration (General) Rules, and the informants shall sign the notice in the presence of the Registrar.

Manner and form of registration Cap. 51

(2) The Registrar shall enter in the notice of birth the particulars stated in the written authority as particulars to be entered on the information given to the Registrar-General.

(3) The Registrar shall append to the signature of the informant the description and residence of such informant as required by the written authority to be entered in the notice of birth.

(4) The Registrar shall enter the date on which the entry is made, in the manner and form provided in the Births and Deaths Registration Act in respect of an entry of the date of birth, followed by the words "On the authority of the Registrar-General".

Cap. 51

(5) The Registrar shall sign the notice of birth and shall append to his signature his official description.

5. An informant who has removed before re-registration from the district in which the birth took place to some other part of the Republic may, with the written consent of the Registrar-General, instead of attending personally at the office of the Registrar of the district in which the birth took place, make and sign the notice of birth before the Registrar of the district where the informant resides, who shall send the same with the authority to the Registrar of the district in which the birth took place.

Removal within the Republic

6. (1) An informant who has removed before re-registration from the district in which the birth took place out of the Republic may, with the consent of the Registrar-General, instead of attending at the office of the Registrar to sign the notice of birth, make and sign a declaration in writing of the particulars to be entered in the notice of birth on the information of such informant.

Removal out of the Republic

(2) In the case of an informant who is in a Commonwealth country, the declaration shall be made before a Judge, court, notary public or person lawfully authorised to administer oaths in such country or place, and in the case of an informant who is in any other country, the declaration shall be made before the High Commissioner, Ambassador or Consuls or Vice-Consuls of the United Kingdom.

(3) The declaration shall be in such form and shall contain such particulars as the Registrar-General may require, being particulars to be entered in the register on the information of such informant.

(4) Upon receipt of the declaration duly attested, the Registrar-General may send it, together with his written authority for re-registration, to the Registrar of the district in which the birth took place.

7. Where re-registration is authorised by the Registrar-General and no informant is living, then, if the legitimated person is an infant, his guardian may attend personally at the office of the Registrar and sign the notice of birth; and if the legitimated person is not an infant the Registrar shall, if so directed in the written authority of the Registrar-General, enter in the notice of birth the words "On the authority of the Registrar-General".

Re-registration where no informant living

8. Any entry or a certified copy of an entry of a re-registered birth under the Act shall not be evidence of such birth or legitimation unless such entry purports to be made on the authority of the Registrar-General.

Entry not to be evidence unless made on authority of Registrar-General

9. The Registrar shall forthwith make and deliver to the Registrar-General a certified copy of the notice of birth.

Copies of entries to be sent to

- 10.** The Registrar-General having the custody of the register in which the birth was previously entered shall cause the previous entry of the birth to be marked in the margin with the words "Re-registered under the Legitimacy Act on", and add the date of re-registration. Reference to re-registration to be made in previous entry
- 11.** Where application is made for a certified copy of the entry of the birth of a person whose birth has been re-registered, the Registrar-General shall supply a certified copy of the entry of re-registration; and no certified copy of the previous entry shall be given except under the direction of the Registrar-General. Certified copies of entries of re-registration
- 12.** Where the necessary information for the purpose of re-registration is not furnished to the Registrar-General within the time specified in paragraph 2 of the Schedule to the Act, the following fees shall be charged: Fees for re-registration
- (a) a fee of eight fee units payable to the Registrar re-registering the birth by the informant or other person attending to sign the notice of birth or, in a case of removal, making a declaration in substitution for such attendance;
- (b) in the case of removal to some other part of the Republic a fee of four fee units payable to the Registrar attesting a declaration by the informant or some other person making the same.
- (As amended by Act No. 13 of 1994)*

CHAPTER 53

THE JUVENILES ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and application
2. Interpretation

PART II

PROTECTION OF JUVENILES

General Provisions

3. Approval of societies
4. Fit person
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CHAPTER 53

CHAPTER 53 JUVENILES

An Act to make provision for the custody and protection of juveniles in need of care; to provide for the correction of juvenile delinquents; and to provide for matters incidental to or connected with the foregoing.

[4th May, 1956]

4 of 1956
15 of 1957
35 of 1959
41 of 1960
1 of 1961
47 of 1963
53 of 1963
30 of 1964
56 of 1965
20 of 1966
34 of 1966
1 of 1967
25
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PART I

PRELIMINARY

1. (1) This Act may be cited as the Juveniles Act, and shall apply to such areas and to such extent as the Minister may, by statutory order, declare.

Short title and application

(2) In the application of this Act to juveniles, the provisions of African customary law shall be observed unless the observance of such customary law would not be in the interests of such juveniles.

(As amended by G.N. No. 276 of 1964)

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

Interpretation

"approved school" means a school approved by the Minister under subsection (1) or deemed to be an approved school under subsection (2) of section *seventy-five*;

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"approved school order" means an order made by a court requiring a juvenile to be sent to an approved school;

"child" means a person who has not attained the age of sixteen years;

"contribution order" has the meaning assigned to it by section *one*

hundred and ten;

"foster child" has the meaning assigned to it by subsection (4) of section *thirty-two*;

"guardian", in relation to a juvenile includes any person who, in the opinion of any court having cognizance of a case in relation to the juvenile or in which he is concerned, has for the time being the charge of or control over such juvenile;

"in need of care" has the meaning assigned to it by section *nine*;

"intoxicating liquor" has the meaning assigned to it by section *two* of the Liquor Licensing Act;

"juvenile" means a person who has not attained the age of nineteen years; and includes a child and a young person;

"juvenile adult" means-

(a) a person who has attained the age of nineteen years but has not attained the age of twenty-one years; and

(b) a person who has attained the age of twenty-one years but has not attained the age of twenty-five years and whose classification as a juvenile adult has been expressly sanctioned by the Minister;

"juvenile adult reformatory" includes any division of a prison or juvenile reformatory established as a reformatory for juvenile adults;

"juvenile court" has the meaning assigned to it by section *sixty-three*;

"legal guardian", in relation to a juvenile, means a person appointed according to law to be his guardian by deed, will or order of a court;

"managers", in relation to an approved school or other institution, means the persons for the time being having the management or control thereof;

"place of safety" includes any institution, police station, or any hospital or surgery, or any other suitable place the occupier of which is willing temporarily to receive a juvenile, but does not include any remand prison, prison or detention camp;

"probation officer" means any person appointed under the Probation of Offenders Act;

"probation order" has the meaning assigned to it by section *three* of the Probation of Offenders Act;

"public place" includes any street and any building, place or conveyance to which for the time being the public are entitled or permitted to have access either with or without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meeting or assembly or as an open court;

"receiving centre" means any reformatory or part thereof declared to be a receiving centre under section *ninety-one*;

"reformatory" means a reformatory established by the Minister under section *ninety-one*;

"reformatory order" means any order ordering a person to be detained in a juvenile reformatory or a juvenile adult reformatory;

"remand prison" means a place established as a remand prison under section *three* of the Prisons Act;

"scheduled offence" means any of the offences mentioned in the First Schedule;

"scheduled territory" means any country mentioned in the Second Schedule;

"street" includes any highway, market place, square, bridge, road, footway, alley, or passage, whether a thoroughfare or not, lawfully used by the public;

"voluntary home" means any home or other institution for the boarding, care and maintenance of juveniles, being a home or other institution supported wholly or partly by voluntary contributions;

"young person" means a person who has attained the age of sixteen years, but has not attained the age of nineteen years.

(2) Reference in this Act to findings of guilty and findings that an offence has been committed shall be construed as including references to pleas of guilty and admissions that an offence has been committed.

(As amended by No. 53 of 1963, G.N. No. 276 of 1964 and No. 25 of 1969)

PART II

PROTECTION OF JUVENILES

General Provisions

3. (1) The managing committee or governing body of any association of persons working for the care, protection or control of juveniles may apply to the Minister for the society to be approved by him for that purpose, and the Minister may, after making such inquiries as he may

Approval of
societies

think fit, approve the society for that purpose and may issue a certificate of approval accordingly.

(2) If the Minister considers that the continuance of such approval is unnecessary or undesirable, he may, by notice served on the managing committee or governing body of the society, withdraw the certificate of approval of the society as from a date to be specified in the notice, not being less than three months after the date of the notice, and upon the date so specified, unless the notice is previously withdrawn, the society shall cease to be an approved society.

(3) The managing committee or governing body of any approved society may, on giving not less than three months' notice to the Minister in that behalf, surrender the certificate of approval of the society, and at the expiration of the said notice, unless previously withdrawn, the society shall cease to be an approved society.

(4) No juvenile shall be committed or received into the care of an approved society under the provisions of this Act after the date of the receipt of any notice given under subsections (2) and (3), but the obligations of the approved society with respect to juveniles under their care at such date shall continue until the withdrawal or surrender of the certificate of approval takes effect when the Commissioner for Juvenile Welfare shall make application under subsection (1) of section *twenty-six* in respect of any juvenile who was at the time of such withdrawal or surrender under the control of the society, so that such juvenile may be suitably dealt with.

(5) The Minister shall, within one month of the date thereof, cause any grant of a certificate of approval or any notice of withdrawal or intention to surrender given in respect of any such certificate to be published in the *Gazette*.

(As amended by G.N. No. 276 of 1964)

4. For the purposes of the provisions of this Act relating to the making of orders committing juveniles to the care of fit persons-

Fit person

- (a) the Commissioner for Juvenile Welfare; or
- (b) an approved society; or
- (c) a person appointed for this purpose by the court;

shall be deemed to be a fit person and accordingly orders may be made committing juveniles to the care of the said Commissioner, or to the care of any such society or person willing to undertake the care of such juveniles.

(No. 35 of 1959)

5. The President may, by *Gazette* notice, appoint a Commissioner for Juvenile Welfare.

Appointment of
Commissioner for
Juvenile Welfare

6. (1) The President may, by *Gazette* notice, appoint as juveniles inspectors such persons as he may think fit.

Appointment of
juveniles
inspectors

(2) In any District in which no juveniles inspector appointed under the provisions of subsection (1) is stationed, the District Secretary of the District shall, for the time being, be a juveniles inspector.

(G.N. No. 503 of 1964)

7. (1) The Commissioner for Juvenile Welfare and a juveniles inspector shall perform such duties as may be entrusted to them by this or any other Act.

Duties of
Commissioner for
Juvenile Welfare
and juveniles
inspectors

(2) The Commissioner for Juvenile Welfare may authorise a juveniles inspector to exercise or perform all or any of the powers and duties which are entrusted to the said Commissioner under the provisions of this or any other Act.

(As amended by No. 1 of 1961)

8. (1) The Commissioner for Juvenile Welfare and a juveniles inspector may, at any reasonable time and for the proper performance of their duties, enter-

Powers of
Commissioner for
Juvenile Welfare
and juveniles
inspectors

(a) any institution or dwelling of any person, society or body in whose custody a juvenile has been placed under this Act; or

(b) any dwelling in which a foster child is kept; or

(c) any voluntary home;

and make such examination into the state and management thereof as he thinks requisite.

(2) Any person who obstructs the Commissioner for Juvenile Welfare or a juveniles inspector in the execution of his duties shall be liable to a fine not exceeding seven hundred and fifty penalty units.

(3) Any refusal to allow the Commissioner for Juvenile Welfare or a juveniles inspector to enter any such institution, dwelling or voluntary home in the execution of his duties shall, for the purposes of section *sixteen* (which relates to search warrants), be deemed to be a reasonable cause to suspect that a juvenile therein is in need of care.

(As amended by Act No. 13 of 1994)

Juveniles in Need of Care

9. (1) For the purposes of this Act, a juvenile in need of care means a person who-

Definition of "in need of care"

(a) is a juvenile who, having no parent or guardian or a parent or guardian unfit to exercise care and guardianship or not exercising proper care and guardianship, is either falling into bad associations or is exposed to moral or physical danger or beyond control; or

(b) is a juvenile who-

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(i) being a person in respect of whom any scheduled offence has been committed; or

(ii) being a member of the same household as a juvenile in respect of whom such an offence has been committed; or

(iii) being a member of the same household as a person who has been convicted of such an offence against a juvenile; or

(iv) being a female member of a household whereof a member has committed an offence under section *one hundred and fifty-nine* of the Penal Code in respect of another female member of that household; or

(v) frequenting the company of any reputed thief or prostitute; or

(vi) lodging or residing in a house or the part of a house used by any prostitute for the purposes of prostitution, or is otherwise living in circumstances calculated to cause, encourage, or favour the seduction of the juvenile;

requires care, control or protection.

(2) For the purposes of this section, the fact that a juvenile-

(a) is found destitute; or

(b) is found wandering without any settled place of abode and without visible means of subsistence; or

(c) is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing or offering anything for sale); or

(d) is found loitering for the purpose of so begging or receiving alms;

shall, without prejudice to the generality of the provisions of paragraph (a) of subsection (1), be evidence that he is exposed to moral danger.

10. (1) Any police officer or juveniles inspector having reasonable grounds for believing that a juvenile is in need of care may bring him before a juvenile court, and it shall be the duty of a juveniles inspector to bring before a juvenile court any juvenile who appears to be in need of care unless he is satisfied that the taking of proceedings is undesirable in the interests of such juvenile, or that proceedings are about to be taken by some other person.

Powers of juvenile courts in respect of juveniles in need of care

(2) If a juvenile court is satisfied that any person brought before the court under this section is a juvenile in need of care, the court may-

(a) order his parents or guardian to enter into recognizances to exercise proper care and guardianship; or

(b) commit him to the care of any fit person, whether a relative or not, who is willing to undertake the care of him; or

(c) without making any other order, or in addition to making an order under either of the last two foregoing paragraphs, make an order placing him for a specified period, not exceeding three years, under the supervision of a probation officer or some other person appointed for the purpose by the court; or

(d) order him to be sent to an approved school.

(3) The provisions of section *one hundred and thirty-one* of the Criminal Procedure Code shall apply in relation to recognizances under paragraph (a) of subsection (2) as they apply in relation to recognizances to be of good behaviour:

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Provided that where a recognizance under the said paragraph is adjudged to be forfeited, the court, if it thinks fit, instead of adjudging the person bound thereby to pay the sum for which he is bound, may adjudge him to pay part only of the said sum or may remit payment of the whole thereof.

(As amended by No. 15 of 1957 and No. 53 of 1963)

11. Any order made by a juvenile court may be varied or revoked at any time by the court making the order or by any other juvenile court acting for the same District.

Power of juvenile court to vary or revoke order

12. Where a juvenile court finds a juvenile to be in need of care within the meaning of section *nine*, and the juvenile has his home or usually resides in an area within the jurisdiction of another juvenile court, the court may transfer the case to that other court to be dealt with.

Power to transfer case from one juvenile court to another

13. (1) Any court by which a person has been-

Disposal of juveniles in respect of whom a scheduled offence has been committed

(a) convicted of committing a scheduled offence against a juvenile; or

(b) committed for trial for any such offence; or

(c) bound over to keep the peace towards a juvenile;

may direct that the juvenile be brought before a juvenile court with a view to that court making such order under section *ten* as may be proper:

Provided that, if the juvenile has a parent or legal guardian, no order shall be made under this section unless the parent or guardian has been convicted of or committed for trial for the offence, or is under committal for having been, or has been proved to the satisfaction of the court to have been, party or privy to the offence, or has been bound over to keep the peace towards the juvenile, or cannot be found.

(2) Where any court has, under this section, directed that a juvenile be brought before a juvenile court, it shall notify forthwith a juveniles inspector of that area of such direction and the juveniles inspector shall take all steps necessary to bring the juvenile before a juvenile court.

(3) Where a direction is made under this section and any order is subsequently made under section *ten* in respect of a person who has been committed for trial, then, if that person is acquitted of the charge, or if the charge is dismissed for want of prosecution, the direction and order shall forthwith be void, except with regard to anything that may have lawfully been done under it.

14. Where the parent or guardian of a juvenile proves to a juvenile court that he is unable to control the juvenile, the court, if satisfied-

Refractory juveniles

(a) that it is expedient so to deal with the juvenile; and

(b) that the parent or guardian understands the results which will follow from and consents to the making of the order;

may order that the juvenile be sent to an approved school or may place him under the supervision of a probation officer, for a period not exceeding three years, or may commit him to the care of a fit person, whether a relative or not, who is willing to undertake the care of him.

15. (1) Any juveniles inspector or police officer having obtained an order from a magistrate may take to a place of safety any juvenile who is about to be brought before a juvenile court as being in need of care.

Proceedings in respect of juveniles in need of care

(2) No juvenile may be kept in a place of safety for longer than fourteen days without a renewal of the order.

(3) Where an application is to be made to a juvenile court for an order under section *ten* and the juvenile in respect of whom the application is to be made has not been removed to a place of safety, a summons may be issued requiring him to attend before the court.

(4) Where under the provisions of this section a juvenile is taken to a place of safety, the person who so takes him shall forthwith send a notice to the juvenile court specifying the grounds upon which the juvenile is to be brought before the court, and shall also send the particulars to the parent or guardian of the juvenile warning him to attend at the court on the date and at the time of the hearing.

(5) Where an application is to be made to a juvenile court under section *ten*, the person intending to make the application shall forthwith notify a juveniles inspector for that area of the name and address of the juvenile, the day and the hour when and the nature of the grounds on which he is to be brought before the court.

(6) A juveniles inspector having received a notice under subsection (5) shall make such investigations and render available to the court such information as to the home circumstances, health, age, character, and general antecedents of the juvenile as are likely to assist the court.

16. (1) If it appears to a magistrate on information on oath laid by any person who, in the opinion of the magistrate, is acting in the interests of a juvenile, that there is reasonable cause to suspect-

Warrant to search
for and remove
juvenile

(a) that the juvenile has been or is being assaulted, illtreated, or neglected in any place within the jurisdiction of the magistrate in a manner likely to cause him unnecessary suffering or injury to health; or

(b) that any scheduled offence has been or is being committed in respect of the juvenile; or

(c) that the juvenile is otherwise in need of care;

the magistrate may issue a warrant authorising any police officer named

therein to search for the juvenile, and, if it is found that he has been or is being assaulted, ill-treated or neglected in manner aforesaid, or that any scheduled offence has been or is being committed in respect of him, or that he is in need of care, to take him and detain him in a place of safety, until he can be brought before a juvenile court, or authorising any police officer to remove him with or without search to a place of safety and detain him there until he can be brought before a juvenile court.

(2) A magistrate issuing a warrant under this section may, by the same warrant, cause any person accused of any offence in respect of the juvenile to be apprehended and brought before a subordinate court, and proceedings brought against him according to law.

(3) Any police officer authorised by warrant under this section to search for any juvenile, or to remove any juvenile with or without search, may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove him therefrom.

(4) Every warrant issued under this section shall be addressed to and executed by a police officer, who shall be accompanied by the person laying the information, if that person so desires, unless the magistrate by whom the warrant is issued otherwise directs, and may also, if the said magistrate so directs, be accompanied by a duly qualified medical practitioner.

(5) It shall not be necessary in any information or warrant under this section to name the juvenile.

17. (1) Where a juvenile is brought before a juvenile court on an application for an order on the grounds that he is in need of care, the court shall allow his parent or guardian to be heard, if they so wish, in opposition to the application for an order, either personally or by a barrister or solicitor.

Power of parent to
oppose application

(2) Where the parent or guardian cannot be found or cannot, in the opinion of the court, be reasonably required to attend, the court may allow any relative or other responsible person to take the place of the parent or guardian for the purpose of this section.

18. If a juvenile court is not in a position to decide what order, or whether any order, ought to be made in respect of a juvenile, the court may make such interim order as it thinks fit for the detention or continued detention of the juvenile in a place of safety:

Interim orders to place of safety

Provided that any interim order made under this section shall not remain in force for more than fourteen days, but if, at the expiration of that period, the court deems it expedient so to do, it may make a further interim order.

Fit Persons

19. (1) Before making an order under this Act committing a juvenile to the care of a fit person, the court shall endeavour to ascertain the religious persuasion of the juvenile, and in selecting the person to whose care the juvenile is to be committed the court shall, if possible, select a person who is of the same religious persuasion as the juvenile or who gives an undertaking that he will be brought up in accordance with that religious persuasion.

Provisions as to orders of committal to fit persons

(2) The provisions of subsection (1) relating to the selection of a fit person shall not apply where the court orders committal to the Commissioner for Juvenile Welfare, but the said Commissioner shall take all reasonable steps to ensure that the juvenile is brought up in accordance with his religious persuasion.

(As amended by No. 35 of 1959)

20. (1) Every order committing a juvenile to the care of a fit person shall contain a declaration

Contents of order of committal to care of fit person

(a) as to the age or apparent age; and

(b) as to the religious persuasion;

of the juvenile with respect to whom it is made.

(2) The court which makes an order committing a juvenile to the care of a fit person shall cause a record in the prescribed form, embodying all such information in the possession of the court as is, in the opinion of the

court, material to be known by such fit person, to be prepared and transmitted to the fit person.

21. Every order made committing a juvenile to the care of a fit person shall, subject to the provisions of this Act, remain in force until the juvenile attains the age of nineteen years. Duration of order

22. (1) The person to whose care a juvenile is committed by any such order as aforesaid shall, while the order is in force, have the same rights and powers and be subject to the same liabilities in respect of his maintenance as if he were the parent of the juvenile, and the juvenile so committed shall continue in his care notwithstanding any claim by a parent or any other person: Power of fit person over juvenile committed to his care

Provided that the authority and control shall not include power to give consent to the marriage of the juvenile or to deal with the property of the juvenile.

(2) The Commissioner for Juvenile Welfare may, when he is satisfied that it is in the interest of the juvenile and on such conditions as he may deem fit, authorise the temporary absence from Zambia of any juvenile committed to his care or to the care of any other fit person.

(3) Nothing in subsection (1) shall be deemed to make the Commissioner for Juvenile Welfare personally liable for the maintenance of a juvenile committed to his care.

(As amended by No. 35 of 1959 and No. 1 of 1961)

23. Where a juvenile is committed to the care of the Commissioner for Juvenile Welfare as a fit person, he may- Powers of Commissioner for Juvenile Welfare to board out juveniles

(a) board out the juvenile with persons whom he considers suitable to undertake the care of the juvenile and who are willing to do so;

(b) place the juvenile in any home or institution within Zambia which he considers suitable for the juvenile and the managers of which are willing to undertake the care of such juvenile;

(c) place the juvenile in a home or institution in Southern Rhodesia or the Republic of South Africa which he considers suitable for the juvenile and the managers of which are willing to undertake the care of such juvenile:

Provided that no juvenile shall be placed in a home or institution outside Zambia without the written authority of the court which made the order committing the juvenile to the care of the Commissioner for Juvenile Welfare as a fit person.

(No. 35 of 1959)

24. A fit person, other than the Commissioner for Juvenile Welfare, may board out juveniles committed to his care for such periods and on such terms as to payment and otherwise as the Commissioner for Juvenile Welfare may approve:

Juveniles may be boarded out by fit persons

Provided that, in selecting the person or institute with whom any juvenile is to be boarded out, care shall be taken to select, if possible, a person or institute of the same religious persuasion as the juvenile, or a person or institute which will give an undertaking that he will be brought up in accordance with that religious persuasion.

(As amended by No. 35 of 1959)

25. The Minister, in any case where it appears to him to be for the benefit of a juvenile, may empower the person to whose care the juvenile has been committed to arrange for his emigration, but except with the authority of the Minister no person to whose care a juvenile has been committed shall arrange for his emigration:

Power to arrange emigration

Provided that the Minister shall not empower such a person to arrange for the emigration of a juvenile unless he is satisfied that the juvenile consents or, being too young to form or express a proper opinion on the matter, is to emigrate in company with a parent, guardian, relative or friend, and also that his parents have been consulted or that it is not practicable to consult them.

(As amended by G.N. No. 276 of 1964)

26. (1) An order committing a juvenile to the care of a fit person may, on the application of any person, be varied or revoked by a juvenile court acting for the District or place within which the juvenile is residing, and the court by which any such order is revoked may, upon the application of any person, substitute for that order an order placing the juvenile for a specified period not exceeding three years under the

Application for order of committal to be varied or revoked

supervision of a probation officer or of some other person appointed by the court for that purpose:

Provided that an order under this subsection placing a juvenile under supervision as aforesaid shall be of no effect after the time at which the juvenile attains the age of nineteen years.

(2) If on the application of the parent or guardian or any near relative of a juvenile committed by any such order as aforesaid, any court having power to vary or revoke the order is satisfied that he is not being brought up in accordance with his religious persuasion, the court shall, unless a satisfactory undertaking is offered by the person to whose care the child has been committed, either revoke the order or vary it in such manner as the court thinks best calculated to secure that he is henceforth brought up in accordance with that persuasion.

27. Where a fit person is of opinion that any juvenile who has been committed to his care and who is under nineteen years of age should be sent to an approved school, he may apply to a juvenile court, and that court may, if it thinks that it is in his interests so to do, order him to be sent to such a school.

Application by fit person for transfer of juvenile to approved school

28. (1) Any juvenile who runs away from a person to whose care he has been committed under this Act may be apprehended without a warrant and brought back to that person, if he is willing to receive him, and if he is not willing to receive him, he may be brought before a juvenile court having jurisdiction in the place where he was residing immediately before he ran away, and that court may make any order in respect to him which the court might have made if he had been brought before it as being a juvenile who, having no parent or guardian, was beyond control.

Escapes from care of fit person

(2) A juvenile who runs away from a person or institution with whom he has been boarded out under section *twenty-four* may be apprehended without a warrant and brought back to that person or institution, or to such other person or institution as the Commissioner for Juvenile Welfare may direct.

(3) Any person who knowingly-

(a) assists, or persistently attempts to induce, or induces a juvenile

to run away from a person or institution to whose care he has been committed or with whom he has been boarded out under this Act; or

(b) harbours or conceals a juvenile who has so run away, or prevents him from returning;

shall be liable to a fine not exceeding one thousand five hundred penalty units or to imprisonment for any term not exceeding six months, or to both.

(As amended by Act No. 13 of 1994)

29. The Minister may, at any time in his discretion, discharge a juvenile from the care of the person to whose care he has been committed or from an approved school and any such discharge may be granted either absolutely or subject to conditions.

Power to discharge

(As amended by G.N. No. 276 of 1964)

30. The Minister may, by statutory instrument, if he thinks fit, make rules as to the manner in which juveniles committed to the care of fit persons are to be dealt with and as to the duties of the persons to whose care they are committed, and may cause any juvenile committed to the care of a fit person to be visited from time to time.

Rules

(As amended by G.N. No. 276 of 1964)

Custody of Juveniles

31. (1) Where the parent of a juvenile applies to any court for the custody of the juvenile and the court is of the opinion that the parent has abandoned or deserted the juvenile, or that he has so conducted himself that the court should refuse to enforce his right to the custody of the juvenile, the court may in its discretion refuse to award the custody of the juvenile to the parent.

Application for custody of juvenile

(2) Where the parent of a juvenile has allowed him to be brought up by another person at that person's expense for such length of time and under such circumstances as to satisfy the court that the parent was unmindful of his parental duties, the court shall not make an order for the delivery of the juvenile to the parent unless the parent has satisfied the court that, having regard to all the circumstances, it is more advantageous to the juvenile to make the order.

(3) If at the time of an application by a parent for an order for the custody of a juvenile, the juvenile is being brought up by a person other than the parent, the court may in its discretion, if it orders the juvenile to be given up to the parent, further order that the parent shall pay to such other person the whole of the cost properly incurred by such person in bringing up the juvenile, or such proportion thereof as shall seem to the court to be just and reasonable having regard to all the circumstances of the case.

Receiving Children for Reward

32. (1) A person who undertakes for reward the care and maintenance of a child apart from his parents, or having no parents, for a longer period than thirty days shall give notice thereof to the juveniles inspector of the area within which the child is to be maintained-

Notices to be given
by persons
receiving children
for reward

(a) in the case of a child not already in his care, being the first child proposed to be received by him for reward in the premises occupied, or proposed to be occupied, for the purpose, not less than seven days before he receives the child;

(b) in the case of any other child not already in his care, not less than forty-eight hours before he receives the child;

(c) in the case of a child already in his care without reward, within forty-eight hours after entering into the undertaking; and

(d) in the case of a child who is being cared for and maintained for reward at the commencement of this Act, and in respect of whom no notice has been given to the juveniles inspector, within one month of the commencement of this Act:

Provided that, in proceedings in respect of failure to give any such notice as aforesaid, it shall be a defence for the defendant to prove that he received the child upon an emergency and gave notice within forty-eight hours thereafter.

(2) For the purposes of this section, an undertaking shall be deemed to be an undertaking for reward if there is any payment or gift of money or money's worth, or any promise to pay or give money or money's worth

irrespective of whether there is any intention of making profit.

(3) The notice required by this section shall contain such particulars as may be prescribed.

(4) A child in respect of whom a notice has been or ought to have been given under this section and who is still living apart from his parents, if any, with the person by whom the notice was, or ought to have been given, is hereinafter referred to as a "foster child".

(5) If a person who is maintaining a foster child changes his residence, he shall, at least seven days before so doing, give to the juveniles inspector notice of the change, and, where the residence to which he removes is situate within the area of another juveniles inspector, he shall at least seven days before so moving give to that juveniles inspector the like notice as respects each foster child in his care as he is required to give on the first reception of a foster child:

Provided that, where an immediate change of residence is necessitated by any emergency, a notice under this subsection may be given at any time within forty-eight hours after the change of residence.

(6) If a foster child dies, or is removed or removes himself from the care of the person who has undertaken his care and maintenance, that person shall, within forty-eight hours thereof, give to the juveniles inspector and to the person from whom the child was received if his whereabouts are known notice in writing of the death or removal and, in the case of removal, the notice shall also state the name and address of the person, if any, to whose care the child has been transferred.

33. (1) If any person required to give any notice under either subsection (5) or (6) of section *thirty-two* fails to give notice before the latest time specified for giving the notice, he shall be guilty of an offence and, if the consideration for the care and maintenance of the child in respect of whom the notice ought to have been given consisted in whole or in part of a lump sum, the person failing to give the notice shall, in addition to any other penalty under this Part, be liable to forfeit that sum, or such less sum as the court having cognizance of the case may deem just, and the sum forfeited shall be applied for the benefit of the child in such manner as the court may direct.

Penalties for failure to give notices

(2) Where under this section any such sum as aforesaid is ordered to be forfeited, the order may be enforced as if it were an order for the payment of a civil debt.

(3) For the purpose of any enactment by which the time for taking proceedings is limited, an offence under this section shall be deemed to continue so long as the child in respect of whom a notice ought to have been given remains in the care of the offender without any notice having been given.

34. A foster child shall not, without the consent of the juveniles inspector and the approval of the Commissioner for Juvenile Welfare, be kept-

Persons prohibited from receiving foster children

(a) by any person from whose care any child has been removed under this Part; or

(b) in any premises from which any child has been removed under this Part by reason of the premises being dangerous or insanitary or so unfit as to endanger the health of a child; or

(c) by any person who has been convicted of an offence under sections *forty-six* to *fifty-three*; or

(d) by any person excluded from taking care of a child under the provisions of section *thirty-six*;

and any person keeping a foster child contrary to this section or causing a foster child to be so kept shall be guilty of an offence.

35. (1) The Minister may fix the maximum number of persons under the age of nineteen years who may be kept in any premises in which a foster child is kept, and may also impose conditions to be complied with so long as the number of children kept in the premises exceeds a specified number.

Power to prevent over-crowding of foster children

(2) If the maximum number fixed under this section is exceeded, or if any condition imposed is not complied with, a person who keeps a foster child in those premises shall be guilty of an offence.

(As amended by G.N. No. 276 of 1964)

36. (1) If a foster child is about to be received or is being kept-

Removal of foster

children from
unsuitable
premises or
persons

(a) in any premises which are overcrowded, insanitary or dangerous; or

(b) by any person who, by reason of old age, infirmity, ill health, ignorance, negligence, inebriety, immorality, or criminal conduct, or for any other reason, is unfit to have care of the child; or

(c) in any premises, or by any person, in contravention of any of the provisions of this Part; or

(d) in an environment which is detrimental to the child;

a subordinate court may, on the application of a juveniles inspector, make an order for the removal of the child to a place of safety until he can be restored to his relatives, or until other arrangements can be made with respect to him; and, upon proof that there is imminent danger to the health and well-being of the child concerned, such court may make the said order *ex parte*.

(2) An order made under subsection (1) may be enforced by a police officer, or any other person authorised by the court making the order; and any person who refuses to comply with such an order upon its being produced or who obstructs any such police officer or person as aforesaid in the enforcement of the order, shall be guilty of an offence.

37. (1) In the case of the death of a foster child, the person who had the care of the child shall, within twenty-four hours of the death, give notice in writing thereof to the coroner of the area within which the body of the child lies, and the coroner shall hold an inquest thereon, unless there is produced to him a certificate of a registered medical practitioner certifying that a practitioner has personally attended the child during his last illness and certifying also the cause of death, and the coroner is satisfied that there is no ground for holding an inquest.

Notice to coroner

(2) If the person required to give notice under this section fails to give notice within the time specified for the purpose, he shall be guilty of an offence.

38. A person who keeps a foster child shall be deemed to have no interest in the life of the child for the purpose of any law for the time being in force regarding life insurance, and, if any such person directly or indirectly insures or attempts to insure the life of a foster child, he shall be guilty of an offence.

Avoidance of insurance on lives of foster children

39. (1) If any person required to give any notice under the provisions of this Part relating to protection of juveniles knowingly makes, or causes or procures any other person to make, any false or misleading statement in any such notice, he shall be guilty of an offence.

Provisions as to notices

(2) Every notice required by this Part to be given to a juveniles inspector may be delivered to the office of the juveniles inspector or may be sent by post in a registered letter addressed to the juveniles inspector or to a person duly authorised by him to receive such notice. Every such notice required to be given to a coroner shall be delivered at his office or residence.

40. (1) No advertisement indicating that a person or society will undertake, or will arrange for, the care or maintenance of a child shall be published unless that person's name and residence, or, as the case may be, that society's name and office, are truly stated in the advertisement.

Prohibition of anonymous advertisements offering to receive foster children

(2) Every person who knowingly publishes or causes to be published any advertisement in contravention of the provisions of this section shall be guilty of an offence.

41. Any person guilty of an offence under the foregoing provisions of this Part relating to the protection of juveniles for which no other penalty is provided shall be liable to a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a term not exceeding six months, or to both and the court may order any child in respect of which the offence was committed to be removed to a place of safety.

Penalties

(As amended by Act No. 13 of 1994)

42. (1) The provisions of this Part relating to the reception of children for reward shall not extend to-

Exemptions

(a) any relative or legal guardian of a child who undertakes the care and maintenance of the child; or

(b) any hospital, convalescent home, school, or institution which is maintained by a Government department or local authority, or which is, as a whole, otherwise than under this Act, subject to inspection by, or under the authority of, a Government department; or

(c) any approved society or fit person to whose care a child has been committed under the provisions of this Act; or

(d) any person who, with the consent of the parents or guardians, has undertaken the care of a child who is attending school as a day scholar; or

(e) any person who, with the consent of the parents or guardians, undertakes for a period not exceeding six months the care and maintenance of a child during the absence on leave or holiday of such parents or guardians; or

(f) any person or body of persons exempted by order of the Minister from the provisions of this Act relating to the reception of children for reward.

(2) The Minister, having satisfied himself that any institution is being conducted in good faith for the care and protection of children, may issue to the managers of the institution a certificate exempting them from the requirements of sections *thirty-two* and *thirty-three*, and any certificate so granted may at any time be withdrawn by the Minister.

(3) For the purposes of this section, "relative" means a grandparent, brother, sister, uncle or aunt by consanguinity or affinity, or in consequence of adoption, and, in the case of an illegitimate child, a person who would be so related through the mother if the child were legitimate.

(As amended by G.N. No. 276 of 1964)

Voluntary Homes

43. (1) It shall be the duty of the person in charge of a voluntary home to give notice with respect to the establishment of the home to the juveniles inspector of the area within which the home is situate within three months after the commencement of this Act, or, in the case of a home established after the commencement of this Act, within one month of the establishment of the home. The notice to be given under this subsection shall state-

Notices and records in connection with voluntary homes

- (a) the address of the home;
- (b) the date on which it was established;
- (c) the name or names of the manager or managers of the home;
- (d) the name of the person in charge thereof;
- (e) the age group of the juveniles for which it is designed to cater;
and
- (f) the race of the juveniles for which it is designed to cater.

(2) It shall be the duty of the person in charge of a voluntary home to keep records showing the name of every juvenile admitted to the home, and his age and the dates on which he was admitted and discharged, and the name of the person, if any, to whose care he was discharged.

(3) If any person required to give a notice or keep records under this section fails to give such notice or keep such records he shall be liable to a fine not exceeding one hundred and fifty penalty units and to a further fine not exceeding thirty penalty units in respect of each day during which the default continues after conviction.

(As amended by Act No. 13 of 1994)

44. (1) No voluntary home shall be established or maintained under the management of-

Restriction on managers of voluntary homes

- (a) any person from whose care a juvenile has been removed as being in need of care; or

(b) any person who has been convicted of a scheduled offence in respect of a juvenile.

(2) No person shall employ in any voluntary home any of the persons mentioned in paragraphs (a) and (b) of subsection (1).

(3) Any person contravening the provisions of this section shall be liable to a fine not exceeding one thousand five hundred penalty units.

(As amended by Act No. 13 of 1994)

45. (1) A juveniles inspector shall cause any voluntary home within his area to be inspected from time to time unless the home is one which is, as a whole, otherwise than under this Act, subject to inspection by, or is under the authority of, a Government department.

Inspection of
voluntary homes
and removal of
juveniles therefrom

(2) If a juvenile, while maintained in a voluntary home, is found to be in need of care, a juvenile court having jurisdiction in the area in which the home is situate, in addition to making an order in respect of the juvenile, may cause a summons to be served upon the person in charge of the home and upon such other person as the court may direct, and upon the hearing of the summons may-

(a) order the removal of all juveniles from the home; or

(b) make an order containing such general and special directions as the court thinks expedient for the welfare of the juveniles in the home:

Provided that no order shall be made unless the court is satisfied that the welfare of the juveniles in the home is endangered.

(3) An order for the removal of all juveniles from a voluntary home shall operate as an authority to any person named in the order and to any police officer to enter the home and to remove all juveniles therein to a place of safety; and where any juveniles are so removed, it shall be the duty of the person removing them to lodge them in a place of safety until they can be restored to their relatives, or until other arrangements have been made with respect to them.

(4) Where an order has been made for the removal of all juveniles from a voluntary home, the home shall not be used for the reception of juveniles without the consent of the juveniles inspector of the area within which it is situate, and any person who knowingly permits it to be so used shall be guilty of an offence and shall be liable on conviction to a fine not exceeding seven hundred and fifty penalty units.

(As amended by Act No. 13 of 1994)

Offences against Juveniles

46. (1) If any person who has attained the age of sixteen years and has the custody, charge or care of any juvenile wilfully assaults, ill-treats, neglects, abandons or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental suffering), that person shall be liable to a fine not exceeding six thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Cruelty to juveniles

(2) For the purposes of this section-

(a) a parent or other person legally liable to maintain a juvenile shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him;

(b) where it is proved that the death of a child under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the child) while the child was in bed with some other person who has attained the age of sixteen years, that other person shall, if he was when he went to bed under the influence of drink, be deemed to have neglected the child in a manner likely to cause injury to his health.

(3) A person may be convicted of an offence under this section-

(a) notwithstanding that actual suffering or injury to health, or the likelihood thereof, was obviated by the act of some other person;

(b) notwithstanding that actual suffering or injury or detriment to health, mind or body has not occurred; and

(c) notwithstanding the death of the juvenile in question.

(4) Upon the trial of any person who is charged with or indicted for infanticide or the manslaughter of a juvenile of whom he had the custody, charge or care, it shall be lawful for the court, if it is satisfied that he is guilty of an offence under this section, to find him guilty of that offence.

(5) If it is proved that a person convicted under this section was directly or indirectly interested in any sum of money accruing or payable in the event of the death of the juvenile, and had knowledge that the sum of money was accruing or becoming payable, then the maximum amount of the fine which may be imposed under this section shall be twelve thousand penalty units and the court shall have the power, in lieu of awarding any other penalty under this section, to sentence the person convicted to imprisonment for any term not exceeding five years.

(6) For the purposes of subsection (5)-

(a) a person shall be deemed to be directly or indirectly interested in a sum of money if he has any share in or any benefit from the payment of that money, notwithstanding that he may not be a person to whom it is legally payable; and

(b) a copy of a policy of insurance, certified to be a true copy by an officer or agent of the insurance company granting the policy, shall be evidence that the juvenile therein stated to be insured has in fact been so insured, and that the person in whose favour the policy has been granted is the person to whom the money thereby insured is legally payable.

(7) Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer lawful punishment to him.

(As amended by Act No. 13 of 1994)

47. (1) If any person having the custody, charge or care of a girl under Causing or
encouraging the

the age of sixteen years causes or encourages the seduction, unlawful carnal knowledge, or prostitution of, or the commission of an indecent assault upon, her, he shall be liable to imprisonment for a term not exceeding two years.

prostitution of girls under sixteen

(2) For the purposes of this section, a person shall be deemed to have caused or encouraged the seduction, unlawful carnal knowledge, or prostitution of, or commission of an indecent assault upon, a girl who has been seduced, unlawfully carnally known, or indecently assaulted, or who has become a prostitute, if he has knowingly allowed her to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.

48. (1) If any person having the custody, charge or care of a juvenile who has attained the age of four years and is under the age of sixteen years allows that juvenile to reside in or frequent a brothel, he shall be liable to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a period not exceeding six months, or to both.

Allowing persons under sixteen to be in brothels

(2) Nothing in this section shall affect the liability of a person to be charged with an offence under sections *one hundred and forty-two* and *one hundred and forty-three* of the Penal Code, but upon trial of a person under those sections, or any one of them, it shall be lawful for the court, if it is satisfied that he is guilty of an offence under this section, to find him guilty of that offence.

Cap. 87

(As amended by Act No. 13 of 1994)

49. (1) Where it is shown to the satisfaction of the magistrate empowered to hold a subordinate court of the first or second class, on the complaint of any person, that a girl under the age of sixteen years is, with the knowledge of her parent or guardian, exposed to the risk of seduction or prostitution or of being unlawfully carnally known, or is living a life of prostitution, the magistrate may adjudge the parent or guardian to enter into a recognizance to exercise due care and supervision in respect of the girl.

Power to bind over persons having the custody of young girls

(2) The provisions of the Penal Code with respect to recognizances to be of good behaviour (including the provisions as to the enforcement thereof) shall apply to recognizances under this section.

Cap. 87

50. (1) If any person causes or procures any child or, having the custody, charge or care of such a child, allows him to be in any street, premises or place for the purpose of begging or receiving alms, or of inducing the giving of alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise), he shall be liable to a fine not exceeding seven hundred and fifty penalty units or to imprisonment for a term not exceeding three months, or to both.

Causing or allowing children to be used for begging

(2) If a person having the custody, charge or care of a child is charged with an offence under this section and it is proved that such child was in any street, premises or place for any such purposes as aforesaid, and that the person charged allowed the child to be in the street, premises or place, he shall be presumed to have allowed him to be in the street, premises or place for that purpose unless the contrary is proved.

(3) If any person while singing playing, performing or offering anything for sale in a street or public place has with him a child who has been hired out to him, the child shall, for the purposes of this section, be deemed to be in that street or public place for the purpose of inducing the giving of alms.

(As amended by Act No. 13 of 1994)

51. If any person gives or causes to be given-

- (a) to any child under the age of five years any intoxicating liquor;
- (b) without the consent of his parent or guardian, to any child over the age of five years any intoxicating liquor;
- (c) to any child any spirituous liquor;

Giving intoxicating or spirituous liquor to children

except upon the order of a duly qualified medical practitioner, or in the case of sickness, apprehended sickness or other urgent cause, he shall be guilty of an offence and liable to a fine not exceeding one hundred and fifty penalty units.

(As amended by Act No. 13 of 1994)

52. (1) The holder of the licence of any licensed premises shall not allow a child, other than an infant, to be at any time in the bar of the licensed premises during the permitted hours.

Causing or allowing children to be in bars of licensed premises

(2) If the holder of a licence acts in contravention of this section, or if any person causes, or procures, or attempts to cause or procure, any child, other than an infant, to go to, or to be in, the bar of any licensed premises during the permitted hours, he shall be liable to a fine not exceeding, in respect of a first offence, sixty penalty units, and in respect of any subsequent offence, one hundred and fifty penalty units.

(3) If a child, other than an infant, is found in the bar of any licensed premises during the permitted hours, the holder of the licence shall be deemed to have committed an offence under this section unless he proves that he had used due diligence to prevent such child from being admitted to the bar or that the child had apparently attained the age of sixteen years.

(4) Nothing in this section shall apply to the case of any child who is in any railway restaurant car, railway or airport refreshment room or other premises constructed, fitted, and intended to be used in good faith for any purpose for which the holding of a licence is merely auxiliary.

(5) In this section-

"bar", in relation to any licensed premises, means any open drinking bar or any part of the premises exclusively or mainly used for the sale and consumption of intoxicating liquor;

"the holder of the licence of any licensed premises" means-

(a) the holder of a licence issued under the Liquor Licensing Act;

(b) the person authorised to sell traditional beer in accordance with the provisions of the Traditional Beer Levy Act;

(c) the secretary of any club registered in accordance with the provisions of the Clubs' Registration Act;

"infant" means a child up to the apparent age of three years and actually carried by some other person;

"licence" means a licence issued under the Liquor Licensing Act or the Clubs' Registration Act and any authority to sell traditional beer in accordance with the provisions of the Traditional Beer Levy Act;

"licensed premises" means-

(a) any premises in respect of which a licence to sell liquor is in force in accordance with the provisions of the Liquor Licensing Act;

(b) a place where traditional beer is sold in accordance with the

Cap. 167

Cap. 168

Cap. 162

Cap. 167

Cap. 162

Cap. 168

Cap. 167

Cap. 168

Cap. 162

provisions of the Traditional Beer Levy Act;

(c) a club registered in accordance with the provisions of the Clubs' Registration Act;

"permitted hours" means those hours of the day during which intoxicating liquor may lawfully be supplied in licensed premises.

(As amended by Act No. 13 of 1994)

Children at Entertainments

53. (1) No child shall, except under licence granted by a juveniles inspector, take part whether as performer or attendant in any entertainment in connection with which any charge, whether for admission or not, is made to any of the audience with a view to profit or personal gain; and every person who causes or procures a child, or being his parent allows him, to take part in an entertainment in contravention of this section shall be liable to a fine not exceeding one thousand five hundred penalty units.

Restriction on children taking part in entertainment

(2) The Minister may exempt any entertainment or class of entertainment from the provisions of this section.

(As amended by G.N. No. 276 of 1964 and Act No. 13 of 1994)

54. A juveniles inspector may grant a licence for a child to take part in any specified entertainment or series of entertainments in his area:

License to take part in entertainment

Provided that no licence shall be granted unless the juveniles inspector is satisfied that the child is fit to take part in the entertainment, and that proper provision has been made to secure his health and kind treatment, and that his performance shall in no way endanger his life or limbs.

55. (1) Where there is provided in any building an entertainment for children, or an entertainment at which the majority of the persons attending are children, it shall be the duty of the person or persons providing the entertainment to take all reasonable steps to station and keep stationed wherever necessary a sufficient number of attendants, properly instructed as to their duties and not being less than eighteen years of age, to prevent more children or other persons being admitted to the building, or to any part thereof, than the building or part can properly accommodate, and to control the movement of the children and other

Safety of children at entertainments

persons admitted while entering or leaving the building or any part thereof, and to take all other reasonable precautions for the safety of the children and the prevention of fire.

(2) Any person failing to fulfil the obligations imposed on him by this section shall be liable to a fine not exceeding one thousand five hundred penalty units.

(3) Any police officer of or above the rank of Assistant Inspector who has reason to believe that such an entertainment as aforesaid is being, or is about to be, provided in any building may enter such building with a view to ascertaining whether the provisions of subsection (1) are carried into effect.

(As amended by No. 47 of 1963 and Act No. 13 of 1994)

Miscellaneous

56. For the purposes of this Part-

Interpretation of
Part II

(a) any person who is the parent or legal guardian of a juvenile or who is legally liable to maintain him shall be presumed to have the custody of him and, as between father and mother, the father shall not be deemed to have ceased to have the custody of him by reason only that he has deserted, or otherwise does not reside with, the mother and the juvenile;

(b) any person to whose charge a juvenile is committed by a person who has the custody of him shall be presumed to have charge of the juvenile;

(c) any other person having the actual possession or control of a juvenile shall be presumed to have the care of him.

57. (1) Where prior to the commencement of Act No. 35 of 1959 a court has committed a juvenile to the care of the Commissioner for Juvenile Welfare, such committal shall not be deemed to be or to have been invalid solely by reason of the fact that, prior to the enactment of Act No. 35 of 1959, the Commissioner for Juvenile Welfare was not a fit person under this Act.

Validation and
saving

(2) The Commissioner for Juvenile Welfare shall be deemed always to have had the powers conferred upon him by this Act as amended by Act

No. 35 of 1959.

(3) Nothing in Act No. 35 of 1959 shall be deemed to render invalid any order validly made prior to the commencement of Act No. 35 of 1959 committing a juvenile to the care of a fit person.

(No. 35 of 1959)

PART III

JUVENILE DELINQUENTS

Preliminary Proceedings

58. It shall be the duty of the Commissioner of Police to make arrangements for preventing, as far as possible, a juvenile while detained in a police station, or while being conveyed to or from any criminal court, or while waiting before or after attendance in any criminal court, from associating with an adult (not being a relative) who is charged with an offence, other than an offence with which the juvenile is jointly charged, and for ensuring that a girl (being a juvenile) shall, while so detained, being conveyed, or waiting be under the care of a woman.

Prevention of juveniles associating with adults during detention

59. Where a person apparently under the age of nineteen years is apprehended, with or without a warrant, and cannot be brought forthwith before a court, the police officer in charge of the police station to which he is brought shall inquire into the case, and may in any case, and-

Bail of juveniles arrested

- (a) unless the charge is one of homicide or other grave crime; or
- (b) unless it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute; or
- (c) unless the officer has reason to believe that the release of such person would defeat the ends of justice;

shall, release such person on a recognizance, with or without sureties, for such amount as will, in the opinion of the officer, secure the attendance of that person upon the hearing of the charge, being entered into by him, or by his parent or guardian or other responsible person.

60. Where a person apparently under the age of nineteen years having been arrested is not released on recognizance as provided in the last preceding section, the officer in charge of the police station to which such person is brought shall cause him to be detained in a place of safety until he can be brought before a court, unless such officer certifies-

Custody of juvenile not released on bail after arrest

(a) that it is impracticable to do so; or

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

(c) that by reason of the state of health or of the mental or bodily condition of the juvenile it is inadvisable so to detain him;

and the certificate shall be produced to the court before which the person is brought.

61. (1) A court on remanding or committing for trial a juvenile who is not released on bail shall, instead of committing him to prison, commit him to custody in a remand prison or place of safety named in the commitment, to be detained there for the period for which he was remanded or until he is thence delivered in due course of law:

Remand or committal to custody in a remand prison or place of safety

Provided that, in the case of a young person, it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly or depraved a character that he is not a fit person to be so detained.

(2) A commitment under this section may be varied or, in the case of a young person who proves to be of so unruly or depraved a character that he is not fit to be so detained, revoked by any court acting in or for the place in or for which the court which made the order acted, and, if the order is revoked, the young person may be committed to prison.

62. (1) Where it is impracticable in a remand prison to separate juveniles from adults detained in custody, a superintendent of prisons may detain any juvenile awaiting trial, or placed on remand by a court, in a suitable dwelling, other than a prison or detention camp, and whilst the juvenile is so detained, he shall be deemed to be in legal custody.

Custody of juveniles in remand prisons

(2) A juvenile whilst so detained and whilst being conveyed to and from a remand prison shall be deemed to be in legal custody, and if he escapes shall be guilty of an offence and may be apprehended without warrant and brought back to the remand prison in which he was detained.

Establishment and Procedure of Juvenile Courts

63. A subordinate court sitting for the purposes of-

Establishment of
juvenile courts

(a) hearing any charge against a juvenile; or

(b) exercising any other jurisdiction conferred on juvenile courts by or under this or any other Act;

is in this Act referred to as a juvenile court.

64. (1) Where a juvenile is brought before a juvenile court for any offence other than homicide or attempted murder, the case shall be finally disposed of in such court.

Procedure in
juvenile courts

(2) After explaining the substance of the alleged offence, the court shall ask the juvenile whether he admits the offence.

(3) Notwithstanding that the juvenile admits the offence, a juvenile court, other than a court presided over by a senior resident magistrate, resident magistrate or such other magistrate as the *Chief Justice may designate for the purposes of this section, shall in any case where the juvenile is not legally represented then hear the evidence of the witnesses in support thereof.

* All magistrate empowered to hold a subordinate court of the first or second class designated by G.N. No. 972 of 1967.

(4) At the close of the evidence in chief of each witness, the magistrate shall, if the juvenile is not legally represented, ask the juvenile, and the juvenile's parent or guardian if present in court, whether he wishes to put any questions to the witness.

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

Provided that where the court puts any questions to a witness in

pursuance of this subsection, the prosecution shall have the right to re-examine the witness upon the answers to such questions.

(6) If it appears to the court that a *prima facie* case is made out, the evidence of any witness for the defence shall be heard and the juvenile shall be allowed to give evidence or make a statement.

(7) If the court is satisfied that the offence is proved, the juvenile shall then be asked if he desires to say anything in extenuation or mitigation of the penalty or otherwise. Before deciding how to deal with him, the court shall, if practicable, obtain such information as to his general conduct, home surroundings, school record, and medical history as may enable it to deal with the case in the best interests of the juvenile, and may put to him any question arising out of such information. For the purpose of obtaining such information or for special medical examination or observation, the court may from time to time remand the juvenile on bail or to a place of detention so, however, that he appears before a court at least once in every twenty-one days.

(As amended by No. 30 of 1964)

65. (1) Subject as hereinafter provided, no charge against a juvenile, and no application or matter whereof the hearing is by this Act assigned to juvenile courts, shall be heard by a subordinate court which is not a juvenile court:

Assignment of certain matters to juvenile courts

Provided that-

(i) a charge made jointly against a juvenile and a person who has attained the age of nineteen years shall be heard by a subordinate court which is not a juvenile court;
and

*All magistrates empowered to hold a subordinate court of the first or second class designated by G.N. No. 972 of 1967.

(ii) where a juvenile is charged with an offence, the charge may be heard by a subordinate court which is not a juvenile court if a person who has attained the age of nineteen years is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence; and

(iii) where in the course of any proceedings before any subordinate court other than a juvenile court, it appears that the person to whom the proceedings relate is juvenile, nothing in this section shall be construed as preventing the court, if it thinks fit so to do, from proceeding with the hearing and determination of those proceedings.

(2) No direction, whether contained in this or any other Act, that a charge shall be brought before a juvenile court shall be construed as restricting the powers of any magistrate to entertain an application for bail or for a remand, and to hear such evidence as may be required for that purpose.

66. (1) Juvenile courts shall sit as often as may be necessary for the purpose of exercising any jurisdiction conferred on them by or under this or any other Act.

Miscellaneous provisions as to powers of juvenile courts

(2) A juvenile court sitting for the purpose of hearing a charge against, or an application relating to, a person believed to be a juvenile may, if it thinks fit to do so, proceed with the hearing and determination of the charge or application notwithstanding that it is discovered that the person in question is not a juvenile.

(3) The attainment of the age of nineteen years by a probationer or a person bound by a recognizance under the provisions of this Act or of the Probation of Offenders Act shall not deprive a juvenile court of jurisdiction to enforce his attendance and deal with him in respect of any failure to observe the conditions of the recognizance or order, or of jurisdiction to vary or to discharge the recognizance or order.

Cap. 93

(4) When a juvenile court has remanded a juvenile for information to be obtained with respect to him, any juvenile court acting for the same District or place-

(a) may in his absence extend the period for which he is remanded, so, however, that he appears before a court at least once in every twenty-one days;

(b) when the required information has been obtained, may deal with him finally;

and where the court by which he was originally remanded has recorded a finding that he is guilty of an offence charged against him, it shall not be necessary for any court which subsequently deals with him under this subsection to hear evidence as to the commission of that offence, except in so far as it may consider that such evidence will assist the court in determining in which manner he should be dealt with.

67. (1) Any court by or before which a juvenile is found guilty of an offence other than homicide may, if it thinks fit, transfer the case to a juvenile court acting for the place where the offender was committed for trial, or for the place where the offender resides; and, where any such case is so transferred, the offender shall be brought before a juvenile court accordingly, and that court may deal with him in any way in which it might have dealt with him if he had been tried and found guilty by that court.

Power of other court to transfer offenders to juvenile courts

(2) No appeal shall lie against an order of transfer made under this section, but nothing in this subsection shall affect any right of appeal against the verdict or finding on which such an order is founded, and a person aggrieved by the order of the juvenile court to which the case is transferred may appeal therefrom as if the offender had been tried by, and pleaded guilty before the juvenile court.

(3) A court by which an order transferring a case to a juvenile court is made under this section may give such directions as appear to be necessary with respect to the custody of the offender or for his release on bail until he can be brought before the juvenile court, and shall cause to be transmitted to the clerk of the juvenile court a certificate setting out the nature of the offence and stating that the offender has been found guilty and that the case has been transferred for the purpose of being dealt with under this section.

68. The words "conviction" and "sentence" shall cease to be used in relation to juveniles dealt with by a subordinate court and any reference in any enactment, whether passed before or after the commencement of this Act, to a person convicted, a conviction, or a sentence shall in the case of a juvenile be construed as including a reference to a person found guilty of an offence, a finding of guilty, or an order made upon such a finding, as the case may be.

Abolition of the use of the words "conviction" and "sentence" in respect of juveniles

69. Where a juvenile is himself ordered by a juvenile court to pay costs

Costs

in addition to a fine, the amount of the costs shall in no case exceed the amount of the fine.

70. No conviction or finding of guilty of a juvenile shall be regarded as a conviction of felony for the purposes of any disqualification attaching to felony.

Removal of disqualifications attaching to felony

71. The Chief Justice may, by statutory instrument, from time to time make rules of court for regulating the procedure and practice of juvenile courts, and such of the provisions of the Subordinate Courts Act or of any other enactment as regulate procedure in criminal cases shall have effect subject to any rules so made.

Rules of court
Cap. 28

(As amended by No. 41 of 1960)

Juvenile Offenders

72. (1) No child shall be sentenced to imprisonment or to detention in a detention camp.

Restriction on punishment of juveniles

(2) No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other manner.

(3) A court shall not order a child to be sent to a reformatory unless the court is satisfied that having regard to his character and previous conduct, and to the circumstances of the offence, it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a reformatory.

73. (1) Where a juvenile charged with any offence is tried by any court, and the court is satisfied of his guilt, the court shall take into consideration the manner in which, under the provisions of this or any other written law, the case should be dealt with, namely:

Methods of dealing with offenders

(a) by dismissing the charge;

(b) by making a probation order in respect of the offender;

- (c) by sending the offender to an approved school;
- (d) by sending the offender to a reformatory;
- (e) by ordering the offender to be caned;
- (f) by ordering the offender to pay a fine, damages or costs;
- (g) by ordering the parent or guardian of the offender to pay a fine, damages or costs;
- (h) by ordering the parent or guardian of the offender to give security for the good behaviour of the offender;
- (i) where the offender is a young person, by sentencing him to imprisonment;
- (j) by dealing with the case in any other manner in which it may legally be dealt with.

(2) Whenever a juvenile is found guilty of an offence for which, but for the provisions of this Act, a sentence of imprisonment would have been passed, the court by which the juvenile is found guilty may, instead of passing such sentence of imprisonment, order him to be detained in a reformatory.

(3) Nothing in this section shall be construed as in any way restricting the power of the court to pass any sentence or combination of sentences which it is empowered to pass under this or any other written law:

Provided that no court shall order an offender to be caned in addition to directing that he be sent to an approved school or a reformatory.

(As amended by No. 56 of 1965)

74. (1) Where a court thinks that a charge against a juvenile is proved, the court may make an order on the parent or guardian of the juvenile under the last preceding section for the payment of a fine, damages or costs or requiring him to give security for good behaviour, with or

Powers of court in respect of fines, etc.

without proceeding to the conviction of the juvenile:

Provided that no such order shall be made unless the court is satisfied that the parent or guardian has conduced to the commission of the offence by neglecting to exercise due care of the juvenile.

(2) An order made under the last preceding section may be made against a parent or guardian who, having been required to attend, has without reasonable excuse failed to do so, but save as aforesaid no such order shall be made without giving the parent or guardian an opportunity of being heard.

(3) Any sums imposed and ordered to be paid by a parent or guardian under the last preceding section, or on forfeiture of any security as aforesaid, may be recovered from him by distress and imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the juvenile was charged.

PART IV

ADMINISTRATIVE PROVISIONS

Approved Schools

75. (1) The Minister may, by statutory notice, establish approved schools for the reception, maintenance and training of juveniles sent thereto under the provisions of this or any other Act.

Establishment of approved schools

(2) Any institution or school established in any of the scheduled territories which affords sufficient facilities for the education and training of persons who could be sent there in pursuance of the provisions of this Act relating to approved schools may be approved by the President and shall thereupon be deemed to be an approved school for the purposes of this Act.

(As amended by G.N. No. 276 of 1964)

76. Before making an order under this Act committing a juvenile to an Regard to be had to

approved school, the court shall endeavour to ascertain the religious persuasion of the juvenile, and in selecting the approved school to which the juvenile is to be committed, the court shall, if possible, select a school for persons of the same religious persuasion as the juvenile, or which gives an undertaking that he will be brought up in accordance with that religious persuasion.

religious
persuasion of
person committed
to approved school

77. (1) Every approved school order shall contain a declaration-

Contents of
approved school
order

(a) as to the age or apparent age; and

(b) as to the religious persuasion;
of the juvenile with respect to whom it is made.

(2) The court which makes an approved school order shall cause a record in the prescribed form, embodying all such material in the possession of the court as is, in the opinion of the court, material to be known by the managers of the school, to be prepared and forwarded to the person in charge of the school.

78. An approved school order shall be an authority for the detention of the person named therein in an approved school-

Authority of
approved school
order

(a) if at the date of the order he has not attained the age of fourteen years, until the expiration of a period of three years or the expiration of four months after he attains the age of fifteen years, whichever is the later;

(b) if at the date of the order he has attained the age of fourteen years but has not attained the age of sixteen years, until the expiration of a period of three years from the date of the order; and

(c) if at the date of the order he has attained the age of sixteen years, until he attains the age of nineteen years.

79. (1) No approved school order made by a juvenile court shall be carried into effect until the record of the case or a certified copy thereof has been transmitted to, and the order confirmed by, the High Court.

Confirmation of
approved school
order by High
Court

(2) Pending the confirmation of an approved school order by the High

Court or pending arrangements for the admission of the juvenile to an approved school, the court making the order may make a temporary order committing the juvenile to the care of a fit person to whose care he might be committed under this Act, or to a place of safety, and, subject as hereinafter provided, such temporary order shall have effect until he is sent to an approved school in pursuance of the approved school order:

Provided that a temporary order as aforesaid shall not remain in force for more than twenty-eight days, but if at the expiration of that period the court considers it expedient so to do, it may make a further temporary order.

(3) Any temporary order may be made under subsection (2) in the absence of the juvenile.

80. (1) The court which makes an approved school order shall cause it to be delivered to the authority or person responsible for conveying the juvenile to his school, and the person who conveys him to his school shall deliver the order to the person in charge of the school.

Conveyance of juveniles to approved schools

(2) Where a juvenile has been ordered to be sent to an approved school, any person who harbours or conceals him after the time has come for him to go to his school shall be liable to a fine not exceeding six hundred penalty units or to imprisonment for a term not exceeding two months, or to both.

(3) Where a person authorised to take a juvenile to an approved school is, when the time has come for him to go to his school, unable to find him or unable to take possession of him, a subordinate court may, if satisfied by information on oath that same person named in the information can produce the juvenile, issue a summons requiring the person so named to attend at the court on such day as may be specified in the summons and produce the juvenile and, if he fails to do so without reasonable excuse, he shall be guilty of an offence and shall, in addition to any other liability to which he may be subject under the provisions of this Act, be liable to a fine not exceeding one hundred and fifty penalty units.

(As amended by Act No. 13 of 1994)

81. All approved schools established under the provisions of

Supervision of

subsection (1) of section *seventy-five* shall be under the supervision of approved schools
the Commissioner for Juvenile Welfare.

82. All approved schools established under the provisions of Classification of
subsection (1) of section *seventy-five* shall be classified according to the approved schools
discipline and training required by the juveniles detained therein.

83. The Commissioner for Juvenile Welfare may at any time direct that Removal of
a juvenile be removed from one approved school within Zambia to juveniles from one
another such approved school. approved school to
another

84. The Commissioner for Juvenile Welfare may grant leave of Leave of absence
absence to any person detained in an approved school within Zambia for
such periods and on such conditions as may be prescribed and may at
any time revoke such leave and direct such person to return to his
school.

85. Where a person detained in an approved school within Zambia is Commutation of
reported to the Minister by the Commissioner for Juvenile Welfare to committal order
be-

(a) exercising a bad influence on the other inmates of the school; or

(b) through his own default not benefiting from the training in the
school;

the Minister may commute the whole or part of the unexpired portion of
his committal order to a term of detention in a reformatory.

(As amended by G.N. No. 276 of 1964)

86. If the managers of an approved school within Zambia are satisfied Extension of
that a juvenile whose period of detention therein is, under the provisions period of detention
of this Act, about to expire needs further care or training, they may, with in approved school
the consent of the Minister, detain such person for a further period not
exceeding six months:

Provided that a person shall not be detained beyond the date on which he
will attain the age of nineteen years.

(As amended by G.N. No. 276 of 1964)

87. At any time during the period of a person's detention in an approved school within Zambia, the Commissioner for Juvenile Welfare may, by a licence in writing, permit him to live at his home or elsewhere, and may at any time, by order in writing, revoke such licence and require the person to whom it relates to return to the school wherein he was last detained.

Release on licence

88. (1) A juvenile sent to an approved school within Zambia shall, after the expiration of the period of his detention, be under the supervision of the managers of his school

Supervision and recall after expiration of order

(a) if at the expiration of that period he has not attained the age of fifteen years, until he attains the age of eighteen years;

(b) if at the expiration of that period he has attained the age of fifteen years, for a period of three years or until he attains the age of twenty-one years, whichever may be the shorter period.

(2) The Commissioner for Juvenile Welfare may, by notice in writing, recall to the school any person under the supervision of a manager who is at the date of the recall under the age of nineteen years:

Provided that-

(i) a juvenile shall not be so recalled unless, in the opinion of the Commissioner for Juvenile Welfare, it is necessary in the interest of such juvenile to recall him;

(ii) a juvenile so recalled shall be released as soon as the Commissioner for Juvenile Welfare thinks that he can properly be released, and in no case shall he be detained after attaining the age of nineteen years.

89. (1) For the purposes of this Act, a juvenile who is out on licence under the provisions of section *eighty-seven*, or is under supervision under the last preceding section, shall be deemed to be under the care of the managers of the school in which he was last detained.

Powers and duties of managers of an approved school towards persons on licence or under supervision

(2) It shall be the duty of the officer in charge of the approved school from which a person is released on licence or under whose supervision he is to cause such person to be visited, advised and befriended and to give him assistance (including, if he thinks fit, financial assistance) in maintaining himself and finding himself suitable employment, or, where practicable, to arrange for the continuance of his education.

90. The Minister may, by statutory instrument, if he thinks fit, make rules as to the management and administration of approved schools established under the provisions of subsection (1) of section *seventy-five*, and the treatment and control of juveniles sent thereto.
(As amended by G.N. No. 276 of 1964)

Rules

**Reformatories*

* Powers and duties of the Minister under section 91 to 107 transferred to Minister responsible for home affairs by S.I. No. 76 of 1964.

91. The Minister may, by statutory notice-

- (a) establish reformatories;
- (b) declare any reformatory or any part thereof to be a receiving centre.

(As amended by No. 53 of 1963)

Establishment of reformatories

92. (1) Every reformatory order shall contain a statement as to-

Contents of reformatory order

- (a) the age or apparent age; and
- (b) the religious persuasion;

of the juvenile in respect of whom it is made.

(2) The court making a reformatory order shall cause a record in the prescribed form, embodying all the information in the possession of the court with respect to the person subject to the order as is, in the opinion of the court, material to be made known to the officer in charge of the receiving centre, to be made and transmitted to such officer.

93. A reformatory order shall, subject to the provisions of this Act, be authority for the detention of the person named therein for a period of four years.

Authority of reformatory order

94. (1) No reformatory order made by a juvenile court shall be carried into effect, except as provided in subsection (2), until the record of the case or a certified copy thereof has been transmitted to and the order confirmed by the High Court.

Conveyance of juvenile to receiving centre

(2) Any juvenile with respect to whom a reformatory order has been made shall be conveyed forthwith to the receiving centre without awaiting the confirmation of the order by the High Court.

*Powers and duties of the Minister under sections 91 to 107 transferred to Minister responsible for home affairs by S.I. No. 76 of 1964.

(3) The court making a reformatory order shall cause it to be delivered to the person conveying the juvenile to the receiving centre, and such person shall deliver it to the officer in charge of the centre.

95. (1) All reformatories shall be under the supervision of the Chief Inspector of Reformatories who shall be the person for the time being holding the office of Commissioner of Prisons.

Control and supervision of reformatories

(2) The Chief Inspector of Reformatories shall be assisted by boards, to be known as "Reformatory Boards", established by the Minister by Gazette notice.

(3) There shall be established a Reformatory Board for each Province in which a reformatory has been established under section *ninety-one*, and each Board shall consist of a chairman and such other members, not exceeding nine, as the Minister may appoint:

Provided that every such appointment to a Board shall be for a specified period but shall be revocable at any time by the Minister at his pleasure.

(As amended by No. 53 of 1963, No. 34 of 1966 and No. 27 of 1969)

96. The officers appointed to control and administer a reformatory shall be appointed under and be subject to the provisions of the Prisons Act. Officers in charge of reformatories
Cap. 97

97. The Chief Inspector of Reformatories shall periodically visit and inspect or cause to be visited and inspected all reformatories. Inspection of reformatories

98. (1) Reformatories shall be classified according to the discipline and training required by the persons detained therein. Classification of reformatories

(2) It shall be the duty of the officer in charge of the receiving centre to consider all the information which may be forthcoming as to the health, character, abilities, conduct, home circumstances, and general antecedents of any juvenile with respect to whom a reformatory order has been made; and thereafter to cause the juvenile to be placed in the reformatory which, in the opinion of that officer, is best suited to the needs of the juvenile.

(3) A juvenile may be detained in the receiving centre for such period, not exceeding three months as may be necessary for the purposes of subsection (2):

Provided that any such detention in the receiving centre shall not extend the total period for which he is liable to be detained in a reformatory.

99. The Chief Inspector of Reformatories may grant leave of absence to any person detained in a reformatory for such periods and on such conditions as he may think fit, and may at any time revoke such leave and direct the person to whom leave was granted to return to the reformatory. Leave of absence

100. The Chief Inspector of Reformatories may at any time direct that a person be removed from one reformatory to another: Removal of person from one reformatory to another

Provided that the total period of detention of a person so removed shall not be increased thereby.

101. Notwithstanding any of the provisions of this Act, when a person detained in a reformatory has attained the age of fourteen years and is reported to the Minister by the Chief Inspector of Reformatories to be-

Commutation of reformatory order

(a) exercising a bad influence on the other inmates of the reformatory; or

(b) through his own default not benefiting from the training in the reformatory;

the Minister may commute the whole or part of the unexpired period of the reformatory order made in respect of such person to a term of imprisonment.

102. If the officer in charge of a reformatory is satisfied that a person whose period of detention therein is, under the provisions of this Act, about to expire needs further care or training he may, with the consent of the Minister, detain such person for a further period, not exceeding six months:

Extension of period of detention in reformatory

Provided that a person so detained shall not be detained beyond the date on which he will attain the age of twenty-three years.

103. A person committed to a reformatory shall be detained in a reformatory for such period, not exceeding four years, as the Chief Inspector of Reformatories may determine, and shall then be released:

Power to discharge

Provided that-

(i) the Chief Inspector of Reformatories shall not release any such person from a reformatory before the expiration of nine months from the date of the reformatory order;

(ii) the Minister may at any time order that any person detained in a reformatory be discharged or may commute the reformatory order under the provisions of section *one hundred and one*.

104. At any time during the period of a person's detention in a reformatory the Chief Inspector of Reformatories may, by a licence in writing, permit him to live at home or elsewhere, and may at any time,

Release on licence

by order in writing, revoke such licence and require the person to whom it relates to return to the reformatory wherein he was last detained.

105. (1) A person sent to a reformatory shall, after the expiration of the period of his detention, be under the supervision of the officer in charge of the reformatory in which he was detained at the date of the expiration of the order-

Supervision and recall after expiration of order

(a) if at the date of his committal he had not attained the age of twelve years, for a period of three years or until he attains the age of sixteen years, whichever shall be the longer period; or

(b) if at the date of his committal he had attained the age of twelve years, for a period of three years after the expiration of his period of detention or until he attains the age of twenty-three years, whichever shall be the shorter period.

(2) The Chief Inspector of Reformatories may, by notice in writing, recall to the reformatory any person under the age of twenty-three years who is under the supervision of an officer in charge of a reformatory:

Provided that-

(i) a person shall not be recalled unless, in the opinion of the Chief Inspector of Reformatories, it is necessary in the interest of such person so to recall him;

(ii) a person who has so been recalled shall be released as soon as the officer in charge of the reformatory is of opinion that he can properly be released, and in no case shall he be detained for a longer period than six months or after he has attained the age of twenty-three years.

(3) Where any person has been recalled as aforesaid, he shall, during any period for which he may be detained, be deemed to be detained under the authority of the original reformatory order made in respect of him.

106. (1) For the purposes of this Act, a person who is under the supervision of or out on licence from a reformatory shall be deemed to be under the care of the officer in charge of the reformatory.

Powers and duties of officer in charge of reformatory

towards persons on
licence or under
supervision

(2) It shall be the duty of the officer in charge of the reformatory to cause a person who is under the supervision of or out on licence from a reformatory to be visited, advised and befriended, and to give him assistance in maintaining himself and finding suitable employment, or, where practicable, to arrange for the continuance of his education.

107. The Minister may, by statutory instrument, if he thinks fit, make rules as to the management and administration of reformatories and the treatment and control of persons detained therein.

Rules

(As amended by No. 53 of 1963 and G.N. No. 276 of 1964)

Escapes

108. (1) Any person who has been ordered to be sent to an approved school or to a reformatory and who-

Escapes from
approved schools
and reformatories

(a) escapes from the school or reformatory in which he is detained, or from any hospital, home or other place in which he is receiving medical attention; or

(b) being absent from his school or reformatory on temporary leave of absence, or on licence, runs away from the person in whose charge he is, or fails to return to the school or reformatory upon the expiration of his leave or upon the revocation of his licence; or

(c) being absent from his school or reformatory under supervision, fails to return thereto upon being recalled;

may be apprehended without warrant, and may, any other enactment to the contrary notwithstanding, be brought before a court having jurisdiction where he is found or where the school or reformatory is situated; and that court may, notwithstanding any limitation contained in this Act upon the period during which he may be detained in an approved school or reformatory, order him to be taken back to his school or reformatory and to have the period of his detention therein increased by such period not exceeding six months as the court may direct.

(2) Where a person is, under subsection (1), taken back to a school or reformatory, the period of his detention shall, notwithstanding any limitations contained in this Act upon the period during which he may be detained in an approved school or reformatory, be increased, over and above any increase ordered by a court, by a period equal to the period during which he was unlawfully at large.

(3) If any person knowingly-

(a) assists or persistently attempts to induce or induces a juvenile to commit any such offence as is mentioned in subsection (1); or

(b) harbours and conceals a juvenile who has committed such an offence, or prevents him from returning;

he shall be liable to a fine not exceeding one thousand five hundred penalty units, or to imprisonment for any term not exceeding six months, or to both.

(As amended by Act No. 13 of 1994)

PART V

SUPPLEMENTAL

Financial Provisions

109. Where an order has been made by a court committing a juvenile to the care of a fit person, or sending him to an approved school, the following persons shall be liable to make contributions in respect of his maintenance, namely:

Contribution to be made by parents

(a) the father and mother of the juvenile so long only as the juvenile has not attained the age of sixteen years; and no payment shall be required to be made by the father or mother of a juvenile under any order made under the provisions of the next following section after the juvenile has attained the age of sixteen years;

(b) a juvenile who has attained the age of sixteen years and is engaged in remunerative work shall be liable to make contributions in respect of himself.

110. (1) Where an order has been made by a court committing a juvenile to the care of a fit person or sending him to an approved school, the court which makes it may at the same time, and any subordinate court having jurisdiction in the place where the person to be charged is for the time being residing may subsequently at any time, make an order (hereinafter referred to as a "contribution order") on any person who is, under the last preceding section, liable to make contributions in respect of the juvenile, requiring him to contribute such sums as the court having regard to his means thinks fit, and any court as aforesaid may from time to time vary or revoke such order.

(2) A contribution order may be made on the application of the person to whose care the juvenile is committed or who is named in the approved school order, and either at the time the committal order is made or subsequently, and the sums contributed shall be paid to such person as the court may name and be applied for the maintenance of the juvenile.

(3) A contribution order shall remain in force, in the case of a juvenile committed to the care of a fit person, so long as the order for his committal is in force, and in the case of a juvenile ordered to be sent to an approved school, until he ceases to be under the care of the managers of such a school:

Provided that no contribution shall be payable under a contribution order in respect of any period during which a juvenile ordered to be sent to an approved school is out on licence or under supervision from such school.

(4) A contribution order shall be enforceable as an affiliation order and any enactments relating to the enforcement of affiliation orders shall apply accordingly, subject to any necessary modifications.

(5) A person on whom a contribution order is made shall, if he changes his address, forthwith give notice thereof to the person who was, immediately before the change, entitled to receive the contributions, and if he fails to do so he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred and fifty penalty units.

(As amended by Act No. 13 of 1994)

111. (1) Where a juvenile who is ordered by a court to be committed to the care of a fit person or to be sent to an approved school is illegitimate, and an affiliation order for his maintenance is in force, that court may at the same time, and any subordinate court having jurisdiction in the place where the putative father is for the time being residing may subsequently at any time, order the payments under the affiliation order to be paid to the person who is from time to time entitled to receive payments under a contribution order in respect of the juvenile. Applications for orders under this subsection may be made by the persons by whom, and in the circumstances in which, applications for contribution orders may be made.

(2) Where an order made under this section with respect to an affiliation order is in force-

(a) any powers conferred by any enactment upon subordinate courts, relating to the enforcement of affiliation orders, shall as respects the affiliation order in question be exercisable, and exercisable only, by courts having jurisdiction in the place where the person liable is for the time being residing;

(b) any sums received under the affiliation order shall be applied in like manner as if they were contributions received under a contribution order;

(c) if the putative father changes his address, he shall forthwith give notice thereof to the person who was immediately before the change entitled to receive payments under the order and, if he fails so to do, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred and fifty penalty units.

(3) The making of an order under this section with respect to an affiliation order shall not extend the duration of that order, and that order shall not in any case remain in force (except for the recovery of arrears)-

(a) in the case of a juvenile committed to the care of a fit person, after the order for his committal has ceased to be in force;

(b) in the case of a juvenile ordered to be sent to an approved school, after he has been released from his school, either absolutely or on licence:

Provided that, where an affiliation order would, but for the provisions of this subsection have continued in force, the mother, or any person entitled to make application for an affiliation order, may apply to a subordinate court having jurisdiction where she is for the time being residing, for an order that the affiliation order may be revived and that payments thereunder may until the expiration thereof be made to the applicant.

(As amended by Act No. 13 of 1994)

112. (1) Where a juvenile is by an order of any court made under this Act removed from the care of any person, and that person is entitled under any trust to receive any sum of money in respect of the maintenance of the juvenile, the court may order the whole or any part of the sum so payable under the trust to be paid to any person the court may name, to be applied for the benefit of the juvenile in such manner as, having regard to the terms of the trust, the court may decide.

Variation of trusts
for maintenance of
juvenile

(2) An appeal shall lie from an order of a subordinate court made under this section to the High Court.

113. The maintenance of juveniles detained in places of safety or committed to the care of fit persons may, to the extent that funds from other sources are inadequate for the purpose, be defrayed out of such sums as may from time to time be appropriated for the purpose by Parliament and placed at the disposal of the Commissioner for Juvenile Welfare:

Grants-in-aid

Provided that such grants-in-aid shall be subject to such conditions as may be laid down by the Commissioner for Juvenile Welfare.

Removal of Persons out of Zambia

114. (1) It shall be lawful for the President to enter into any agreement with the Government of any scheduled territory, on such terms and conditions as he may think fit, for the reception into the scheduled territory and the detention in any reformatory, approved school or other institution therein of any person who has been ordered by a court under the provisions of this Act to be detained in a reformatory, approved school or other institution.

Power to enter into
agreements

(2) The agreement set forth in the Third Schedule shall be deemed to have been lawfully entered into under the powers conferred by this section.

(As amended by No. 53 of 1963, G.N. No. 276 of 1964 and S.I. No. 63 of 1964)

115. (1) Any person who has been ordered under the provisions of this Act to be detained in a reformatory, approved school or other institution may, while still subject to such order, by warrant signed by the President, be removed in custody into any of the scheduled territories in order that he may be detained in any reformatory, approved school or other institution therein in accordance with the law in force in the scheduled territory authorising such detention until the expiration of the order or until he is sooner released according to law.

Removal of persons out of Zambia

(2) No person shall be removed in custody in a scheduled territory under this section unless the original warrant of committal accompanies him.

(3) Any person in course of removal under a warrant signed under this section shall be deemed to be in lawful custody.

(As amended by G.N. No. 276 of 1964 and S.I. No. 63 of 1964)

116. Any person who has been ordered by a court under the provisions of this Act to be detained in a reformatory, approved school or other institution shall, pending his removal to any such reformatory, school or institution in a scheduled territory, be detained in such place and in the custody of such person as the Minister may direct and subject to such conditions as the Minister may prescribe.

Detention pending removal

117. Nothing contained in this Act shall prevent the finding and orders of a court in respect of any person removed hereunder into lawful custody in a scheduled territory from being questioned within Zambia in the same manner as if he had not been so removed, and the order for detention of any such person may be remitted or his discharge ordered in the same manner and by the same authority as if he had not been so removed.

Appeals after removal

Provisions in Relation to Court Proceedings in which Juveniles are Involved

118. (1) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a juvenile, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order of judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated or estimated by the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person and, where it appears to the court that the person so brought before it has attained the age of nineteen years, that person shall, for the purposes of this Act, be deemed not to be a juvenile.

Presumption and determination of age

(2) Where, in any charge or indictment for any offence under this Act, or for any scheduled offence, it is alleged that the person by or in respect of whom the offence was committed was a juvenile or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a juvenile, or to have been under or to have attained the specified age, as the case may be, he shall, for the purposes of this Act, be presumed at that date to have been a juvenile or to have been under or to have attained the specified age, as the case may be, unless the contrary is proved.

(3) Where a person is charged with an offence under this Act in respect of a person apparently under a specified age, it shall be a defence to prove that the person in respect of whom the offence is alleged to have been committed was actually of or over that age.

119. (1) A juvenile court shall sit in a room other than that in which any courts other than juvenile courts ordinarily sit, unless no such other room is available or suitable, and if no such room is available or suitable, the juvenile court shall sit on different days or at different times from those on or at which ordinary sittings are held.

Sittings of juvenile courts

(2) No person shall be present at any sitting of a juvenile court, or at any sitting of the High Court when hearing charges against a juvenile not

jointly charged with a person who is not a juvenile, except-

- (a) members and officers of the court;
- (b) parties to the case, their legal advisers, and witnesses and other persons directly concerned in that case;
- (c) *bona fide* representatives of newspapers and news agencies;
- (d) such other persons as the court may specifically authorise to be present.

120. No child (other than an infant in arms) shall be permitted to be present in court during the trial of any other person charged with an offence, or during any proceedings preliminary thereto, except during such time as his presence is required as a witness or otherwise for the purposes of justice; and any child present in court when under this section he is not permitted to be so shall be ordered to be removed.

Children not allowed in court

121. (1) Where, in any proceedings in relation to any offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court, is a juvenile is called as a witness, the court may direct that all or any persons, not being members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of the juvenile:

Power to clear court

Provided that nothing in this section shall authorise the exclusion of *bona fide* representatives of a newspaper or news agency.

(2) The powers conferred on a court by this section shall be in addition and without prejudice to any other powers of the court to hear proceedings *in camera*.

122. (1) Where, in any proceedings against any person for any offence or in any civil proceedings, any child of tender years called as a witness does not, in the opinion of the court, understand the nature of an oath, his evidence may be received though not on oath, if, in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth; and his

Evidence of a child of tender years

evidence though not given on oath but otherwise taken and reduced into writing so as to comply with the requirements of any law in force for the time being, shall be deemed to be a deposition within the meaning of any law so in force:

Provided that where evidence admitted by virtue of this section is given on behalf of the prosecution, the accused shall not be liable to be convicted of the offence unless that evidence is corroborated by some other material evidence in support thereof implicating him.

(2) If any child whose evidence is received as aforesaid wilfully gives false evidence in such circumstances that he would, if the evidence had been given on oath, have been guilty of perjury, he shall be liable on conviction to be dealt with as if he had been convicted of an offence punishable in the case of an adult with imprisonment.

123. (1) In relation to any proceedings in any court-

Prohibition of
publication of
certain matters

(a) no newspaper report or wireless broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any juvenile concerned in the proceedings, either as being the person against or in respect of whom the proceedings are taken, or as being a witness therein;

(b) no picture shall be published in any manner as being or including a picture of any juvenile so concerned in the proceedings as aforesaid:

Provided that the court or the Minister may in any case, if satisfied that it is in the interests of justice so to do, by order dispense with the requirements of this subsection to such extent as may be specified in the order.

(2) Any person who publishes or broadcasts by wireless any matter in contravention of any such direction shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand five hundred penalty units in respect of each offence.

(As amended by G.N. No. 276 of 1964 and Act No. [sn]13 of 1994)

124. Where, in any proceedings with relation to any scheduled offence, the court is satisfied that the attendance before the court of any juvenile in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the juvenile.

Power to proceed with case in absence of juvenile

125. (1) Where a magistrate is satisfied by the evidence of a duly qualified medical practitioner that the attendance before a court of any juvenile in respect of whom any scheduled offence is alleged to have been committed would involve serious danger to his life or health, the magistrate may take in writing the deposition of the juvenile on oath, and shall thereupon subscribe the deposition and add thereto a statement of his reason for taking it and of the date when and the place where it was taken, and of the names of the persons (if any) present at the taking thereof.

Extension of power to take depositions

(2) The magistrate taking any such deposition shall transmit it with his statement-

(a) if the deposition relates to an offence for which any accused person is already committed for trial, to the proper officer of the court for trial at which the accused person has been committed; and

(b) in any other case, to the clerk of the court before which proceedings are pending in respect of the offence.

126. Where, in any proceedings in respect of any scheduled offence, the court is satisfied by the evidence of a duly qualified medical practitioner that the attendance before the court of any juvenile in respect of whom the offence is alleged to have been committed would involve serious danger to his life or health, any deposition of the juvenile taken under the Criminal Procedure Code or under this Part shall be admissible in evidence either for or against the accused person without further proof thereof if it purports to be signed by the magistrate by or before whom it purports to be taken:

Admission of deposition of juvenile
Cap. 88

Provided that the deposition shall not be admissible in evidence against the accused person unless it is proved that reasonable notice of the intention to take the deposition has been given to him or that it was taken in the presence of the accused person and that he or his advocate had

opportunity of cross-examining the juvenile making the deposition.

127. (1) Where a juvenile is charged with any offence, or is for any other reason brought before a court, his parent or guardian may in any case, and shall if he can be found and resides within a reasonable distance, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.

Attendance in
court of parent of
juvenile

(2) Where a juvenile is arrested or taken to a place of safety, the police officer by whom he is arrested or in charge of the police station to which he is brought, or the person by whom he is taken to the place of safety, as the case may be, shall cause the parent or guardian of the juvenile, if he can be found, to be warned to attend at the court before which the juvenile will appear.

(3) If any parent or guardian who has been required to attend as aforesaid, having received reasonable notice of the time and place at which he is required to attend, fails to attend accordingly, and does not excuse his failure to the satisfaction of the court, he shall be liable to a fine not exceeding three hundred penalty units.

(4) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the juvenile:

Provided that if that person is not the father, the attendance of the father may also be required.

(5) The attendance of the parent of a juvenile shall not be required under this section in any case where the juvenile was, before the institution of the proceedings, removed from the custody or charge of his parent by order of a court.

(As amended by Act No. 13 of 1994)

PART VI

MISCELLANEOUS

128. In any proceedings against any person for any scheduled offence, the husband or wife of the person charged shall be a competent witness for the prosecution or defence without the consent of such person.

Evidence of husband or wife of accused person

129. In any proceedings under this Act, a copy of an entry in the wages book of any employer of labour or, if no wages book be kept, a written statement signed by the employer or a responsible person in his employ, shall be evidence that the wages therein entered or stated as having been paid to any person have in fact been so paid.

Evidence of wages

130. (1) Appeals may be brought, in manner provided by Part V of the Subordinate Courts Act, by the following persons in the following cases, that is to say:

Appeals
Cap. 28

(a) in the case of an order committing a juvenile to the care of a fit person, requiring a juvenile to be sent to an approved school, or placing a juvenile under the supervision of a probation officer or other person, by the juvenile or his parent or guardian on his behalf;

(b) in the case of an order requiring a person to enter into a recognizance to exercise proper care and guardianship over a juvenile, by the person required to enter into the recognizance;

(c) in the case of an order requiring all or any part of the payments accruing due under an affiliation order to be paid to some other person, by the person who but for the order would be entitled to the payments;

(d) in the case of a contribution order, by the person required to contribute.

(2) Nothing in this section shall be construed as affecting the rights of appeal conferred by sections *sixty-seven* and *one hundred and twelve*, or any other right of appeal conferred by this or any other Act.

131. A document purporting to be a copy of-

Provisions as to documents, etc.

(a) an order made by a court under or by virtue of any of the provisions of this Act; or

(b) an affiliation order referred to in an order under section *one*

hundred and eleven;

shall, if it purports to be certified as a true copy by the clerk of the court by which such order was made, be evidence of such order.

132. The President may, by statutory notice, alter, amend or add to the Second Schedule. Power to amend Second Schedule

(As amended by No. 53 of 1963, G.N. No. 276 of 1964 and S.I. No. 63 of 1964)

133. The Minister may, by statutory instrument, make regulations prescribing anything to be prescribed under this Act. Regulations

(As amended by No. 53 of 1963 and G.N. No. 276 of 1964)

134. (1) Reference in any Act or document to juvenile courts under the Juvenile Offenders Act, Chapter 8 of the 1950 Edition of the Laws, or the Juveniles Act, Chapter 8 of the 1956 Edition of the Laws, shall be construed as including reference to such courts under this Act. Transitional provisions

(2) Any order or warrant made or issued whether by virtue of the Juvenile Offenders Act, Chapter 8 of the 1950 Edition of the Laws, or the Juveniles Act, Chapter 8 of the 1956 Edition of the Laws, shall be deemed to have been made under and by virtue of this Act.

135. The Juveniles Act, Chapter 8 of the 1956 Edition of the Laws, is hereby repealed: Repeal and saving

Provided that all orders and warrants made or issued under the said Act shall remain in force and be enforced in accordance with the terms thereof.

FIRST SCHEDULE

(Sections 2, 9, 13, 16, 44, 120, 125, 126 and 128)

OFFENCES AGAINST JUVENILES TO WHICH SPECIAL PROVISIONS OF THIS ACT APPLY

The murder or manslaughter of a juvenile;

Cap. 87

Infanticide;

Cap. 87

Cap. 89

Any offence against section 136 or 171 of the Penal Code;

Any offence against a juvenile under section 137, 155, 156, 157, 158, 159, 199, 247 or 248 of the Penal Code;

Any offence under section 46, 47, 48, 50 or 54 of this Act;

Any offence under section 8 of the Suicide Act where the person who killed himself is a juvenile;

Any other offence involving bodily injury to a juvenile.

(As amended by No. 1 of 1967)

SECOND SCHEDULE

(Sections 2, 75, 115, 116, 117 and 132)

SCHEDULED TERRITORIES

Botswana.

Malawi.

South Africa.

Zimbabwe.

(As amended by S.I. No. 63 of 1964)

THIRD SCHEDULE

(Section 114)

AGREEMENT WITH THE UNION

Agreement under Section 14 of the Prisons and Reformatories Act No. 46 of 1920

WHEREAS it appears that provision has been made by section *fourteen* of the Prisons and Reformatories Act Amendment Act No. 46 of 1920, authorising the Governor-General of the Union of South Africa to enter into an agreement with the Officer administering the Government of any territory in South Africa south of the Equator (being a portion of the British Dominions or a Territory under the Protection of the Crown), for the purposes specified in the said section;

AND WHEREAS the Administrator of Northern Rhodesia desires to enter into such an agreement as aforesaid;

AND WHEREAS the Officer administering the Government of the Union of South Africa has consented thereto;

NOW, THEREFORE, it is hereby agreed between the Officer administering the Government of the Union of South Africa, and the Administrator of Northern Rhodesia that, subject to the provisions of the said Act, and to conditions hereinafter appearing, an arrangement shall exist-

(a) for the reception in the Union and detention in any prison or gaol therein of any person sentenced by a competent court of Northern Rhodesia according to law in force therein to imprisonment with or without hard labour; and

(b) for the reception in the Union and detention in any juvenile reformatory or juvenile adult reformatory therein of any person who, being an juvenile or juvenile adult, has been ordered by a competent court of Northern Rhodesia according to law in force therein to be detained in a juvenile or juvenile adult reformatory.

And the Officer administering the Government of the Union of South Africa, and the Administrator of Northern Rhodesia hereby agree on behalf of the Union Government and the Northern Rhodesia Administration, respectively, that when accommodation is available, and the Union Government has agreed to accept any prisoner or juvenile, there shall be paid by the Administrator of Northern Rhodesia to the Union Government in respect of each prisoner or juvenile the sum of three shillings per head per day, or such other amount as may be mutually agreed upon between the Administration and the Prisons Department of the Union of South Africa, and that the Union Government shall be entitled to a refund of any expenses incurred by the latter Department in returning such persons to their homes on discharge from custody.

This Agreement shall take effect as provided by law on the publication of a summary of the terms thereof in the *Gazette* of the Union of South Africa, and shall be terminated on three months' notice being given by either of the parties to the Agreement.

Given under my Hand and the Great Seal of the Union of South Africa, at Pretoria this 5th day of November, One Thousand Nine Hundred and Twenty.

J. ROSE INNES,
Officer administering the Government.

Given under my Hand and Seal at Livingstone this 17th day of

November, One Thousand Nine Hundred and Twenty.

HUGH C. MARSHALL,
Acting Administrator.

SUBSIDIARY LEGISLATION

JUVENILES

CAP. 53

SECTION 1-APPLICATION Order by the Minister

Government
Notices
116 of 1956
497 of 1964

The provisions of the Act are hereby applied to the whole of Zambia with the exception of sections thirty-two to forty-two inclusive which do not apply to the Western Province nor to any area situated in a reserve or in trust land as defined in the Zambia (State Lands and Reserves) Orders, 1928 to 1964, and the Zambia (Trust Land) Orders, 1947 to 1964.

App. 9

SECTION 3-APPROVAL OF SOCIETY Notice by the Minister

Government
Notice
93 of 1961

The Management Committee of the Zambia Guild of St. Joseph's Home is hereby approved as an approved society.

SECTION 7-AUTHORISATIONS

Notices by the Commissioner for Juvenile Welfare

Government
Notice
1943 of 1961

The person for the time being holding the office of Chief Social Welfare Officer or Senior Social Welfare Officer, being a juveniles inspector, is hereby authorised to exercise or perform the powers and duties entrusted to the Commissioner for Juvenile Welfare under the provisions of the sections of the Act listed below:

Sections 3(4), 4, 19(2), 22(3), 23(a), 23(b), 28, 34, 57, 83, 84, 87 and 88.

The persons for the time being holding the offices of Senior Social Welfare Officer, being juveniles inspectors, are hereby authorised to exercise or perform the powers and duties entrusted to the Commissioner for Juvenile Welfare under the provisions of the section of the Act listed below:

General Notice
185 of 1963

Section 22(2).

SECTION 53-EXEMPTION FROM PROVISIONS Order by the Minister

Government
Notice
119 of 1956

Any school entertainment approved by the Minister responsible for education is hereby exempted from the provisions of section *fifty-three* of the Act.

SECTION 75-APPROVED SCHOOLS Notices by the Minister

Government
Notices
240 of 1961

363 of 1963

Nakupota Training Centre, Ndola, and Nakambala Training School, Mazabuka, are hereby established as approved schools.

Lowden Lodge, Umtali, and Mount Hampden Training School, near Harare, are hereby approved as approved schools.

General Notice
1973 of 1960

THE APPROVED SCHOOLS RULES

ARRANGEMENT OF RULES

Rule

1. Title
2. Interpretation
3. Accommodation
4. Duties and responsibilities of Principal

5. Visiting committee
6. Care of pupils
7. Daily routine
8. Education and training
9. Employment
10. Religious instruction
11. Recreation, letters and visits
12. Discipline and punishment
13. Release on licence
14. After care
15. Medical care
16. Records
17. Promulgation of Rules
18. Inspection

**SECTION 90-THE APPROVED SCHOOLS RULES
Rules by the Minister**

Government
Notice
417 of 1962
Statutory
Instrument
63 of 1964

1. These Rules may be cited as the Approved Schools Rules.

Title

2. In these Rules, unless the context otherwise requires-

Interpretation

"Commissioner" means the Commissioner for Juvenile Welfare or his duly authorised agent;

"Principal" means the person appointed by the Commissioner to manage an approved school;

"pupil" means a juvenile sent to an approved school in pursuance of an approved school order;

"school" means an approved school established by the Minister under subsection (1) of section *seventy-five* of the Act;

"visiting committee" means the persons appointed by the Commissioner under rule 5 (1).

(As amended by S.I. No. 63 of 1964)

3. The number of pupils accommodated in a school shall not exceed such number as may be fixed for that school from time to time by the Commissioner.

Accommodation

4. (1) The Principal of a school shall be responsible to the Commissioner for the efficient conduct of the school.

Duties and responsibilities of Principal

(2) The Principal shall keep-

(a) a register of admissions and discharges in which shall be recorded all admissions, licences, revocation of licences, recalls, releases and discharges;

(b) a log book in which shall be entered every event of importance connected with the school;

(c) a daily register of the presence or absence of each pupil; and

(d) a punishment book.

(3) The Principal shall determine the duties of the members of the staff. These shall include duties connected with the supervision of the pupils in the school, their recreation and their after care, and a list of such duties shall be made available to every staff member.

(4) When the Principal of a school is absent from the school, the Commissioner may appoint a member of the staff to perform the duties and exercise the powers of the Principal during his absence.

(5) As soon as practicable after the admission of a pupil, the Principal shall notify that pupil's parent or guardian of his whereabouts if such parent or guardian can be traced.

5. (1) The Commissioner shall appoint at least four persons to be members of a visiting committee. Such persons shall reside within a reasonable distance of the school and shall act in an advisory capacity to the Principal in respect of the matters described in sub-rule (3).

Visiting committee

(2) The committee shall meet at the school at least monthly.

(3) It shall be the duty of the visiting committee to satisfy themselves that the conditions of the school and the training, welfare and education of the pupils under their care are satisfactory and in this respect members of the committee may inspect the premises, books, and records of the school and consult with the Principal on any matter regarding the administration of the school, or any matter contained in these Rules and require him, if necessary, to transmit their views to the Commissioner. On such a requirement being made, the Principal shall transmit the views of the committee to the Commissioner as soon thereafter as may be reasonably practicable.

(4) Any pupil shall have the right of personal access to the visiting committee, the Principal, the Senior Social Welfare Officer for the Province and the Commissioner.

(5) A record of all proceedings of meetings of the visiting committee shall be kept by the secretary who shall be appointed by the Commissioner.

6. (1) Each pupil shall be provided with a separate bed and shall be kept supplied with suitable bed clothing.

Care of pupils

(2) The pupils shall be supplied with sufficient and varied food based on a dietary scale approved by the Commissioner after consultation with the Director of Medical Services. A copy of the dietary scale shall be kept posted in the school kitchen.

(3) Pupils shall be issued with suitable articles of clothing which shall remain the property of the Government:

Provided that a pupil may on his release be issued with essential articles of clothing free of charge.

7. (1) The daily routine of the school (including the hours of rising, schoolroom instruction and practical physical training, domestic work, meals, recreation and retiring) shall be in accordance with a scheme approved by the Commissioner. Daily routine

(2) A copy of the daily routine shall be kept posted in some conspicuous place in the school.

(3) Any substantial deviation from the daily routine shall be entered in the log book.

8. (1) Lower primary education shall be afforded to all pupils in a school and further education may be provided for individual pupils according to their age, aptitude and capability. Education and training

(2) The schoolroom time-table and syllabus shall be subject to the approval of the Commissioner and a copy of the time-table shall be kept posted in the schoolroom.

(3) All pupils shall be given vocational training in accordance with a scheme approved from time to time by the Commissioner. Any substantial deviation from the scheme shall be recorded in the log book.

(4) The attendance of pupils in the schoolroom and at all periods of vocational training shall be recorded in the manner prescribed by the Commissioner.

9. Pupils may be employed in performing such tasks as the Principal may from time to time prescribe, subject to their need for education, instruction, recreation and leisure. Pupils under twelve years shall not be employed except on light work. Employment

10. Where a pupil is of a particular religious persuasion, arrangements shall be made as far as practicable for him to receive religious assistance Religious instruction

and instruction from a minister of religion of the church to which he belongs.

11. (1) Pupils shall be encouraged to write to their parents or guardians at least once a month. Letters written by pupils shall be despatched at public expense in a plain envelope. Recreation letters and visits

(2) Pupils may be allowed visits from their parents, relatives and friends at such intervals and on such days and at such times as the Principal may determine.

(3) Arrangements may be made for providing pupils with pocket money each week, subject to such conditions as may be prescribed by the Commissioner.

(4) The Principal may suspend any of the facilities and privileges mentioned in this rule if he is satisfied that they interfere with the discipline of the school; any such suspension shall be recorded in the log book.

12 (1) The Principal may introduce any system approved by the Commissioner which will encourage good conduct and industry and will facilitate the reformatory treatment of the pupils. Discipline and punishment

(2) When punishment is necessary for the maintenance of discipline, the Principal in his discretion may adopt one of the following sanctions:

(a) the forfeiture of privileges under rule 11;

(b) separation from other pupils;

Provided that this punishment shall only be used in exceptional cases and subject to the following conditions:

(i) no pupil under the age of twelve years shall be kept in separation;

(ii) the room used for the purpose shall be light and airy and kept lighted after dark;

(iii) some form of occupation shall be given;

(iv) means of communication with a member of the staff shall be provided;

(v) if the separation is to be continued for more than twenty-four hours, it shall be reported immediately to the Commissioner;

(c) corporal punishment. Every effort shall be made to enforce discipline without resort to corporal punishment which may be used only as a last resort. Where it is found necessary, its application shall be in strict accordance with sub-rule (3).

(3) Corporal punishment shall be subject to the following conditions:

(a) it shall be inflicted only with a type of cane approved by the Commissioner;

(b) if applied on the hands, the number of strokes shall not exceed three on each hand, but no boy over fifteen years shall be so punished;

(c) if applied on the posterior, it shall be over the boy's ordinary cloth trousers and the number of strokes shall not exceed six for boys under fifteen years and eight for boys of fifteen years and over:

Provided that in exceptional cases, with the special approval of the Commissioner, twelve strokes may be administered to boys of fifteen years and over;

(d) no boy with any physical or mental disability shall be punished without the sanction of the medical officer;

(e) no corporal punishment shall be inflicted except by the Principal (or during his absence by the officer appointed under rule 4 (4) to exercise the duties of the Principal);

(f) it shall not be inflicted in the presence of other boys;

(g) notwithstanding the provisions of paragraphs (e) and (f), for minor offences committed in the school-room by boys under fifteen years, the principal teacher may be authorised by the Principal to administer with a light cane, not more than two strokes on each hand. A book known as the school-room punishment book shall be kept and the

principal teacher shall at once enter therein a record of any corporal punishment inflicted by him under this paragraph.

(4) The Principal shall be responsible for the immediate recording of a punishment awarded in the punishment book which he is required to keep under rule 4 (2) and he shall enter therein such details as may be required by the Commissioner.

(5) The punishment book shall be examined at each meeting of the visiting committee and shall be signed by the chairman. It will also be shown to the Provincial Medical Officer on his request.

(6) No pupil shall be allowed to administer any form of punishment to any other pupil.

13. (1) It shall be the duty of the Principal to recommend placement on licence of each pupil as soon as the pupil has made sufficient progress in his training; and with this object in view, he shall review the progress made by each pupil and all the circumstances of the case (including home surroundings) towards the end of his first year in the school and thereafter as often as may be necessary and at least quarterly. Release on licence

(2) At each review the Principal, in consultation with the visiting committee, shall consider the date at which the pupil is likely to be fit to be placed on licence. The views of the visiting committee shall be transmitted, along with the Principal's report, to the Commissioner.

(3) Where there is reason to believe that a pupil can be placed on licence during the first twelve months of his detention, the case shall be reported by the Principal to the visiting committee and the same procedure followed as in sub-rule (2).

(4) The Principal shall maintain a licensing register in a form prescribed by the Commissioner showing the date and result of his review of each case and the reasons for his recommendation.

14. (1) The Principal shall see that every effort is made to obtain suitable employment for a pupil who is fit for release on licence, and for this purpose he shall avail himself where necessary of any help that can After care

be obtained, whether from public organisations or private individuals. When the pupil's home is unsatisfactory, he shall endeavour to place him in a hostel or other suitable lodging.

(2) The Principal shall provide every pupil on leaving with a sufficient outfit and, if necessary, a reasonable sum for travelling and subsistence.

(3) If the pupil is returning to the care of his parents, the Principal shall communicate with the pupil's parents or guardian beforehand, and make adequate arrangements for his transportation and reception.

15. (1) The Commissioner shall arrange for a medical officer to be appointed whose duties shall include Medical care

(a) a thorough examination of each pupil as soon as possible after admission and shortly before leaving the school:

(b) a quarterly inspection of each juvenile;

(c) a general inspection of the school from a hygienic point of view and advice as to dietary and general hygiene;

(d) the examination and treatment of all sick and ailing pupils;

(e) the keeping of medical records in respect of each pupil;

(f) the furnishing of such reports and certificates as the Commissioner may require.

(2) Notice of any meeting of the visiting committee shall be given to the medical officer so that he may have an opportunity of attending and presenting a report.

(3) The Principal shall report at once any death and any case of serious illness, infectious disease, or accident involving a pupil to the parent or guardian of the pupil and to the Commissioner.

(4) Any violent or sudden death of a pupil shall be notified immediately

by the Principal to the coroner of the District in which the death occurs. A report of the proceedings at any inquest shall be sent without delay to the Commissioner.

16. The Principal shall arrange for the keeping of all registers and records required by the Commissioner and shall cause to be sent to him such returns, statements and other information as may be required by him from time to time.

Records

17. The Principal shall cause a copy of these Rules to be given to each member of the staff and to the medical officer.

Promulgation of Rules

18. The Principal shall arrange that the school shall be open at all times to inspection by or on behalf of the Commissioner and he shall give all facilities for the examination of the books and records of the school.

Inspection

SECTION 91-ESTABLISHMENT OF REFORMATORIES Notices by the Minister

General Notice
1644 of 1953
Federal
Government
Notices
267 of 1957
22 of 1958
137 of 1958

Reformatory and receiving centre established at Katombora, Livingstone District.

Government prisons at Livingstone and Lusaka established as reformatories and receiving centres.

The prisons specified in the Schedule established as reformatories and the juvenile section within each of the said prisons as a receiving centre.

Federal Notices
512 of 1959
532 of 1962

SCHEDULE

Bwana Mkubwa Prison.

Chingola Prison.

Chipata Prison.
Kabwe Medium Security Prison.
Kasama Prison.
Kitwe Prison.
Mongu Prison.
Ndola Prison.

Detention camp at Kabwe established as reformatory.

Gazette Notice
1280 of 1966

SECTION 107-THE JUVENILES (REFORMATORY DIETARY SCALES) RULES

Statutory
Instrument
194 of 1965

Rules by the Minister

1. These Rules may be cited as the Juveniles (Reformatory Dietary Scales) Rules.

Title

2. In these Rules, unless the context otherwise requires-

Interpretation

"medical officer" means a medical officer appointed or nominated in terms of section *sixteen* of the Prisons Act;

Cap. 97

"officer in charge" means the person appointed to control and administer a reformatory in terms of section *ninety-six* of the Act.

3. Subject to the provisions of rule 4, a person detained in a reformatory shall be placed on the dietary scale as set out in the Schedule.

Dietary scale

4. (1) The officer in charge may, on the advice of the medical officer, increase, reduce or vary the dietary scale or substitute one item for another.

Variation of
dietary scale

(2) The officer in charge shall report to the Chief Inspector of Reformatories any increase, reduction, variation or substitution made by

him in terms of sub-rule (1) and shall enter details of such increase, reduction, variation or substitution in a book to be kept for the purpose.

(3) A person detained in a reformatory who is admitted to a civil hospital shall be placed on the appropriate hospital diet.

SCHEDULE

(Rule 3)

DIETARY SCALE

Daily Issues

Fresh Meat (less 25% bone)	141.75 g
OR Fresh Fish	
OR Dried Fish	
Maize Meal OR Millet Meal	
OR Rice (unpolished) (see Note 1)	
OR Bread (see Note 1)	
Protone Soup Powder	
OR Milk, non-fat	9.45 g
OR Milk Powder, non-fat	28.35 g
Bread . . . . .	.226.8 g
OR Porridge, Flour and Rice (see Note 2)	.226.8 g
Beans, Peas, Lentils or Dhal	42.62 g
AND Groundnuts	56.7 g
OR Cheese	28.35 g
Dripping . . . . .	.28.35 g
OR Margarine . . . . .	.28.35 g
OR Groundnut Cooking Oil	14.2 g
OR Red Palm Oil	3.6 g
Mixed Fresh Vegetables	170.1 g
OR Potatoes . . . . .	.226.8 g
AND Sweet Potatoes (when available) (see Note 4)	

	. . . . .	226.8 g
AND Pumpkin (when available)	. . . . .
		113.4 g
Mixed Fresh Fruit (in season).	. . . . .
		113.4 g
Cocoa OR Coffee OR Tea	. . . . .
		14.175 g
Sugar	. . . . .	21.5 g
Salt (iodised, if available)	. . . . .
		14.175 g
Chillies OR Peppers	. . . . .
		3.6 g

NOTES

1. Bread or rice may be substituted for maize or millet on the recommendation of the Medical Officer or the School Reception Board.
2. Where bread or rice is supplied in place of maize or millet meal, porridge, flour and rice the total weight of 226.8 g should be supplied.
3. Where bread is supplied in place of maize or millet meal, 56.7 g of cheese, syrup or jam may be substituted for 56.7 g of beans, peas, lentils, dhal or groundnuts.
4. Sweet potatoes should be of the yellow varieties, if possible, and, when unavailable, cereal meal should be augmented by 56.7 g per day.

GENERAL OBSERVATIONS

- (i) The above quantities are raw weights.
- (ii) Fish should not be used on more than two days per week.
- (iii) 113.4 g of meal may be substituted for 226.8 g of bread, where regular supplies of bread are not available.
- (iv) Protone Soup powder, where supplied, should be added to the water used for cooking vegetables or meat.
- (v) Vegetables include spinach, cabbage, tomatoes, kale, pumpkin, turnip, kohlrabi, lettuce, onions, beetroot, carrots, peas, beans, leeks.
- (vi) Rice may be included in the ration not more than twice a week and should be unpolished or par-boiled.
- (vii) Fruit includes lemons, limes, oranges, pawpaw, bananas, mangoes, guava, grenadillas, mulberries.
- (viii) Tea or coffee may be substituted for cocoa if necessary.

(ix) Expenditure may be incurred at such rates as the Minister may approve from time to time for the purposes of purchasing additional rations for issue on Christmas Day and on such other days as may be approved by the Minister.

THE REFORMATORY SCHOOLS RULES [ARRANGEMENT OF RULES]

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Statutory
Instrument
7 of 1965

Rules by the Minister

PART I

PRELIMINARY

1. These Rules may be cited as the Reformatory Schools Rules. Title
2. In these Rules, unless the context otherwise requires- Interpretation

"After Care Committee" means the persons forming the After Care Committee of the Reformatory Board under rule 105(1);

"Chief Inspector" means the Chief Inspector of Reformatories;

"housemaster" or "assistant housemaster" means the officers appointed to be housemasters or assistant housemasters of a reformatory school by the Chief Inspector;

"inmate" means any person detained in a reformatory school or receiving centre and includes any person granted leave of absence under section *ninety-nine* or licence under section *one hundred and four* of the Act;

"institution" means a reformatory school;

"matron", in relation to a reformatory school, means the officer appointed to be a matron of such school;

"officer" means any officer employed by or in the Zambia Prison Service and posted to the staff of a reformatory school;

"Reformatory Board" means the persons or body of persons appointed for the relevant year by the Minister under subsection (3) of section *ninety-five* of the Act;

"visiting justice" means Ministers of the Government of the Republic of Zambia and magistrates exercising jurisdiction in the area where a reformatory is situated;

"visitor" means any member of a Reformatory Board.

PART II

CONTROL AND ADMINISTRATION

3. (1) Every institution shall be under the control of the Chief Inspector. Control and administration

(2) The general charge and administration of a reformatory school shall be vested in the superintendent.

(3) The Chief Inspector, with the approval of the Minister, shall appoint for each institution a fit and proper person to be superintendent thereof and such number of housemasters, assistant housemasters and other officers as may be necessary.

PART III

ACCOMMODATION

4. A room or dormitory shall not be used for the confinement of inmates unless it is certified by the Chief Inspector, on the advice of a medical officer, to be of such a size and to be lighted, ventilated and fitted up in such a manner as may be requisited for health. If the certificate of any room or dormitory is cancelled, that room or dormitory shall not be used for the confinement of inmates, unless and until it is again certified. The certificate shall specify the maximum number of inmates to be located at any one time in such room or dormitory, and the number so specified shall not be exceeded. In special circumstances, with the authority of the Chief Inspector, inmates may be located in tents or other temporary accommodation. Accommodation

5. Inmates may be accommodated by night in rooms or dormitories with one, three or more than three inmates in each room or dormitory, and each inmate shall be provided with a separate bed. Accommodation by night
6. At every institution a proper place for the reception, accommodation and treatment of sick inmates shall be provided. Sick inmates
7. The institution and every room and part thereof shall be kept clean and every inmate shall keep his room, dormitory, utensils, books and other articles issued for his use and his clothing and bedding, clean and neatly arranged as may be directed and shall clean and sweep the yards, passages and other parts of the institution as may be ordered. Cleanliness
8. In every institution rooms shall from time to time be set aside for the confinement of inmates undergoing punishment for institution offences and shall be certified as fit to be used for such purposes by the medical officer. Confinement of inmates

PART IV

ADMISSION, DISCHARGE AND REMOVAL

9. (1) The superintendent shall, upon the delivery to him of an order for detention in a reformatory school, make all the necessary arrangements for the conveyance of the young person, named therein, to the institution. Admission
- (2) Every inmate shall be searched on admission and at such times subsequently as may be directed, and all unauthorised articles shall be taken from him. Manner of search
- (3) The searching of an inmate shall be conducted in as seemly a manner as is consistent with the necessity of discovering any concealed

article.

10. (1) All money, clothing or other effects belonging to an inmate, which he is not allowed to retain, shall be placed in the custody of the superintendent, who shall keep an inventory thereof, which shall be signed by the inmate. Inmate's property

(2) All articles of a perishable nature and all articles infected with vermin or otherwise likely to spread disease which are in possession of an inmate on admission shall be destroyed. Destruction of infected articles

(3) In any case where the clothes of an inmate are so old, worn out or dirty as to be useless, the superintendent shall order them to be destroyed and, in such case, on the release of the inmate, the superintendent shall issue replacement clothing of a suitable kind.

(4) Articles which in the opinion of the superintendent are too bulky for storage shall not be accepted into an institution. Bulky articles

(5) On discharge of an inmate, all articles of clothing and property shall be returned to him, unless they have been destroyed under this rule.

(6) If any inmate is discharged from an institution and fails to claim his property within six months from his discharge, or if any inmate dies in the institution and his personal representative or relatives do not claim his property within six months of his death, the superintendent may, if in his opinion such property is of no substantial value, destroy it, or if he considers it possible to sell it, he shall sell it and devote the proceeds to the welfare of the inmates in the institution generally. Unclaimed property

11. The name, age, height, weight, particular marks and such other measurements and particulars as may be required, in regard to an inmate, shall, upon his admission, and from time to time, be recorded in such manner as may be directed. Medical examination of inmates

12. Every inmate shall, on the day of his reception or as soon as possible after his admission, be separately examined by the medical officer. Particulars of inmates

- 13.** Every inmate shall be given a bath on reception, and thereafter daily, unless it is otherwise directed, in any particular case, by the superintendent or medical officer. Baths
- 14.** If the inmate is found to have any infectious or contagious disease or to be in a verminous condition, steps shall be taken to treat the condition and to prevent it from spreading to other inmates. Infectious or contagious disease
- 15.** The superintendent shall see every inmate on reception and explain to him the rules of the institution. In every room and dormitory there shall be provided sufficient information as to the rules concerning the disciplinary requirements of the institution, to earnings and gratuities and privileges and to the proper methods of submitting applications and of making complaints as to food, clothing, bedding and other necessities. Interview and information to inmates
- 16.** (1) The superintendent shall, personally or through another officer, ensure that as soon as possible after admission into an institution, and in any case within twenty-four hours, every inmate who can read understands the information so provided. Information to be understood
- (2) Where an inmate cannot read or has difficulty in understanding the information so provided, it shall be explained to him so that he may be aware of his rights and obligations.
- 17.** Every inmate shall be examined by the medical officer before being discharged, or removed to another institution. No inmate shall be removed to any other institution unless the medical officer certifies that he is fit for removal, and no inmate who is suffering from any acute or dangerous illness shall be discharged from the institution until, in the opinion of the medical officer, it is safe to do so or, his order having expired, he refuses to stay. Medical examination
- 18.** An inmate in close custody shall be exposed to public view as little as possible while being removed from or to an institution. Close custody
- 19.** Any inmate, for whose production at any place an order is issued, may, while outside the institution, be kept in the custody of the officers directed to convey him to that place. Production orders

PART V

PROHIBITED ARTICLES

- 20.** No inmate shall have in his possession any prohibited article, and any such article which may be found in the possession of an inmate may be confiscated by the superintendent. Possession of prohibited articles
- 21.** No person shall, without authority, convey or throw into, or deposit in, the institution, or convey or throw out of the institution, or deposit with a view to its coming into the possession of any such inmate, any money, clothing, food, drink, tobacco, letter, paper, book, tool, or other article whatsoever. Anything so conveyed, deposited or thrown without authority may be confiscated by the superintendent. Conveyance of prohibited articles
- 22.** All persons or vehicles entering or leaving the institution may be examined and searched, and any person suspected of bringing any prohibited article into the institution, or of carrying out any prohibited article or any property belonging to the institution, shall be stopped, and immediate notice thereof shall be given to the superintendent. Search of vehicles and persons entering or leaving
- 23.** No inmate shall be given or allowed to have any intoxicating liquor, except in pursuance of a written order of the medical officer specifying the quantity to be given and the name of the inmate for whose use it is intended. Liquor
- 24.** No inmate shall be allowed to smoke or to have in his possession any tobacco, except in accordance with such orders as may be given by the superintendent with the approval of the Chief Inspector. Tobacco

PART VI

CLOTHING AND BEDDING

25. Every inmate shall be provided with an outfit of clothing adequate for warmth and health in accordance with a scale approved by the Chief Inspector and shall wear such clothing and no other:

Clothing outfit

Provided that, with the authority of the Chief Inspector, other clothing may be worn in special circumstances or if recommended by the medical officer.

26. Every inmate shall be provided with bedding adequate for warmth and health in accordance with a scale approved by the Chief Inspector. Additional bedding may be authorised in special circumstances on the recommendation of the medical officer.

Bedding scale

27. Except as provided in rules 25 and 26, no inmate shall, without authority of the superintendent, receive or have in his possession any clothing, bedding or equipment in excess of the authorised allowance.

Excess prohibited

28. (1) The clothes of an inmate shall be changed and washed at least weekly and bedclothes shall be washed and aired as often as the superintendent directs.

Cleanliness of clothes and bedding

(2) The institution clothing and bedding left by an inmate on discharge shall be thoroughly washed, dried and disinfected before being reissued.

PART VII

FOOD

29. (1) Every inmate shall be entitled to a sufficient quantity of plain wholesome food, in accordance with the dietary scale set out in the Juveniles (Reformatory Dietary Scales) Rules.

Food

(2) A copy of the dietary scale shall be displayed in some conspicuous place in the institution.

(3) The diet of an inmate who persistently wastes his food may be reduced by the superintendent after obtaining the written advice of the medical officer. Waste of food

(4) An inmate ordered restricted diet shall have his ordinary diet replaced by the restricted diet set out in the First Schedule, unless the medical officer otherwise recommends. Restricted diet

30. No inmate shall receive or have in his possession any food other than the allowance authorised by the dietary scale except- Extra food

(a) with the authority of the superintendent; or

(b) with the authority of the medical officer, if a variation of diet is ordered on medical grounds.

31. An inmate who has any complaint to make regarding food supplied to him shall make it to the superintendent or other senior officer as soon as possible after the food has been served to him. Complaints about food

PART VIII

HEALTH AND CLEANINESS

32. Every inmate shall obey such directions as may from time to time be given to him as regards washing, bathing, shaving and haircutting. Personal hygiene

33. (1) Inmates, if medically fit, shall be exercised regularly at physical drill, games and gymnastics. Exercise

(2) Every inmate, unless excused by the medical officer on medical grounds, shall take such exercise as may be ordered.

(3) Subject to the directions of the Director of Medical Services, the medical officer may depute any of the functions or duties under this Part to any person who he considers is suitably qualified to carry out such duties and functions.

(4) At regular intervals and not less than once a month the weight of every inmate shall be taken and recorded in such manner as may be directed.

PART IX

EMPLOYMENT

34. (1) Every inmate shall be required to engage in useful work, all of which, so far as is practicable, shall be performed in association with other inmates, whether on the necessary services of the institution, or in workshops or on outdoor work; and shall be instructed, as far as possible, in useful occupations which may help him to earn his livelihood on discharge. Work

(2) No inmate shall be set to work unless he has been certified as fit for that type of work by the medical officer.

(3) Every inmate who has not been exempted by the medical officer shall be required to work at least forty hours a week and shall, in addition to work, attend educational classes as required.

(4) In every institution there shall be a scheme approved by the Minister under which inmates may receive payment for work done.

(5) (a) Inmates participating in the earnings scheme shall be classified in the following grades: Earnings scheme

Grade A-inmates who, in the opinion of the Chief Inspector, are of exemplary conduct and are skilled in their trade, or whose output and effort at work is exemplary, and inmates who are placed in a position of

trust and responsibility and are promoted to be prefects, house captains or school captain.

Grade B-inmates who, in the opinion of the superintendent, are of good conduct and are semi-skilled in their trade or whose output at work is above average.

Grade C-inmates who are eligible to participate in the earnings scheme but who are not in Grade A or Grade B.

(b) Promotion to Grade A shall be made by the Chief Inspector and promotion to Grades B and C by the superintendent.

35. (1) Except where the Chief Inspector otherwise directs, inmates shall not be required to do any work, other than keeping the institution clean and preparing food, on Sundays and public holidays.

Work on Sundays
and holidays

(2) The superintendent shall make special arrangements for the observation by inmates of religious and national festivals.

PART X

RELIGIOUS INSTRUCTION

36. Adequate arrangements shall be made for the provision of religious ministrations or instruction to inmates according to their religious beliefs.

Religious
ministrations

37. Every inmate shall, from the beginning of his training, be furnished with such religious books as are recognised for the faith to which he belongs, and are obtainable.

Religious books

PART XI

EDUCATION

38. (1) Provision shall be made for educational classes for the benefit of all inmates and every inmate shall attend such classes as may be directed by the superintendent. Classes

(2) A library of books for the use of the inmates shall be provided and every inmate shall be allowed to have not more than three library books in his room or dormitory at any one time and to exchange them as often as possible. Library books

(3) The superintendent may arrange for lectures, concerts and debates for inmates to take place outside the hours of work.

PART XII

VISITS AND COMMUNICATIONS

39. (1) Communications between inmates and other persons shall be allowed only in accordance with this rule, and the superintendent may restrict such communications still further if he thinks it necessary for the maintenance of discipline and order in the institution and the welfare of the inmates. Visits and letters

(2) Save as provided in sub-rule (3), visits and letters shall be governed by the following:

(a) on admission an inmate shall be entitled to write and receive one letter;

(b) an inmate shall be entitled to write one letter every week to persons approved by the superintendent and to receive letters as often as the superintendent considers desirable;

(c) an inmate shall be entitled to receive one visit of thirty minutes' duration every month from three persons on such conditions relating to visits as may be imposed by the superintendent.

(3) The superintendent may allow an inmate to write a special letter and to receive a reply or to receive a special visit at his discretion.

(4) The superintendent shall at any time communicate to an inmate, or to his relatives or friends, any matter which he thinks likely to be of importance to such inmate.

(5) The degree of supervision to be exercised during visits to inmates shall be within the discretion of the superintendent.

40. (1) The privilege of writing and receiving letters and receiving visits may, at the discretion of the superintendent, be postponed at any time in case of misconduct, but shall not be subject to forfeiture.

Postponement of privileges of letters and visits

(2) When an inmate who becomes entitled to a letter or visit is at the time undergoing punishment, the superintendent shall defer the privilege to a suitable time.

41. If an inmate who is dangerously ill desires to be visited by a near relative or friend, the superintendent may give an order in writing for the admission of that relative or friend.

Visits to sick inmates

42. (1) Reasonable facilities shall be allowed for the legal representative of an inmate to see him on any legal matter in the sight of but not in the hearing of an officer of the institution.

Inmate shall see legal representative

(2) For the purposes of this rule, "legal representative" shall include a legal representative's clerk.

43. Every letter to or from an inmate shall be read by the superintendent, or by an officer deputed by him for the purpose, and it shall be within the discretion of the superintendent to stop any letter, on the grounds that he considers its contents are objectionable or that it is of inordinate length.

Letters to be read

44. On production of an order from the proper police authority, a

Visits by police

police officer may visit, in the sight and hearing of an officer of the institution, any inmate who is willing to see such police officer. officers

45. An inmate may be released by order of the Chief Inspector on leave of absence on conditions and for reasons approved by the Chief Inspector, to be absent from the institution for a stated length of time. Should the inmate break any condition of his parole, while absent from the institution, he shall be liable to be dealt with as though he had been discharged on an ordinary licence and the licence had been revoked. Leave of absence

46. Where the Chief Inspector allows an inmate to be absent from the institution under section *ninety-nine* of the Act, he shall issue to the inmate a leave of absence in Form 1 in the Second Schedule. Leave of absence licence

PART XIII

OFFENCES AND PUNISHMENTS

47. An inmate who- Institution offences

(a) disobeys any order of the superintendent or of any other officer or any institution rule;

(b) is careless, idle or negligent at work or refuses to work;

(c) is indecent in language, act or gesture;

(d) escapes from the institution or from lawful custody;

(e) mutinies or incites other inmates to mutiny;

(f) commits an assault of any other inmate;

(g) commits personal violence against any officer or servant of the institution;

(h) leaves his room or dormitory or place of work or appointed place without permission;

(i) wilfully disfigures or damages any part of the institution or any property which is not his own;

(j) has in his possession any unauthorised articles, or attempts to obtain such articles;

(k) gives to or receives from any person any unauthorised article;

- (l) makes repeated and groundless complaints;
 - (m) in any way offends against good order and discipline;
 - (n) attempts to do any of the foregoing things; or
 - (o) aids and abets the doing of any of the foregoing things;
- shall be guilty of an institution offence.

48. No report against an inmate shall be dealt with by any officer of the institution except the superintendent, or, in his absence, the officer appointed to act for him.

Inquiry into offences

49. When an inmate has been reported for an offence, the superintendent may order him to be kept apart from other inmates, pending adjudication.

Isolation pending adjudication

50. An inmate shall, before a report is dealt with, be informed of the offence for which he has been reported and shall be given an opportunity of hearing the facts alleged against him and of being heard in his defence.

Inmate to be informed

51. Every offence against discipline shall be reported forthwith, and the superintendent shall investigate such reports not later than the following day, unless that day be a weekly or public holiday.

Investigation into reports

52. (1) A charge against an inmate in respect of an alleged offence against discipline may be heard and determined within an institution by the superintendent, by a visiting justice or a senior officer of the Zambia Prison Service appointed by the Chief Inspector.

Hearing of charge

(2) If the superintendent, visiting justice or senior officer of the Zambia Prison Service finds an inmate guilty of an offence against discipline, he may make one or more of the following awards:

Awards

- (a) Removal from house to penal grade.
- (b) Deprivation of any of the following privileges for a period not exceeding one month:
 - (i) Association.

- (ii) Recreation and games.
- (iii) Earnings.
- (c) Extra work or fatigues outside normal labour hours for not more than two hours a day and for a period not exceeding one month.
- (d) A fine not exceeding the equivalent of one month's earnings.
- (e) Reduction in stage or delay in promotion to a higher stage or reduction in earnings grade for a period not exceeding three months.
- (f) Confinement to a room for a period not exceeding three days.
- (g) Restricted diet, as laid down in the First Schedule, for a period not exceeding three days.

53. Where an inmate is reported for any of the following offences, viz: Serious offences

- (i) mutiny or incitement to mutiny;
- (ii) gross personal violence to any officer or servant of the institution or any other inmates;
- (iii) escaping from the institution or from legal custody;
- (iv) any serious or repeated offence against discipline for which such award as the superintendent is authorised to make is deemed by him insufficient;
- (v) any offence upon which the superintendent, having regard to the circumstances of the case, thinks it expedient that a visiting justice or senior officer of the Zambia Prison Service appointed by the Chief Inspector should adjudicate;

the superintendent may forthwith report the offence to a visiting justice or the Chief Inspector who shall thereupon arrange to inquire into the report, and if an inmate is found guilty, the visiting justice or senior officer of the Zambia Prison Service may make one or more of the following awards:

- (a) Any award authorised under rule 52 (2). Awards
- (b) Deprivation of privileges.

- (c) Loss of stage or grade.
- (d) Removal from the earnings scheme.
- (e) A fine not exceeding three months' earnings.
- (f) Confinement in a room not exceeding fourteen days.
- (g) Restricted diet not exceeding fifteen days.
- (h) Whipping with a light cane not exceeding ten strokes.

54. A record shall be kept in every institution of the charge against any inmate, the evidence supporting the charge, the decision of the superintendent, visiting justice or senior officer appointed by the Chief Inspector, and the punishment awarded. A special book kept for the purpose shall be used to record any award of corporal punishment, the date of infliction and the number of strokes inflicted.

Record of punishments

55. (1) Any disciplinary award may be remitted or reduced by the Chief Inspector.

Remission and reduction of awards

(2) A disciplinary award may be determined at any time during the currency thereof by the superintendent.

56. Confinement in a room, corporal punishment or restricted diet shall in no case be awarded unless the medical officer has certified that the inmate is in a fit condition of health to sustain it.

Medical examination of inmates

57. (1) Every inmate undergoing confinement in a room shall be visited at least once a day by the superintendent, and any inmates confined to a room shall be visited by the appointed officer at intervals of not more than one hour during the day and night.

Visits to inmates under confinement

(2) Every inmate undergoing confinement in a room shall be taken for exercise each day for one hour in the morning and one hour in the afternoon.

58. (1) Before an inmate is ordered to undergo caning with a light cane in respect of any of the offences set out in rule 53, the case shall be adjourned without announcing the punishment which shall be submitted for approval to the Chief Inspector who, if the award exceeds five strokes, shall submit the case to the Minister for confirmation.

Confirmation of
caning

(2) The award shall be reviewed in the shortest possible time and, if confirmed, the superintendent shall announce the punishment and arrange for it to be carried out without undue delay.

(3) If the award is not confirmed, the adjudicating officer or the Minister or Chief Inspector, as the case may be, may substitute any other punishment as prescribed in rule 53.

(4) Caning shall be inflicted with a light cane not more than 835mm long and not more than 9.38 mm thick.

59. (1) All caning within the institution shall be attended by the superintendent and the medical officer.

Caning

(2) The medical officer shall, immediately before corporal punishment is inflicted, examine the inmate and satisfy himself that the inmate is fit to undergo the punishment.

(3) At any time after the infliction of the punishment has commenced, the medical officer may, if he deems it necessary in order to prevent injury to the inmate's health, recommend that no further punishment be inflicted, and the superintendent shall thereupon remit the remainder of the punishment.

(4) The superintendent shall enter in the caning book the hour at which the punishment was inflicted, the number of strokes inflicted and any orders he may have given as to remission.

60. Where restricted diet is ordered for a longer period than six days, the offender shall receive three days' ordinary diet after each period of six days' restricted diet:

Restricted diet and
work

Provided that-

(i) no manual work shall be enforced on any one of the days on which restricted diet constitutes the sole food supplied to the inmate, who may, nevertheless, be allowed the option of performing suitable labour, if he so desires;

(ii) no inmate who has been on restricted diet shall be placed upon this diet for a fresh offence until an interval has elapsed equal to the period already passed by the inmate on restricted diet.

PART XIV

RESTRAINTS

61. No inmate shall be placed in handcuffs or other mechanical restraint as a punishment.

Not to be used as a punishment

62. (1) When it appears to the superintendent that in order to prevent an inmate from injuring himself or others, or damaging property, or creating a disturbance, it is necessary that he should be placed under mechanical restraint, he may order him to be placed under mechanical restraint, and notice thereof shall forthwith be given to the Chief Inspector and to the medical officer.

Mechanical restraint

(2) No inmate shall be kept under mechanical restraint for longer than is necessary, and in any case not for more than twenty-four hours, unless an order in writing from the Chief Inspector is given, specifying the cause thereof and the time during which the inmate is to be kept, which order shall be preserved by the superintendent as his warrant.

(3) Particulars of every case of mechanical restraint shall be forthwith recorded by the superintendent.

63. The superintendent shall order any refractory or violent inmate to be temporarily confined in a special room certified for the purpose, but no inmate shall be confined in such a room as a punishment, or for longer than is necessary.

Confinement of refractory inmates

PART XV

COMPLAINTS BY INMATES

64. (1) Any request made by an inmate to see the superintendent or the Chief Inspector shall be recorded by the officer to whom it is made and conveyed without delay to the superintendent, who shall inform the Chief Inspector, as the case may be, of any such request.

Hearing of complaints

(2) The superintendent shall, at a convenient hour every day other than the weekly holiday and public holidays, hear the applications of all the inmates who have requested to see him.

PART XVI

CLASSIFICATION AND GRADES

65. The superintendent shall classify all inmates, having regard to their character, previous history and other relevant circumstances, and shall arrange for each inmate to receive such training for which, in his opinion, he is most suitable.

Classification of inmates

66. (1) Inmates shall be divided into such grades and stages as the Chief Inspector may approve.

Grades and stages

(2) An inmate may be placed in the penal grade by order of the superintendent, if he is satisfied that such inmate is exercising a bad

influence and is idle or ill-conducted, but no inmate shall be detained in it longer than is necessary in the interests of himself or others. While in the penal grade he shall not be employed in association with other inmates and shall receive no payment.

(3) An inmate shall not be promoted in stage or grade, except after full consideration of the circumstances of his case by a board, called the "Institution Board", composed of such officers of the institution as the Chief Inspector may decide. The Board may also order reversions to a lower grade, if, for some reason other than an act of misconduct, they consider it desirable.

PART XVII

DISCHARGE

67. (1) An inmate shall become eligible for release on licence after he has served not less than nine months of his term of detention. If the superintendent, in consultation with the After Care Committee, is of the opinion that there is a reasonable probability that an inmate will lead a useful and industrious life and abstain from crime, he shall submit his recommendation to the Chief Inspector, who, if he thinks fit, may thereupon order that he be discharged from the institution on licence.

Recommendation
for release

(2) When the Chief Inspector has decided that an inmate shall be released on licence, every effort shall be made, in consultation with the After Care Committee and a Probation Officer, to obtain suitable employment for him. The Probation Officer shall give all relevant information and full assistance, with a view to securing a continuous and well-directed supervision of the case, both at the moment of discharge and afterwards at the home or place to which the inmate proceeds. Every encouragement shall be given to the Probation Officer or other authorised persons to visit the inmate before discharge, in order that they may have a personal knowledge of, and be in possession of, the views of the authorities of the institution concerning such inmate.

Release on licence

(3) If the Chief Inspector is satisfied that an inmate who has been released on licence has escaped from the supervision of the person under whose care he has been placed, or who has been guilty of a serious and

Revocation of
licence

wilful breach of the conditions of his licence, and that the case cannot be dealt with by admonition and warning, he may revoke the licence.

(4) An inmate whose licence has been revoked may, on readmission to an institution, be detained in the penal grade for such length of time as the superintendent shall deem necessary, having regard to all the circumstances of the case.

(5) An order for release on licence shall be in Form 2 and revocation of licence shall be in Form 3 in the Second Schedule.

PART XVIII

STAFF

68. (1) It shall be the duty of an officer of a reformatory to carry out his duties and responsibilities in accordance with the Act, these Rules and any standing orders, administrative directions or general or special instructions issued by the Chief Inspector or superintendent. General duty of officers

(2) Any breach or non-compliance by an officer of a reformatory with any provisions of the Act, these Rules or any standing orders or general or special instructions issued by the Chief Inspector or superintendent shall be a disciplinary offence.

(3) The conditions of service of the officers of a reformatory shall be subject to the Prisons Rules. Cap. 97

69. No officer shall be absent from the institution without leave from the superintendent. Absence

70. Every officer shall direct the attention of the superintendent to any inmate, whether he complains or not, who appears to be out of health, or whose state of mind appears to be deserving of special notice and care, and the superintendent shall without delay bring such cases to the notice of the medical officer. Sick inmates

71. (1) No officer shall act in a manner calculated to provoke an inmate. No provocation or unnecessary use of force

(2) No officer, in dealing with inmates, shall use force unnecessarily, and, in any case in which the application of force to an inmate is needful, no more force than is necessary shall be used.

(3) If an officer strikes or uses force against an inmate, he shall have the inmate as soon as possible examined by the medical officer, and shall immediately report the incident to the superintendent.

72. (1) No officer shall communicate with an inmate for an improper purpose. Discretion by officers

(2) No officer shall discuss his duties or any matters of discipline or of institutional arrangements within the hearing of an inmate.

(3) Every officer shall at once communicate to the superintendent any abuse or impropriety which may come to his knowledge.

73. (1) No officer shall, without the authority of the Chief Inspector, carry out any pecuniary or business transaction with or on behalf of any inmate. No business transaction without authority

(2) No officer shall, without the authority of the superintendent, bring in, or carry out, or attempt to bring in or carry out, or knowingly allow to be brought in or carried out, to or for any inmate any article whatsoever.

74. No officer shall receive any fee or gratuity or other consideration in connection with the admission of any visitors to the institution, or in connection with the admission of any visitors to inmates. Fee or gratuity prohibited

75. No officer shall, directly or indirectly, communicate with any ex-inmate or with the friends or relatives of any ex-inmate, or inmate, except with the knowledge of the superintendent. Communications

- 76.** No officer shall, directly or indirectly, have any interest in any contract in connection with the institution, nor shall he receive, directly or indirectly, under any pretence whatsoever, any fee, gratuity or other consideration from any contractor or from any person tendering or any other person whatever in connection with any such contract. Contracts
- 77.** Every officer or servant of the institution shall submit himself to be searched in the institution if called upon to do so by the superintendent. Search
- 78.** (1) No officer shall, directly or indirectly, make any unauthorised communication to representatives of the Press or any other persons with reference to matters which have become known to him in the course of his official duties. Unauthorised publicity
- (2) No officer shall, without the authority of the Chief Inspector, publish any matter or make any public pronouncement relating to the institution or inmates or the administration of the Zambia Prison Service.
- 79.** (1) Every officer shall occupy quarters as may be assigned to him and shall at any time vacate them, if required to do so. Quarters
- (2) On the termination of an officer's service, he shall give up the quarters he has occupied, as soon as he is required to do so; and, on the death of an officer, his family shall give up the quarters, when required to do so.
- 80.** An officer shall not punish any inmate unless authorised to do so under the Act or these Rules. Punishment
- 81.** Nothing in this or any other rule shall be so construed as to exempt any officer of a reformatory from being prosecuted under the Act or any other written law in respect of any act or omission that is an offence under the Act or any other written law: Offences

Provided that an officer shall not be punished twice for the same offence or disciplinary offence.

PART XIX

SUPERINTENDENT

82. (1) The superintendent shall be responsible for the maintenance of discipline in the institution. Responsibilities of the superintendent

(2) The superintendent shall also be responsible for all property in the institution and shall keep the following books and accounts:

(a) an inventory of the furniture and tools in the institution;

(b) a diary in which all occurrences of importance within the institution must be recorded;

(c) a nominal record of all inmates committed to the institution, showing the date and period of commitment of inmates, the names and addresses of their parents (if known), their particular marks, general appearance, race, language, nationality, apparent age, health, height and weight; a record of the health and conduct of inmates while in the institution shall be kept;

(d) a punishment book in which all punishments shall be recorded;

(e) a visitors' book for the entry of observations by visitors;

(f) an account of all materials purchased for use in the workshops of the institution and the disposal thereof;

(g) a record of all articles manufactured in the institution, and of all sales of such articles, showing cost of materials, transport and other expenses connected therewith.

(3) In the absence of the superintendent, the senior housemaster shall have the powers and duties of the superintendent.

(4) The superintendent and the senior house-master shall never be absent from the institution at the same time.

(5) The senior house-master and the subordinate staff of the institution shall be under the orders of the superintendent and shall not be absent from the institution without leave from him, to be recorded in the diary.

(6) The superintendent, or in his absence the senior house-master may, subject to the limitations laid down in these Rules, inflict punishment where it appears necessary that it should be inflicted immediately.

83. (1) The superintendent shall exercise a close and personal supervision of the whole institution, and shall visit and inspect daily all parts of the institution where inmates are employed or confined, and shall give special attention to every inmate who for any reason is confined to his room, and to every inmate who is a hospital patient.

Special duties

(2) The superintendent shall, from time to time, visit the institution during the night and satisfy himself as to the state of the institution. Such visits shall be made at varying intervals and at varying times and not less often than twice a fortnight.

(3) The superintendent shall take an early opportunity to interview all inmates as soon as possible after their reception and he shall again interview them prior to discharge.

84. The superintendent, in case of misconduct, may suspend any subordinate officer, and shall report the particulars without delay to the Chief Inspector.

Suspension of subordinates

85. The superintendent shall, as far as practicable, carry into effect any written recommendation made by the medical officer on grounds of health, for the alteration of the discipline or treatment of any inmate, or for his separation from other inmates.

Duties of superintendent as to health

86. Where an inmate is, in the opinion of the medical officer, dangerously ill, the superintendent shall whenever practicable forthwith inform the relatives of such inmate.

Relatives to be informed

- 87.** The superintendent shall, without delay, report to the Chief Inspector any case of insanity or apparent insanity occurring among the inmates, or any case in which the medical officer is of the opinion that the mental state of any inmate is becoming impaired or enfeebled by continued discipline or treatment, or any sick inmate will not survive his sentence, or is totally and permanently unfit for the discipline of the institution. Mental state of inmates
- 88.** The superintendent shall pay attention to the ventilation, drainage and sanitary condition of the institution, and take any measures as may be necessary for their being maintained in proper order. Ventilation etc.
- 89.** Upon the death of an inmate, the superintendent shall give immediate notice thereof to the coroner or magistrate having jurisdiction in respect of such death and to the Chief Inspector, and, where practicable, to the nearest relative of the deceased. Death of an inmate
- 90.** (1) The superintendent shall supply to the coroner or magistrate the name of any inmate who tenders his evidence in the case of an inquest about to be held on the body of any inmate. Inquest
- (2) After any inquest on an inmate the superintendent shall report to the Chief Inspector the finding of the jury, or of the coroner, and such other circumstances of importance as may arise at the inquest.
- 91.** The Chief Inspector may appoint any officer to perform in the absence of the superintendent all or any of the duties required to be performed by the superintendent. Absence of superintendent
- 92.** (1) The Chief Inspector and the superintendent may, in the exercise of their discretion, allow any person to visit the institution. Visits to institution
- (2) No person visiting an institution shall, without the permission of the superintendent, make any sketch, or take any photograph, and this permission shall not be granted unless an undertaking is given that the sketch or photograph will not be published without the authority of the Chief Inspector.

(3) The superintendent may remove from the institution any visitor whose conduct is improper.

93. The superintendent shall ensure that proper precautions against fire are adopted, and that the appliances for the extinction of fire are at all times kept in good order and ready for use. He shall ensure that instructions are given as to the steps to be taken in the case of fire, and that the officers concerned are acquainted with their duties in such an event.

Fire precautions

94. Where a reformatory is divided into houses, a house-master or assistant housemaster shall be responsible for the administration of each house, subject to the general directions of the Chief Inspector and the superintendent.

Housemaster responsible for each house

95. One or more officers on the staff of a reformatory may be attached to each house, and shall be subject to the directions of the housemaster or assistant housemaster in charge of the house.

Officers attached to house

96. Housemasters, assistant housemasters and subordinate officers on the staff of a reformatory shall devote themselves to the mental, moral and physical development of each inmate under their charge.

General duties

PART XX

MEDICAL OFFICER

97. The medical officer shall have the general care of the health of the inmates, and he shall visit the institution whenever practicable.

Medical officer to attend regularly

98. The medical officer shall report to the Chief Inspector, through the superintendent, any circumstances connected with the institution or the treatment of the inmates which, at any time, appear to him to require

Medical officer to make reports

consideration on medical grounds.

99. (1) The medical officer shall examine every inmate as soon as possible after his admission. The medical officer shall also examine every inmate before discharge. On each occasion the medical officer shall record the state of health of the inmate and such particulars as may be prescribed by the Chief Inspector.

Medical examinations on admission and discharge

(2) The medical officer shall see such inmates who complain of illness, and shall report to the superintendent in writing their fitness or otherwise for work. He shall visit every sick inmate at such times as may be necessary. He shall attend at once on receiving information of the serious illness of any inmate.

Visits

(3) The medical officer shall visit every inmate under restraint, confined to a room, or on restricted diet, or any other inmate to whom his attention is specially directed.

(4) When an inmate is about to be removed from an institution, the medical officer shall examine him and certify as to his fitness to travel and as to such other particulars regarding him as may be required.

(5) The medical officer shall frequently examine the provisions made for cleanliness and sanitation and see whether they are in efficient working order and report at once to the superintendent any defect or insufficiency therein.

Cleanliness and sanitation

(6) The medical officer shall keep a record of the death of any inmate, which shall include the following particulars:

Death of inmate

(a) the time and date when the deceased was taken ill and when the illness was first notified to the medical officer;

(b) the nature of the disease;

(c) the time and date of death; and

(d) an account of the appearances after death (in cases where post mortem examinations are made) together with any special remarks that

appear to him to be required.

100. Once in every quarter of the year the medical officer shall inspect every part of the institution, for the purpose of ascertaining that nothing exists therein to be injurious to the health of the inmates, and, especially, that the ventilation is sufficiently provided for and properly attended to. The result of this inspection shall be reported to the Chief Inspector forthwith.

Quarterly
inspection

101. The medical officer shall frequently inspect the inmates food, both cooked and uncooked and shall report to the superintendent as to the state and quality of the food, and as to any deficiency in the quantity or defect in the quality of the water; and also as to the sufficiency of clothing and bedding and any other matter which may affect the health of the inmates.

Inspection of food,
etc.

102. (1) Whenever the medical officer has reason to believe that an inmate's health is likely to be injuriously affected by the discipline or treatment, he shall report the case in writing, through the superintendent to the Chief Inspector together with such recommendations as he thinks proper.

Inmate unfit for
discipline

(2) Whenever the medical officer is of the opinion that the life of any inmate will be endangered by continued discipline or that any sick inmate will not survive his sentence, or is permanently and totally unfit for training, he shall report his opinion and the grounds thereof in writing, through the superintendent, to the Chief Inspector.

Inmate unfit for
training

(3) Whenever any inmate appears to the medical officer to be dangerously ill, he shall give notice thereof to the superintendent.

(4) The medical officer shall report in writing to the superintendent the case of any inmate to which he thinks it necessary, on medical grounds, to draw attention, and shall make such recommendations as he deems needful for the alteration of the discipline or treatment of the inmate, or for the supply to him of additional articles.

Alteration in
treatment on
medical grounds

103. The medical officer shall have the special care of the mental health of the inmates, keeping under his special observation any inmate

Mental condition
of inmates

whose mental condition appears to require such observation, and, if necessary, shall take such steps as he may consider proper with a view to the segregation or removal of such inmate to an institution designed for the observation of weak-minded inmates, or certification under any written law relating to mental health and mental deficiency or disorder.

104. The medical officer shall submit to the superintendent in writing a recommendation for separating from other inmates any inmate suffering, or suspected of suffering, from any infectious or contagious disease; and shall immediately take such steps as may be necessary to prevent the spread of any such disease.

Spread of disease

PART XXI

REFORMATORY BOARDS

105. (1) The Board appointed by the Minister under section *ninety-five* of the Act shall appoint an After Care Committee whose duties shall include the responsibility for matters relating to the release, employment, supervision and after care of inmates.

Appointment of
After Care
Committee

(2) The Board shall meet quarterly but shall appoint one or more of its members to visit the institution in each month of the year.

Monthly visits by
members

(3) A member of the Board may at any time visit an institution and may inspect the several wards, cells, yards, punishment cells and other apartments or divisions of the institution, and may inspect and test the quality and quantity of the inmates' food, and may question any inmate or any member of the staff, and shall ascertain, so far as possible, whether the institution rules are adhered to, and shall call the attention of the superintendent to any irregularity that may be observed in the working of the institution or in the treatment of any inmate, and shall exercise and perform such duties as may be prescribed.

Powers and duties
of members of
Board

FIRST SCHEDULE

(Rules 29 (4) and 52 (2) (g))

RESTRICTED DIET

Bread 500 g per day.

or

Maize meal 500 g per day.

or

Cassava meal 500 g per day.

or

Millet meal 500 g per day.

Unlimited water.

SECOND SCHEDULE

PRESCRIBED FORMS

FORM 1
(Rule 46)

LEAVE OF ABSENCE LICENCE

.....

.....

Date

To:

You are hereby given leave of absence for the purpose of
on the following conditions:

1. You will go to such place as the Superintendent directs.
2. You will not change your address without permission.
3. You will keep away from persons of bad character.

If the Superintendent has instructed you to report to the Probation Officer or any other
person, you will do so.

If you receive any instructions, you will carry them out. In any case, you should see the
Probation Officer if you want advice or help.

His name and address is:

You will report back at this institution by on
and, if you fail to return at the proper time, you
will render yourself liable to be arrested. No extension of this licence can be granted.

You will keep this form on you all the time that you are on licence and you will produce
it if you are required to do so.

Superintendent
(on the authority of the
Chief
Inspector of
Reformatories)

I have read and understood the conditions of my parole, and the conditions of my licence
have been explained to me.

Inmate

FORM 2
(Rule 67 (5))

ORDER FOR DISCHARGE ON LICENCE

..... day of, 19.....

The Chief Inspector of Reformatories, in pursuance of the power conferred upon him by section 104 of the Juveniles Act, does by this licence permit :
who at the held at
on the day of , 19..... for the
..... of was
found guilty of and was ordered to detention in a
Reformatory School, and who is now detained in the school at
to be discharged from the said school within thirty days from the date hereof on condition
that the licensee is placed under the care, supervision and authority of
until the expiration of the sentence on theday of
19....., and during the further period of for which the
licensee is liable to remain under supervision, namely until the
day of , 19..... , unless the Chief Inspector sooner
revoke or alter this licence.

This license is granted subject to the conditions endorsed hereon upon the breach of any
of which it will be liable to be revoked and forfeited.

*Chief Inspector of
Reformatories*

CONDITIONS

1. The licensee shall proceed to such place as is directed by the
and shall not, without the consent of the person under
whose charge he has been placed, remove from that place or such other place as may be
named by the person.
2. The licensee shall obey such instructions as may be given with regard to punctual and
regular attendance at employment or otherwise, shall report periodically either personally
or by letter, if required to do so, and shall make no change of address without permission.
3. The licensee shall abstain from any violation of the law, shall not associate with
persons of bad character, and shall lead a sober, steady and industrious life to the
satisfaction of .
4. The licensee shall not visit the school or write to any inmate in it without first
obtaining the permission of the Superintendent.

I hereby acknowledge that I am aware of the above-named conditions, which have been
explained to me.

Inmate
, 19.....

This inmate was discharged on , 19.....

Superintendent

FORM 3
(Rule 67 (5))

ORDER OF REVOCATION OF LICENCE

WHEREAS by licence bearing the date the day
of . . . , 19..... , you
being a person under sentence of detention in the Reformatory School at
were duly licensed to the care of . . . for the period of
..... months days from
the Chief Inspector of Reformatories does hereby revoke the said licence from the date
hereof, and requires you the said
forthwith to return to the school at . . .

Given under my hand this day of , 19.....

*Chief Inspector of
Reformatories*

NOTE.-A person failing to return to a Reformatory School on revocation of licence may be
apprehended without warrant and taken to the school.

CHAPTER 54

THE ADOPTION ACT

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CHAPTER 54

ADOPTION

An Act to provide for the making and registration of adoption orders; to provide for the registration and control of adoption societies; to regulate the making of arrangements by adoption societies and other persons in connection with the adoption of children; to provide for the supervision of adopted children by the Commissioner for Juvenile Welfare in certain cases; to restrict the making and receipt of payments in connection with the adoption of children; and to provide for matters incidental to or connected with the foregoing.

5 of 1956
32 of 1958
13 of 1994
24 of 1997
Government
Notices
276 of 1964
497 of 1964
Statutory
Instrument
53 of 1965

[1st August, 1956]

PART I

PRELIMINARY

1. This Act may be cited as the Adoption (Amendment)Act, 1997, and shall be read as one with the Adoption Act, in this Act referred to as the principal Act.. Title
Cap. 54
2. (1) In this Act, unless the context otherwise requires-
- "abroad" means in any country outside Zambia;
- "adoption order" has the meaning assigned to it by section *three*;
- "adoption society" means a body of persons whose functions consist of or include the making of arrangements for the adoption of children; Interpretation
Cap. 53
Cap. 53
Cap. 51
Cap. 28
- "body of persons" means any body of persons, whether incorporated or unincorporated;
- "Commissioner" means the Commissioner for Juvenile Welfare appointed under the provisions of section *five* of the Juveniles Act;
- "court" means a court having jurisdiction to make adoption orders under the provisions of section *ten*;
- "custodian" means the person in whose care and possession an infant is or is to be placed in pursuance of any arrangements made under the provisions of this Act;
- "father", in relation to an illegitimate infant, means the natural father of such infant;
- "foreign infant" means a person who is below the age of eighteen years and is not a citizen of Zambia, but shall not include a person who is or has been married.
- "infant" means a person who has not attained the age of twenty-one years, but does not include a person who is or has been married;
- "interim order" means an order made under the provisions of section *eight*;
- "juveniles inspector" means a person appointed as such under the provisions of section *six* of the Juveniles Act;
- "place of safety" has the same meaning as in the Juveniles Act;
- "registered adoption society" means an adoption society registered under the provisions of Part V;
- "Registrar-General" means the Registrar-General of Births and Deaths appointed under the provisions of section *three* of the Births and Deaths Registration Act;

"relative", in relation to an infant, means a grandparent, brother, sister, uncle or aunt, whether of the full blood, of the half-blood or by affinity, and includes-

(a) where an adoption order has been made in respect of the infant or any other person under the provisions of this Act, or of the repealed Act, any person who would be a relative of the infant within the meaning of this definition if the adopted person were the child of the adopter born in lawful wedlock;

(b) where the infant is illegitimate, the father of the infant and any person who would be a relative of the infant within the meaning of this definition if the infant were the legitimate child of his mother and father;

"the repealed Act" means the Adoption of Children Act, Chapter 136 of the 1948 Edition of the Laws;

"subordinate court" means a subordinate court of the first or second class as defined in the Subordinate Courts Act.

(2) For the purposes of this Act, a person shall be deemed to make arrangements for the adoption of an infant if, not being a parent or guardian of the infant, he enters into or makes any agreement or arrangement for, or for facilitating, the adoption of the infant by any other person, whether the adoption is effected, or is intended to be effected, in pursuance of an adoption order or otherwise, or if he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangement therefor, or if he causes another to do so.

(As amended by Act no. 24 of 1997)

PART II

MAKING OF ADOPTION ORDERS

3. (1) Subject to the provisions of this Act, the court may, upon an application made in the prescribed manner, make an order (in this Act referred to as an adoption order) authorising the applicant to adopt an infant.

Power to make
adoption orders

(2) An adoption order may be made on the application of two spouses authorising them jointly to adopt an infant.

(3) An adoption order may be made authorising the adoption of an infant by the mother or father of the infant, either alone or jointly with her or his spouse.

4. (1) An adoption order shall not be made in respect of an infant unless the applicant or, in the case of a joint application, one of the applicants-

Restrictions on making adoption orders

(a) has attained the age of twenty-five years and is at least twenty-one years older than the infant; or

(b) has attained the age of twenty-one years and is a relative of the infant; or

(c) is the mother or father of the infant.

(2) An adoption order shall not be made in respect of an infant who is a female in favour of a sole applicant who is a male, unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

(3) Except as provided by subsection (2) of section *three*, an adoption order shall not be made authorising more than one person to adopt an infant.

(4) Subject to the provisions of section *five*, an adoption order shall not be made-

(a) in any case except with the consent of every person or body of persons who is a parent or guardian of the infant or who is liable by virtue of any order or agreement to contribute to the maintenance of such infant;

(b) on the application of one of two spouses, except with the consent of the other spouse.

(5) An adoption order shall not be made in respect of any infant unless-

- (a) the applicant and the infant reside in Zambia; and
 - (b) the infant has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the order; and
 - (c) the applicant has, at least three months before the date of the order, notified the Commissioner of his intention to apply for an adoption order in respect of the infant.
- (6) Notwithstanding subsection (5) an adoption order shall not be made in respect of a foreign infant-
- (a) unless the infant resides in Zambia and the applicant is ordinarily resident in Zambia;
 - (b) unless the foreign infant has been continuously in the care and possession of the applicant for at least twelve consecutive months immediately preceding the date of the order;
 - (c) unless the applicant has at least three months before the period referred to in paragraph (b) notified the Commissioner of his intention to apply for an adoption order in respect of the foreign infant; and
 - (d) if the foreign infant is in Zambia under a temporary or visiting permit issued under the Immigration and Deportation Act.
- (7) Subsections (1), (2), (3) and (4) shall apply with the necessary modifications to a foreign infant adopted under subsection (6).

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(As amended by Act No. 24 of 1997)

5. (1) The court may dispense with any consent required by paragraph (a) of subsection (4) of section *four* if it is satisfied-

Consent to adoption

- (a) in the case of a parent or guardian of the infant, that he has abandoned, neglected or persistently ill-treated the infant;
- (b) in the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the infant, that he has persistently neglected or refused so to contribute;
- (c) in any case, that the person whose consent is required cannot be found or is incapable of giving his consent or that his consent is unreasonably withheld.

(2) The court may dispense with the consent of the spouse of an applicant for an adoption order if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving his consent or that the spouses are separated and are living apart and that the separation is likely to be permanent.

(3) The consent of any person to the making of an adoption order in pursuance of an application may be given, either unconditionally or subject to conditions with respect to the religious persuasion in which the infant is to be brought up, without knowing the identity of the applicant for the order, and where consent so given by any person is subsequently withdrawn on the ground only that he does not know the identity of the applicant, his consent shall be deemed for the purposes of this section to be unreasonably withheld.

(4) While an application for an adoption order in respect of an infant is pending in any court, any parent or guardian of the infant who has signified his consent to the making of an adoption order in pursuance of the application shall not be entitled, except with the leave of the court, to remove the infant from the care and possession of the applicant, and in considering whether to grant or refuse such leave the court shall have regard to the welfare of the infant.

6. (1) Where any person whose consent to the making of an adoption order is required by paragraph (a) of subsection (4) of section *four* does not attend in the proceedings for the purpose of giving such consent, then, subject to the provisions of subsection (2), a document signifying his consent to the making of such an order shall, if the person in whose favour the order is to be made is named in the document or, where the identity of that person is not known to the consenting party, is distinguished therein in the prescribed manner, be admissible as evidence of such consent, whether executed before or after the commencement of the proceedings.

Evidence of consent of parent or guardian

(2) Where any document mentioned in subsection (1) is attested by a magistrate in the case of a document executed within Zambia, or is attested in accordance with the provisions of the Authentication of Documents Act in the case of a document executed outside Zambia, such document shall be admissible as provided in subsection (1) without further proof of the signature of the person by whom it is executed, and for the purposes of this subsection, a document purporting to be attested

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as aforesaid shall be deemed to be so attested, and to be executed and attested on the date and at the place specified therein, unless the contrary is proved.

(3) Any licence issued under the provisions of section 40 of the Adoption Act, 1950, or section 23 of the Adoption of Children (Northern Ireland) Act, 1950, of the United Kingdom, authorising the care and possession of an infant to be transferred to any British subject resident in Zambia shall be admissible as evidence of the consent of the parent or guardian of the infant to an adoption order being made under the provisions of this Act in respect of such infant and such British subject.

(4) If the consent of the parent or guardian to an adoption has been dispensed with by the Licensing Authority under section 40 (2) of the Adoption Act, 1950, or under section 23 (3) of the Adoption of Children (Northern Ireland) Act, 1950, of the United Kingdom, such consent shall not be required by the court under this Act.

(5) A document signifying the consent of the mother of an infant shall not be admissible under the provisions of this section unless-

(a) the infant is at least six weeks old on the date of the execution of the document; and

(b) the document is attested on that date in accordance with the provisions of subsection (2).

(As amended by No. 32 of 1958)

7. (1) The court before making an adoption order shall be satisfied-

Functions of court
as to adoption
orders

(a) that every person whose consent is necessary under the provisions of this Act, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of such adoption order will be permanently to deprive him or her of his or her parental rights;

(b) that the adoption order, if made, will be for the welfare of the

infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant.

(2) The court in an adoption order may impose such terms and conditions as the court may think fit, and in particular may require the adopter by bond or otherwise to make for the infant such provision, if any, as in the opinion of the court is just and expedient.

8. (1) Subject to the provisions of this section, the court may, upon any application for an adoption order, postpone the determination of the application and make an interim order giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the infant and otherwise as the court may think fit. Interim orders

(2) All such consents as are required to an adoption order shall be necessary to an interim order but subject to a like power on the part of the court to dispense with any such consent.

(3) An interim order shall not be made in any case where the making of an adoption order would be unlawful by virtue of subsection (5) of section *four*.

(4) An interim order shall not be deemed to be an adoption order within the meaning of this Act.

9. An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, whether such order was made under the provisions of this or any other enactment, and, upon any application for such further adoption order, the adopter or adopters under the adoption order last previously made shall, if living, be deemed to be the parent or parents of the infant for all the purposes of this Act. Adoption orders in respect of children previously adopted

10. (1) The court having jurisdiction to make adoption orders under this Act shall be the High Court or, at the option of the applicant, but subject to any rules which may be made in that behalf, any subordinate court of the first class within the jurisdiction of which either the applicant or the Jurisdiction and procedure

infant resides at the date of the application for the adoption order.

(2) For the purpose of any application under this Act and subject to any rules which may be made in that behalf, the court shall appoint some person or body of persons to act as guardian *ad litem* of the infant upon the hearing of the application with the duty of safeguarding the interests of the infant before the court.

PART III

REGISTRATION OF ADOPTION ORDERS

11. (1) The Registrar-General shall maintain at the Office of the Registrar-General a register to be called the Adopted Children Register, in which shall be made such entries as may be directed to be made therein by adoption orders, but no other entries.

Adopted Children
Register

(2) A certified copy of any entry in the Adopted Children Register, if purporting to be sealed or stamped with the seal or stamp of the Office of the Registrar-General, shall, without any further or other proof of that entry, be received as evidence of the adoption to which it relates and, where the entry contains a record of the date of the birth or the country of the birth of the adopted person, shall also be received as aforesaid as evidence of that date or country in all respects as if the copy were a certified copy of an entry in the Register of Births.

(3) The Registrar-General shall cause an index of the Adopted Children Register to be made and kept in the Office of the Registrar-General and every person shall be entitled to search such index and to have a certified copy of any entry in such Register in all respects upon, and subject to the same terms, conditions and regulations as to payment of fees or otherwise as are applicable under the provisions of the Births and Deaths Registration Act in respect of searches in registers kept in the Office of the Registrar-General, and in respect of the supply from such office of certified copies of entries in the Registers of Births and Deaths.

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(4) The Registrar-General shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and books, and make such entries therein, as may be necessary to record and make

traceable the connection between any entry in the Register of Births which has been marked "Adopted" in pursuance of the provisions of this Act, and any corresponding entry in the Adopted Children Register, but the registers and books kept under the provisions of this subsection shall not be, nor shall any index thereof be, open to public inspection and search, nor, except under an order by the High Court, shall the Registrar-General furnish any person with any information contained in or with any copy or extract from such registers or books.

12. (1) Every adoption order shall contain a direction to the Registrar-General to make in the Adopted Children Register an entry in the form set out in the Schedule, and, subject to the provisions of subsection (2), shall specify the particulars to be entered under the headings in columns 2 to 6 of the Schedule.

Registrations of adoptions

(2) For the purposes of compliance with the requirements of subsection (1)-

(a) where the precise date of the infant's birth is not proved to the satisfaction of the court, the court shall determine the probable date of the infant's birth and the date so determined shall be specified in the order as the date of birth of the infant;

(b) where the name or surname which the infant is to bear after the adoption differs from his original name or surname, the new name or surname shall be specified in the order instead of the original;

and where the country of birth of the infant is not proved to the satisfaction of the court, the particulars of that country may, notwithstanding anything in subsection (1), be omitted from the order and from the entry in the Adopted Children Register.

(3) Where upon any application to a court for an adoption order in respect of an infant, not being an infant who has previously been the subject of an adoption order made under the provisions of this Act or of the repealed Act, there is proved to the satisfaction of the court the identity of the infant with a child to whom an entry in the Register of Births relates, any adoption order made in pursuance of such application shall contain a direction to the Registrar-General to cause the entry in the Register of Births to be marked with the word "Adopted".

(4) Where an adoption order is made by a court in respect of an infant

who has previously been the subject of an adoption order made under the provisions of this Act or of the repealed Act, the order shall contain a direction to the Registrar-General to cause the previous entry in the Adopted Children Register to be marked with the word "Re-adopted".

(5) Where an adoption order is made by a court, the prescribed officer of the court shall cause the order to be communicated in the prescribed manner to the Registrar-General, and upon receipt of such communication the Registrar-General shall cause compliance to be made with the directions contained in the order both in regard to marking any entry in the Register of Births with the word "Adopted" and in regard to making the appropriate entry in the Adopted Children Register.

13. (1) The court by which an adoption order has been made under this Act or under the repealed Act may, on the application of the adopter or of the adopted person, amend the order by the correction of any error in the particulars contained therein, and where an adoption order is so amended, the prescribed officer of the court shall cause the amendment to be communicated in the prescribed manner to the Registrar-General and any necessary correction of or addition to the Adopted Children Register shall be made accordingly.

Amendment of
orders and
rectification of
Registers

(2) Where an adoption order was made before the commencement of this Act, the power of the court under subsection (1) shall include power to amend the order-

(a) by the insertion of the country of the adopted person's birth;

(b) where the order does not specify a precise date as the date of the adopted person's birth, by the insertion of the date which appears to the court to be the date or probable date of his birth;

and the provisions of subsection (1) shall have effect accordingly.

(3) The court by which an adoption order has been made under the repealed Act shall, on the application of the adopter or of the adopted person, request the Registrar-General to provide for the registration of the adoption in accordance with section *twelve*, as if this Act had been in force at the time of the said adoption.

(4) Where an adoption order is quashed or an appeal against an adoption order allowed, the court which made the order shall give directions to the Registrar-General to cancel any marking of an entry in the Register of Births and any entry in the Adopted Children Register effected in pursuance of the order.

(5) A copy or extract of an entry in any register, being an entry the marking of which is cancelled under the provisions of this section, shall be deemed to be an accurate copy if and only if both the marking and the cancellation are omitted therefrom.

PART IV

EFFECT OF ADOPTION ORDERS

14. (1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parents or guardians of the infant in relation to the future custody, maintenance and education of the infant, including all rights to appoint a guardian and to consent or give notice of dissent to marriage, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as if the infant were a child born to the adopter in lawful wedlock, and in respect of the matters aforesaid the infant shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock.

Rights and duties
of parents and
capacity to marry

(2) In any case where two spouses are the adopters, the spouses shall, in respect of the matters mentioned in subsection (1) and for the purpose of the jurisdiction of any court to make orders as to the custody and maintenance of and right of access to children, stand to each other and to the infant in the same relation as they would have stood if they had been the lawful father and mother of the infant and the infant shall stand to them respectively in the same relation as to a lawful father and mother respectively.

(3) For the purpose of the law relating to marriage, an adopter and the person whom he has been authorised to adopt under an adoption order shall be deemed to be within the prohibited degrees of consanguinity, and the provisions of this subsection shall continue to have effect

notwithstanding that some other person other than the adopter is authorised by a subsequent order to adopt the same infant.

15. (1) Where, at any time after the making of an adoption order, the adopter or the adopted person or any other person dies intestate in respect of any real or personal property other than property subject to an entailed interest under a disposition made before the date of the adoption order, that property shall devolve in all respects as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of any other person.

Intestacies, wills
and settlements

(2) In any disposition of real or personal property made, whether by instrument *inter vivos* or by will, including codicil, after the date of an adoption order-

(a) any reference, whether express or implied, to the child or children of the adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to the adopted person;

(b) any reference, whether express or implied, to the child or children of the adopted person's natural parents or either of them shall, unless the contrary intention appears, be construed as not being, or as not including, a reference to the adopted person; and

(c) any reference, whether express or implied, to a person related to the adopted person in any degree shall, unless the contrary intention appears, be construed as a reference to the person who would be related to him in that degree if he were the child of the adopter born in lawful wedlock and were not the child of any other person.

(3) Where under any disposition any real or personal property or any interest in any such property is limited, whether subject to any preceding limitation or charge or not, in such a way that it would, apart from this section, devolve as nearly as the law permits, along with a dignity or title of honour, then, whether or not the disposition contains an express reference to the dignity or title of honour, and whether or not the property or some interest in the property may in some event become severed therefrom, nothing in this section shall operate to sever the property or any interest therein from the dignity or title of honour, but the property or interest shall devolve in all respects as if this section had not been enacted.

16. (1) For the purposes of any enactments for the time being in force relating to friendly societies, collecting societies and industrial insurance companies which enable such societies and companies to insure money to be paid for funeral expenses and which restrict the persons to whom money may be paid on the death of a child under the age of ten, an adopter shall be deemed to be the parent of the infant whom he is authorised to adopt under an adoption order.

Industrial insurance, etc.

(2) Where, before the making of an adoption order in respect of an infant, any such insurance as is mentioned in subsection (1) has been effected by the natural parent of the infant, the rights and liabilities under the policy shall by virtue of the adoption order be transferred to the adopter, and the adopter shall, for the purposes of the enactments mentioned in subsection (1), be treated as the person who took out the policy.

17. (1) Where an adoption order is made in respect of an infant who is illegitimate, then, subject to the provisions of this section, any affiliation order in force with respect to the infant, and any agreement whereby the father of the infant has undertaken to make payments specifically for the benefit of the infant, shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the order or agreement at the date of the adoption order.

Affiliation orders, etc.

(2) Where an infant to whom any such order or agreement as is mentioned in subsection (1) relates is adopted by his mother, and the mother is a single woman, the order or agreement shall not cease to have effect by virtue of subsection (1) upon the making of the adoption order, but shall cease to have effect if she subsequently marries.

(3) Where an adoption order is made in respect of an infant committed to the care of a fit person by an order in force under the provisions of the Juveniles Act, such last-mentioned order shall cease to have effect.

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PART V

ADOPTION SOCIETIES

18. (1) It shall not be lawful for any body of persons to make any arrangements for the adoption of an infant unless that body is a registered adoption society.

Restriction on making arrangements for adoption

(2) If any person takes part in the management or control of a body of persons which exists wholly or partly for the purpose of making arrangements for the adoption of infants, and which is not a registered adoption society, he shall be guilty of an offence.

(3) In any proceedings under this section proof of things done or of words written, spoken or published, whether or not in the presence of any party to the proceedings, by any person taking part in the management or control of a body of persons or in making arrangements for the adoption of infants on behalf of that body shall be admissible as evidence of the purpose for which such body of persons exists.

19. (1) Subject to the following provisions of this Part, where application is made in the prescribed manner by or on behalf of an adoption society to the Commissioner and there is furnished therewith the prescribed information relating to the activities of the society, the Commissioner shall register the society under the provisions of this Part.

Registration of adoption societies

(2) The Commissioner may refuse to register an adoption society under this Part if it appears-

(a) that the activities of the society are not controlled by a committee of members of the society who are responsible to the members of the society;

(b) that any person proposed to be employed, or employed, by the society for the purpose of making any arrangements for the adoption of infants on behalf of the society is not a fit and proper person to be so employed;

(c) that the number of competent persons proposed to be employed, or employed, by the society for the purpose aforesaid is, in the opinion of the Commissioner, insufficient having regard to the extent of the activities of the society in connection with that purpose; or

(d) that any person taking part in the management or control of the

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society or any member of the society has been convicted of an offence under the provisions of this Act or under the provisions of section *forty-nine* of the Juveniles Act.

(3) The Commissioner may at any time cancel the registration of an adoption society on any grounds which would entitle him to refuse an application for the registration of the society.

20. (1) Where the Commissioner proposes to refuse an application for registration made to him by or on behalf of an adoption society or to cancel the registration of an adoption society, the Commissioner shall give to the society not less than fourteen days' notice in writing of his intention so to do.

Procedure and
right of appeal

(2) Every notice mentioned in subsection (1) shall state the grounds on which the Commissioner intends to refuse the application or to cancel the registration, as the case may be, and shall contain an intimation that, if within fourteen days after the receipt of the notice the society inform the Commissioner in writing that they desire so to do, the Commissioner will, before refusing the application or cancelling the registration, as the case may be, give to the society an opportunity of causing representations to be made to the Commissioner by or on behalf of the society.

(3) If the Commissioner, after giving to the society an opportunity of causing such representations as are mentioned in subsection (2) to be made, decides to refuse the application for registration or to cancel the registration, as the case may be, he shall give to the society notice in writing of his decision.

(4) Any adoption society aggrieved by the refusal of an application for registration, or by the cancellation of their registration, by the Commissioner may appeal to the High Court by a notice of appeal given within twenty-one days after notice in writing of the decision has been given to the society.

(5) Where the registration of an adoption society is cancelled by the Commissioner, such society shall, for the purposes of this Part, be deemed to be registered under this Part during the period within which an appeal against the cancellation may be brought under the provisions

of this section and, if such an appeal is brought, until the determination or abandonment of such appeal.

21. (1) The Commissioner may at any time give notice to any registered adoption society or to any officer of such society requiring such society or officer to produce to the Commissioner or to any person duly nominated by him in that behalf such books, accounts and other documents relating to the performance by the society of the function of making arrangements for the adoption of infants as the Commissioner may consider necessary for the exercise of the powers conferred upon the Commissioner by subsection (3) of section *nineteen*.

Inspection of books, etc.

(2) Any notice given under the provisions of subsection (1) may contain a requirement that any information to be furnished in accordance with such notice shall be verified by statutory declaration.

(3) Any person who fails to comply with the requirements of a notice given under the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a period not exceeding three months, or to both.

(As amended by Act No. 13 of 1994)

22. (1) It shall not be lawful for a registered adoption society by whom arrangements are made for the adoption of an infant-

Arrangements by adoption societies for adoption

(a) to place the infant in the care and possession of a person resident in Zambia if an adoption order in respect of the infant could not lawfully be made in favour of that person;

(b) to place the infant in the care and possession of a person resident abroad unless the approval of the Minister has been granted in respect of the infant under the provisions of subsection (2) of section *thirty-two*.

(2) At any time within three months from the date on which an infant is delivered into the care and possession of a person resident in Zambia in pursuance of arrangements made by a registered adoption society for the adoption of such infant by such person-

(a) such person may give notice in writing to the society of his intention not to adopt the infant; or

(b) the society may cause notice in writing to be given to such person of their intention not to allow the infant to remain in his care and possession.

(3) If, at the expiration of the period of three months mentioned in subsection (2), no such notice as is mentioned in subsection (2) has been given, the person into whose care and possession the infant was delivered shall, within six months after the expiration of such period, either-

(a) apply to the court for an adoption order in respect of the infant; or

(b) give notice in writing to the society of his intention not to apply for such an order.

(4) Where any notice is given to a registered adoption society by any person, or by such a society to any person under the provisions of subsection (2) or (3), or where an application for an adoption order made by any person pursuant to subsection (3) is refused by the court, that person shall, within seven days after the date on which the notice was given or the application refused, as the case may be, cause the infant to be returned to the society, and the society shall receive the infant accordingly:

Provided that it shall be sufficient compliance with the requirements of this subsection if the infant is delivered by the said person to, and is received by, a suitable person nominated for the purpose by the society.

(5) Any person who contravenes the provisions of this section shall be guilty of an offence and the court by which an offender is convicted may order any infant in respect of whom the offence is committed to be returned to his parents or guardians or the registered adoption society.

(As amended by G.N. No. 276 of 1964 and S.I. No. 53 of 1965)

PART VI

SUPERVISION BY THE COMMISSIONER

23. (1) Subject to the provisions of section *twenty-four*, this Part shall have effect where- Application of
Part VI

(a) arrangements are made for the placing of an infant who has not attained the age of sixteen years in the care and possession of a person who is resident in Zambia and is not the parent or guardian or a relative of the infant; and

(b) any person, not being the parent or guardian of the infant or the person in whose care and possession the infant is to be placed, participates in the making of the arrangements.

(2) For the purposes of this Part, a person shall be deemed to participate in the making of arrangements for the placing of an infant in the care and possession of another person-

(a) if he enters into or makes any agreement or arrangement for, or for facilitating, the placing of the infant in the care and possession of that other person; or

(b) if he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangement therefor;

or if he causes another to do so.

(3) The person in whose care and possession an infant is or is to be placed in pursuance of such arrangements as are mentioned in this section is in this Part referred to as the custodian of the infant.

24. The provisions of this Part shall not have effect where possession of an infant has been, is, or is proposed to be taken- Exemptions
from Part VI

(a) by any person for a purely temporary purpose;

(b) by a school, hospital, convalescent home or other similar

Cap. 305
Cap. 53

institution;

(c) by an institution to which the infant has been committed under the provisions of the Mental Disorders Act; or

(d) by any reformatory, approved school, house or home approved under the provisions of the Juveniles Act for the reception of juveniles.

25. Where this Part has taken effect in relation to an infant, it shall cease to have effect-

Duration of application of Part VI

(a) if an adoption order or an interim order is made in respect of such infant, upon the making of such order;

(b) if no such order has been made, on the date on which he attains the age of eighteen years or ceases to live apart from his parents with the person with whom he was living when he attained the age of sixteen years, whichever first occurs.

26. (1) Not less than seven days before possession is taken of an infant pursuant to any arrangements by virtue of which this Part has effect in relation to the infant, any person who participates in the arrangements, not being the parent or guardian of the infant or the custodian of the infant, shall give notice in writing of the arrangements to the Commissioner.

Notification of taking possession of an infant

(2) The notice required by this section shall state the name and sex of the infant, the date and place of the infant's birth, and the name and address of the custodian of the infant.

(3) Any person who fails to give any notice required by the provisions of subsection (1) shall be guilty of an offence.

27. (1) Where the custodian of an infant in relation to whom this Part has effect changes his residence while the infant is in his care and possession, he shall give to the Commissioner notice of the change at least seven days before doing so:

Notification of change of residence, etc.

Provided that, where an immediate change of residence is necessitated by any sudden emergency, the provisions of this subsection shall be deemed to have been complied with if any notice required thereunder is given at any time within forty-eight hours after the change of residence.

(2) If an infant in relation to whom this Part has effect dies while in the care and possession of his custodian, the custodian shall, within twenty-four hours of the death, give notice in writing of the death to the Commissioner and to the coroner of the District in which the body of the infant lies.

(3) Any person who fails to give any notice required by the provisions of this section shall be guilty of an offence.

28. (1) If an infant in relation to whom this Part has effect-

Summary order
for removal of
infant

(a) is about to be received or is being kept by any person in any premises which are overcrowded, insanitary or dangerous, or in an environment which is detrimental to the infant; or

(b) is in the care and possession of a custodian who, by reason of old age, infirmity, ill-health, ignorance, negligence, inebriety, immorality or criminal conduct, or for any other reason, is unfit to have care of the infant;

a subordinate court may, on an application made by or on behalf of the Commissioner, make an order for the removal of the infant to a place of safety until he can be restored to his parents or guardian or until other arrangements can be made for him.

(2) Upon proof that there is imminent danger to the health or well-being of the infant concerned, any magistrate, acting, if he deems it necessary, *ex parte*, may exercise the powers conferred upon a subordinate court by subsection (1), upon the application of a juveniles inspector.

(3) Any order made under the provisions of this section may be enforced by a juveniles inspector, and any person who refuses to comply with such an order upon its being produced, or who obstructs a juveniles inspector in the enforcement of such order, shall be guilty of an offence.

29. Where any person is convicted of an offence under the provisions of this Part, the court may order any infant in respect of whom the offence was committed to be removed to a place of safety until he can be

Removal of
infant in respect
of offences

restored to his parents or guardian or until other arrangements can be made for him.

PART VII

MISCELLANEOUS AND GENERAL

30. (1) It shall not be lawful for an adopter, or for a parent or guardian of an infant, to receive, except with the sanction of the court, any payment or other reward in consideration of the adoption of an infant under the provisions of this Act, or for any person to make or give or agree to make or give to an adopter, parent or guardian any payment or reward, the receipt of which is prohibited by this subsection. Prohibition of certain payments

(2) Any person who, in connection with arrangements by virtue of which Part VI has effect in relation to an infant, gives or receives, or agrees to give or receive, any remuneration or reward whatsoever shall be guilty of an offence.

(3) Subject to the provisions of subsection (4), any person who makes arrangements for the adoption of an infant and receives or makes, or agrees to receive or make, any payment or reward whatsoever in connection with the making of the arrangements shall be guilty of an offence.

(4) The provisions of subsection (3) shall not apply-

(a) to any payments the making or receipt of which is sanctioned by the court to which an application for an adoption order in respect of an infant is made;

(b) to any payments the making or receipt of which is authorised by the Commissioner under the provisions of subsection (3) of section *thirty-three*;

(c) to any payments made by or on behalf of a registered adoption

society in respect of the maintenance of an infant who has been placed at the disposition of the society;

(d) to any payments made to a registered adoption society by the parent or guardian of an infant or by any person in respect of the maintenance of the infant so long as the infant is not in the care and possession of a person who has adopted or proposes to adopt him, whether under an adoption order or otherwise, being payments made weekly and at a rate not exceeding such rate as may be prescribed.

31. (1) It shall not be lawful for any advertisement to be published indicating-

Restriction
upon
advertisements

(a) that the parent or guardian of an infant desires to cause the infant to be adopted;

(b) that a person desires to adopt an infant; or

(c) that any person, not being a registered adoption society, is willing to make arrangements for the adoption of an infant.

(2) Any person who causes to be published or who knowingly publishes any advertisement in contravention of the provisions of subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding one thousand five hundred penalty units.

(As amended by Act No. 13 of 1994)

32. (1) It shall not be lawful for any person in connection with any arrangements made for the adoption of an infant who is resident in Zambia to permit or procure the care and possession of the infant to be transferred to any person who is not the guardian or a relative of the infant and who is resident abroad.

Restriction on
sending infants
abroad

(2) It shall not be lawful for any person in connection with any such arrangements as are mentioned in subsection (1) to permit or procure the care and possession of an infant as mentioned in subsection (1) to be transferred to a person who is resident abroad, and who is not the guardian or a relative of the infant, unless the approval of the Minister has been granted in respect thereof.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence, and the court by which such person is convicted may order any infant in respect of whom the offence was committed to be returned to his parents or guardian.

(As amended by G.N. No. 276 of 1964 and S.I. No. 53 of 1965)

33. (1) The Commissioner may grant a licence in the prescribed form, and subject to such conditions and restrictions as he may think fit, authorising the care and possession of an infant for whose adoption arrangements have been made to be transferred to a person resident abroad, but, subject to the provisions of this section, no such licence shall be granted unless the Commissioner-

Licence to send
infant abroad
for adoption

(a) is satisfied that the application is made by or with the consent of every person or body of persons who is a parent or guardian of the infant in question, or who has the actual custody of the infant, or who is liable to contribute to the support of the infant; and

(b) is satisfied by the report of a Zambian consular officer, or any other person who appears to the Commissioner to be trustworthy, that the person to whom the care and possession of the infant is proposed to be transferred is a suitable person to be trusted therewith, and that the transfer is likely to be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant.

(2) The Commissioner may dispense with any consent required by paragraph (a) of subsection (1) if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot be found or is incapable of giving such consent, or, being a person liable to contribute to the support of the infant, either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the Commissioner and in all the circumstances of the case, to be dispensed with.

(3) Where the Commissioner grants a licence under the provisions of this section, he may authorise the making or receipt by any person of any payments in consideration of the transfer of the care and possession of the infant in respect of whom the licence is granted.

(As amended by S.I. No. 53 of 1965)

- 34.** Any notice under this Act may be served by registered post, and such service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. Service of notices
- 35.** Where any offence under the provisions of Part V, VI or VII committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, member of the committee, secretary or other officer of the body, he, as well as the body, shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly. Offences by bodies corporate
- 36.** Any person who is guilty of an offence under the provisions of this Act shall, unless some other penalty is specifically provided therefor, be liable to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding six months, or to both. Penalties
(As amended by Act No. 13 of 1994 and Act No. 24 of 1997))
- 37.** The Minister may, by statutory instrument, make regulations- Regulations
- (a) prescribing the manner in which application for registration shall be made by an adoption society;
- (b) providing for the conduct of negotiations entered into by or on behalf of any registered adoption society with persons who, having the care and possession of infants, are desirous of causing such infants to be adopted;
- (c) prescribing the maximum rate at which payments may be made under the provisions of paragraph (d) of subsection (4) of section *thirty*;
- (d) with respect to the application for and grant of licences under the provisions of section *thirty-three*, and prescribing the form of application for such licences;
- (e) prescribing anything to be prescribed under this Act.
(As amended by G.N. No. 276 of 1964)
- 38.** The High Court may, by statutory instrument, make rules- Rules
Cap. 53

- (a) prescribing the manner in which applications shall be made for adoption orders;
- (b) for the purposes of section *ten*;
- (c) prescribing the officers of courts who shall be responsible for communicating adoption orders to the Registrar-General;
- (d) dealing with all matters of court procedure and all matters incidental thereto arising out of this Act and for carrying this Act into effect, and such rules may provide for applications for adoption orders being heard and determined otherwise than in open court and, where applications are made to a subordinate court of the first class, for the hearing and determination thereof in a juvenile court as defined in the Juveniles Act.

SCHEDULE

(Section 12)

FORM OF ENTRY IN ADOPTED CHILDREN REGISTER

1 No. of entry	2 Date and country of birth of parents and child	3 Name and sur-name of child	4 Sex of child	5 Name, address, occupation and nationality of adoptors	6 Status of child	District where adoption order is made	District where adoption is made and description of court ⁷ Date of entry ⁸ Signature of officer deputed by Registrar-General to attest to entry

(As amended by Act No. 24 of 1997)

SUBSIDIARY LEGISLATION ADOPTION

SECTION 37-THE ADOPTION SOCIETIES REGULATIONS

Regulations by the Minister

Government
Notice
192 of 1956
Act No.13 of
1994

- 1.** These Regulations may be cited as the Adoption Societies Regulations.

Title
- 2.** Every application for the registration of an adoption society under section *nineteen* of the Act shall be made in the form, and shall give the particulars, set out in the First Schedule.

Application for registration
- 3.** The registration fee to be paid by an adoption society to the Commissioner for Juvenile Welfare shall be seventy-five fee units.
(As amended by Act No. 13 of 1994)

Registration fee
- 4.** Where the parent or guardian of a child proposes to place an infant at the disposition of a registered adoption society with a view to the infant's adoption, the society-

(a) shall furnish the parent or guardian with a memorandum in the form set out in the Second Schedule; and

(b) shall not accept the infant unless the parent or guardian has signed and delivered to the society a certificate (which the society shall retain) in the form set out in the Second Schedule, that he has read and understood the said memorandum.

Duties of adoption society prior to acceptance of infant
- 5.** In the case of every infant proposed to be delivered by or on behalf of a registered adoption society into the care and possession of an adopter-

(a) the society shall make inquiries and obtain reports on the points set out in the Third Schedule; and the report obtained on the health of the infant shall be signed by a duly qualified medical practitioner; and

(b) the case shall be considered by a committee (to be called a "case committee") appointed by the society for the purpose and consisting of not less than three persons.

Duties of adoption society prior to placement
- 6.** No infant shall be delivered into the care and possession of an

Duties of case

adopter by or on behalf of a registered adoption society until- committee

- (a) the adopter has been interviewed by the case committee or by some competent person on their behalf;
- (b) the case committee has arranged for the inspection of, and received a report from a competent person upon, any premises in which the adopter intends that the infant should remain permanently; and
- (c) the case committee has considered the reports required by regulation 5.

7. Every registered adoption society shall, within twelve months of registration, and thereafter at least once in every period of twelve months, furnish to the Commissioner for Juvenile Welfare-

(a) duly audited accounts and balance sheets submitted by a person dissociated from the society and not in any way related to any member or officer of the society; and

(b) a report in the form set out in the Fourth Schedule.

Annual reports of adoption society to be sent to Commissioner for Juvenile Welfare

8. (1) Every registered adoption society shall make adequate arrangements for the care and supervision of infants who have been placed by their parents or guardians in the care of the society.

Care of infants accepted by adoption society

(2) Every infant who is not accommodated in premises under direct control of the society, or accommodated in any approved home or institution providing for the care and protection of children, shall, unless and until the infant has been adopted in pursuance of an adoption order, be visited in the first month and thereafter at least once a month by a representative of the society who shall report upon the case to the case committee; if the case committee so recommend, the society shall immediately remove the infant.

FIRST SCHEDULE

(Regulation 2)

**THE ADOPTION ACT
FORM OF APPLICATION FOR REGISTRATION**

I/We, the undersigned, being a person/persons duly authorised on behalf of the society called the , hereby apply to the Commissioner for Juvenile Welfare to have the said society registered as an adoption society under the provisions of section 19 of the Adoption Act.

The following are particulars of the society:

1. Date of establishment
2. Full residential address of the society's administrative centre .
3. Postal address of the society
4. Objects for which the society exists

(State if the society applies its profits, if any, and other income to promoting these objects.) (A copy of the society's constitution should be attached to this application.)

5. Full names, addresses and occupations or descriptions of the members of the committee controlling the activities of the society should be attached as Schedule I to this application.
6. Full names, addresses and occupations or descriptions of the members of case committees should be attached as Schedule II to this application.
7. Full names, addresses and qualifications of all persons employed by the society, whether voluntary or paid, for the purpose of making any investigations or reports on behalf of the society should be attached as Schedule III to this application.
8. Copies of the society's latest annual report and audited statement of accounts should be attached.

I/We hereby declare that the particulars furnished above and in Schedules I, II and III to this application are correct in every respect.

Signature

Office held under the society

Address

Signature

Office held under the society

Address

SECOND SCHEDULE

(Regulation 4)

(Form of Memorandum to be given to the parent or guardian and Certificate to be signed by parent or guardian)

ADOPTION OF CHILDREN: EXPLANATORY MEMORANDUM

1. If the Court makes an adoption order, all your rights and duties with regard to the child will be transferred permanently to the adopter(s) and in law the child will no longer be yours.

2. The Court cannot make an adoption order without the consent of each parent or guardian of the child unless it is satisfied-

(a) in the case of a parent or guardian of the child, that he has abandoned, neglected or persistently ill-treated the child;

(b) in the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the child, that he has persistently neglected or refused so to contribute;

(c) in any case, that the person whose consent is required cannot be found, or is incapable of giving his consent, or that his consent is unreasonably withheld.

If the natural father of an illegitimate child contributes towards the child's maintenance under an affiliation order or a voluntary agreement, the Court will, as a rule, require his consent also.

3. Your consent must be given in writing and must be attested by a Magistrate. If you are the child's mother, your consent cannot be given until the child is at least six weeks old on the date of the execution of the document. In giving your consent you may, if you choose, stipulate the religious persuasion in which you desire the child to be brought up.

4. You are not allowed to receive or pay any money for the adoption unless the Court agrees. This does not apply to a weekly payment for the maintenance of your child before placement with the adopter(s), whether paid to an adoption society, nursery or foster mother.

5. An adoption society cannot arrange for your child to be sent abroad for adoption without a licence from the Commissioner for Juvenile Welfare and here again the licence cannot be granted without your consent, except for a reason of the same sort as those set out in paragraph 2.

6. If you have taken out an insurance policy against funeral expenses for your child, the insurers will be able to tell you whether, after the adoption order is granted, the policy can be transferred to the adopter(s) should they wish to continue it.

CERTIFICATE

(To be furnished to a registered adoption society by a parent or guardian proposing to place a child at the disposition of the society with a view to the child being adopted)

I HEREBY CERTIFY that I have received
from..... a Memorandum
headed "Adoption of Children: Explanatory Memorandum", from
which I have detached this certificate of acknowledgment, and I further
certify that I have read the Memorandum and understand it.

Signature

Address

Date

THIRD SCHEDULE

(Regulation 5)

(Points on which inquiries must be made and reports obtained in the case of every child proposed to be delivered by or on behalf of a registered adoption society into the care and possession of an adopter)

PART A-PARTICULARS RELATING TO THE CHILD

1. Name.
2. Address.
3. Date and place of birth.
4. Is the child resident in Zambia?
5. If baptised, state place of baptism and denomination.
6. Full name, address and age of the child's parents. If dead, state date of death.
7. Parents' religion.
8. Has either parent any other children? If so, state their ages and sex.
9. Is there any history of insanity, tuberculosis or other disease in the family of either parent?
10. Why is the child offered for adoption?
11. Has the child any right or interest in property? If so, give full particulars.
12. Has any insurance been effected on the life of the child?

PART B-PARTICULARS RELATING TO THE PARENTS OR GUARDIANS

1. If the mother is alive, does she consent to adoption?
2. If the father is alive-
 - (a) is he married to the mother or otherwise liable to contribute to the child's maintenance? If so, give particulars. (If the parents are separated, state whether there is a separation order in force.)
 - (b) does he consent to the adoption?
3. If the child has guardians, state-
 - (a) their names and addresses;
 - (b) how and by whom they were appointed;
 - (c) whether they consent to adoption.
4. (a) Are any other persons liable to contribute to the support of the

child?

(b) If so, do they agree to adoption?

5. If the answer to questions 1, 2 (b), 3 (c) or 4 (b) is in the negative, the reason should be stated.

PART C-PARTICULARS RELATING TO THE ADOPTER

1. Name(s).
2. Address(es).
3. Country of domicile.
4. Date(s) of birth.
5. Religion(s).
6. Occupation(s).
7. Is it intended to apply for an adoption order?
8. Is the adopter married or are the adopters a married couple? If so, give date and place of marriage, and say whether it is intended to make a joint application for an adoption order.
9. Is there any child of the adopter(s) living at home? If so, give age and sex.
10. Has any child been adopted by the adopter(s) before? If so, give particulars.
11. What is the accommodation and condition of the home?
12. What are the means of the adopter(s)? How far are the earnings of children living at home included?
13. What are the wishes of the adopter(s) as to the age and sex of the child they wish to adopt?
14. Give the names and addresses of two responsible persons who can vouch for the character of the adopter(s).

PART D-VERIFICATION OF PARTICULARS

1. (a) Have the particulars given under Parts A, B and C above been verified so far as possible?
(b) Have the particulars of the birth of the child, and of the death, marriage or separation of the parents, and of the marriage of the adopter(s) been confirmed by inspection of certificates of birth, death or marriage or the separation order?
2. Has a representative of the case committee interviewed the adopter(s)?
3. Has the home of the adopter(s) been inspected by a representative of the case committee? Was it found satisfactory?
4. Are the adopter(s) and the members of their household persons of good character? Have their references been taken up?

5. Do the adopter(s) and the members of their household appear to be in good health?

6. Has the child been seen by the adopter(s)?

7. Has the child been accepted by the adopter(s) with a view to adoption?

PART E-MEDICAL PARTICULARS

(The medical report must be signed by a duly qualified medical practitioner)

1. (a) Date of birth.

(b) Weight at birth (state if premature).

(c) Present weight.

(d) Was the mother's confinement normal or instrumental?

2. Was the child-

(a) entirely breast-fed;

(b) partially breast-fed; or

(c) entirely bottle-fed?

3. State of nutrition (good, fair, poor).

4. (a) When did the child begin to walk?

(b) When did the child begin to talk?

5. Has the child any affection of bones, muscles or joints?

6. Are there any evidences of paralysis?

7. Are there any evidences of syphilis? State result of serological test.

8. Is there any evidence of tuberculosis?

9. Has the child had fits? If so, state nature.

10. Is there, or has there been, any affection of the skin?

11. Is there, or has there been, any affection of the eyes? Is the sight normal?

12. Has the child had any discharge from the ears, or any serious ear trouble and can it hear well?

13. Are the nose and throat in healthy condition?

14. Is there any evidence of disease of heart or lungs?

15. Has the child normal control of bowels and bladder for its age?

16. Is the child now suffering from any infectious or contagious disease?

17. Has the child had scarlet fever, measles, chicken-pox, whooping-cough, diphtheria or mumps?

18. (a) Has the child been vaccinated?

(b) Has the child been immunised against diphtheria?

19. Has the child any signs of active or healed rickets?
20. Is the child's mental and physical development normal for its age?
21. Are behaviour, speech and articulation normal for its age?
22. If the child has been neglected or improperly fed, do you consider its constitution such that good nursing and proper care would make it suitable for adoption?
23. Give particulars of any condition not mentioned above about which you consider an adopter should be informed.

FOURTH SCHEDULE

(Regulation 7)
THE ADOPTION ACT
FORM OF ANNUAL REPORT

Report to the Commissioner for Juvenile Welfare from the adoption society called

for the year ended

1. Full postal address of the society's administrative centre.
2. Has there been any change in the objects for which the society exists? Does it still apply the whole of its profits, if any, and other income in promoting those objects?
3. Full names, addresses and occupations or descriptions of all members of the committee controlling the activities of the society.
4. Full names, addresses, occupations or descriptions and qualifications of members of the case committee.
5. Has any person taking part in the management or control of the society or any member of the society been convicted of an offence under the Adoption Act, or of a breach of any regulation made thereunder? (If so, give particulars.)
6. Full names, addresses and qualifications of all persons employed by the society, whether voluntary or paid, for the purpose of making any arrangements for the adoption of children.
7. Cases dealt with by the society during the year ended
 - (a) Number of applications from persons wishing to adopt a child.
 - (b) Number of children offered to the society with a view to adoption.
 - (c) Number of children taken into hostels under the direct control of the society pending adoption.
 - (d) Number of children placed by the society pending adoption in foster homes or hostels not under the direct control of the society.
 - (e) Number of children placed with a view to adoption.
 - (f) Number of adoption orders made in respect of children placed by the society.
8.
 - (a) Number of children placed for adoption by the society and awaiting adoption orders at the end of the year.
 - (b) Number of children in hostels under the direct control of the society at the end of the year.
 - (c) Number of children at the end of the year in foster homes or in hostels in which they had been placed by the society but which

are not under the society's direct control.

9. A copy of the society's latest annual report should be attached.

I/We hereby declare that the above particulars are correct in every respect.

Signature

Office held under the society

Address

Signature

Office held under the society

Address

Date

SECTION 37-THE ADOPTION (TRANSFER ABROAD) REGULATIONS

Government
Notice
193 of 1956
Statutory
Instrument
53 of 1965

Regulations by the Minister

- 1.** These Regulations may be cited as the Adoption (Transfer Abroad) Regulations.

Title

- 2.** An application for a licence under section *thirty-three* of the Act, authorising the care and possession of an infant for whose adoption arrangements have been made to be transferred to a person resident abroad, may be made by a parent or guardian of the infant or by any other person or body concerned in the making of the arrangements for the adoption of the infant, and, if that body is an adoption society, the application may be made by any person authorised by the society in that behalf.

(As amended by No. 53 of 1965)

Application for
licence to
transfer infant
abroad

- 3.** Notice of the application shall be given in Form 1 in the Schedule to the Commissioner for Juvenile Welfare, and the notice shall be delivered or sent by registered post to the Commissioner for Juvenile Welfare.

Notice of
application to
be sent to
Commissioner
for Juvenile
Welfare

- 4.** The Commissioner for Juvenile Welfare shall cause a copy of the notice to be sent to a Zambian consular officer, or any other person who appears to the Commissioner to be a trustworthy person, and shall request the officer or person to report whether the person to whom the care and possession of the infant is proposed to be transferred is a suitable person to be entrusted therewith.

(As amended by No. 53 of 1965)

Commissioner
for Juvenile
Welfare to
obtain report on
person applying
for care and
possession of
infant

- 5.** A copy of the notice referred to in regulation 3 shall be served by the applicant upon the infant and upon every person or body who is a parent or guardian of the infant, or who has the actual custody of the infant, or who is liable to contribute to the support of the infant:

Service of
copies of notice
of application:
powers of

Commissioner
for Juvenile
Welfare to
dispense with
service

Provided that the Commissioner for Juvenile Welfare may dispense with the service required by this regulation of a copy of the notice-

- (i) upon any person other than the infant, if he is satisfied that the person cannot be found; and
- (ii) upon the infant, if he thinks fit having regard to the age and understanding of the infant.

6. The Commissioner for Juvenile Welfare shall obtain, in Form 2 in the Schedule, the consent of every person or body of persons who is a parent or guardian of the infant in question, or who has the actual custody of the infant, or who is liable to contribute to the support of the infant:

Consents to be
obtained or
dispensed with

Provided that the Commissioner for Juvenile Welfare may dispense with any consent required by this regulation if he is satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot be found or is incapable of giving such consent, or, being a person liable to contribute to the support of the infant, either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the Commissioner for Juvenile Welfare and in all the circumstances of the case, to be dispensed with.

7. (1) The service of any document under regulations 5 and 6 may be effected by delivering it to the person to be served or by sending it by registered post to him at his last known or usual place of abode:

Service of
documents

Provided that where the document is to be served upon a body it shall be left at or sent by registered post to the registered office of that body or, in the absence of any registered office, the principal place where the body transacts or carries on its business.

(2) The service of any such document as aforesaid may be proved by the production of a declaration in Form 3 in the Schedule or in a form to the like effect purporting to be made before a magistrate.

8. The Commissioner for Juvenile Welfare, for the purpose of satisfying himself upon any matter relating to an application for a licence under the provisions of these Regulations, may require any person or body, by a person authorised on its behalf, to appear before him.

Powers of
Commissioner
for Juvenile
Welfare

9. Any licence granted under section *thirty-three* of the Act shall be in Form 4 in the Schedule.

Form of licence

SCHEDULE

PRESCRIBED FORMS

FORM 1
(Regulation 3)

FORM OF NOTICE OF AN APPLICATION FOR A LICENCE

To: The Commissioner for Juvenile Welfare.

I hereby give notice that I intend to apply for a licence under section 33 of the Adoption Act in respect of a male/female infant named.

aged.....years,
born on the.....day of....., 19.....

The infant is the subject of arrangements for his/her adoption as follows:
(*)

- (i) The father (**) of the infant is
of , a.....subject, aged.....years.
- (ii) The mother (**) of the infant is
of , a.....subject, aged.....years.
- (iii) The guardian of the infant is
of. , a.....subject, aged.....years.
- (iv) The infant is at present in the custody of
of.....

The following persons are liable to contribute to the support of the infant
‡:

- (1) of
- (2) of

The person to whom it is proposed to transfer the care and possession of the infant
is
resident at

The following financial arrangements have been made/are contemplated in consideration of the transfer of the care and possession of the infant (*) or (§):

My full name, address and nationality are-
Name
Address
Nationality

and I am making this application as (||)

Date

*Signature
of the
Applicant*

(*) Here set out the arrangements.

(†) If the father or mother is dead this fact should be stated.

(‡) Delete if inapplicable.

(§) If there are no financial arrangements write "none".

(||) Insert capacity, i.e. parent, guardian or person concerned in making the arrangements for the adoption.

(As amended by No. 53 of 1965)

FORM 2
(Regulation 6)

FORM OF CONSENT TO THE MAKING OF AN APPLICATION FOR A
LICENCE

I of
being the *..... of the infant named with
respect to whom application is to be made to the Commissioner for Juvenile
Welfare by for the
grant of a licence under section 33 of the Adoption Act authorising the care and
possession of the said infant for whose adoption arrangements have been made
to be transferred to ,
resident abroad at ,
do hereby declare that I consent to the making of the said application.

* Here insert the appropriate words, i.e. father, mother, guardian, person having
the actual custody, a person liable to contribute to the support, etc.

In witness whereof I have signed this consent on
theday of, 19.....

Signature

Declared and signed before me.

Magistrate

* Here insert the appropriate words, i.e. father, mother, guardian, person having
the actual custody, a person liable to contribute to the support, etc.

(As amended by No. 53 of 1965)

FORM 3
(Regulation 7)

FORM OF DECLARATION OF SERVICE

I
of
hereby declare that I did on the day of, 19.....,
serve
of with a copy of the notice of application to be made to the
Commissioner for Juvenile Welfare for a licence under section 33 of the
Adoption Act in respect of an infant named by*:

- (i) delivering the said document personally;
- (ii) sending the said document by registered post to
being his/her last known or usual place of abode;
- (iii) leaving the said document at being the
registered office of . (principal
place where transacts or carries on its business);

- (iv) sending the said document by registered post to
being the registered office of (principal
place where transacts or carries on its business).

Declared and signed before me the day of, 19.....

Signature

Magistrate

*Delete whichever is inapplicable.

FORM 4
(Regulation 9)

LICENCE GRANTED BY COMMISSIONER FOR JUVENILE
WELFARE

WHEREAS application has been made by
of
for a licence under section 33 of the Adoption Act for authority to
transfer the care and possession
of
an infant aged , having been born as far as can be ascertained
on the day of, 19,
to
resident at

AND WHEREAS I, the undersigned, am satisfied that all the consents
required by section 33 (1) (a) of the said Act have been given or
dispensed with, and am further satisfied by the report of
that the aforesaid is a suitable person to be entrusted with the care
and possession of the said infant, and that the transfer is likely to be for
the welfare of the said infant;

AND WHEREAS I am further satisfied that the aforesaid application
is made in connection with arrangements which have been made for the
adoption of the said infant by
of ;

NOW THEREFORE I, the undersigned, do hereby grant (subject to
the conditions and restrictions set out below) this licence authorising the
care and possession of the said
to be transferred to the said (and I do hereby authorise the making and
receipt of payments as follows:
)

.....

*Commissioner
for Juvenile
Welfare*

CONDITIONS AND RESTRICTIONS

- 1.
- 2.

(As amended by No. 53 of 1965)

SECTION 37-THE ADOPTION (FORMS) REGULATIONS

Government
Notice
248 of 1956

Regulations by the Minister

- | | |
|---|---|
| 1. These Regulations may be cited as the Adoption (Forms) Regulations. | Title |
| 2. Form 1 in the Schedule is hereby prescribed as the form of notice to be given to the Commissioner for the purpose of paragraph (c) of subsection (5) of section <i>four</i> of the Act. | Form of notice to Commissioner under section 4 (5) (c) of the Act |
| 3. Form 2 in the Schedule is hereby prescribed as the form of notice to be given to the Commissioner for the purposes of section <i>twenty-six</i> of the Act. | Form of notice to Commissioner under section 26 of the Act |
| 4. The forms hereby prescribed may be used with such variations as the circumstances of the case may require. | Forms may be varied |

SCHEDULE

PRESCRIBED FORMS

FORM 1 **(Regulation 2)**

THE ADOPTION ACT
THE ADOPTION (FORMS) REGULATIONS
FORM OF NOTICE TO BE SENT TO THE COMMISSIONER FOR
JUVENILE WELFARE PURSUANT TO SECTION 4 (5) (C) OF THE
ACT

To: The Commissioner for Juvenile Welfare,

*Delete

Lusaka.

as
required

TAKE NOTICE that I, (1)
of (2)
(P.O. Box No.)

a by occupation, intend to
apply for an adoption order in respect of the infant whose particulars are stated below:
Infant's names
Date of birth Sex
Place of birth
Infant was received into my care on . from
(3)

AND FURTHER TAKE NOTICE that I, (1)
*propose to make an application
(*have instructed Messrs
of to make an application) in the
prescribed manner to the *High Court at
/*Subordinate Court of the
at
Date.....

Signature

NOTES-

- (1) Insert full names in block capitals.
- (2) Insert full residential address.
- (3) Insert full name of person or agency from whom infant was received and the residential address of such person or agency.
- (4) Insert name and address of solicitors (if any).

FORM 2
(Regulation 3)

THE ADOPTION ACT
THE ADOPTION (FORMS) REGULATIONS

*Delete as required

FORM OF NOTICE TO BE SENT TO THE COMMISSIONER FOR JUVENILE WELFARE PURSUANT TO SECTION 26 OF THE ACT

To: The Commissioner for Juvenile Welfare, Lusaka.

TAKE NOTICE that I, (1)

of (2)

(P.O. Box No.)

a by occupation, not being

the parent, guardian or custodian of (3)

an infant of the sex, born on the

day of, 19....., at

propose to make arrangements for the said infant to be placed in the care and possession of

(4)

whose address is (2) (P.O. Box No.)

with effect from the day of, 19.....

AND the said (4)

*has/have been informed of *his/her/their responsibility to inform you of any change of residence whilst the said infant is in *his/her/their care and possession.

Date.....

Signature

NOTES-

(1) Insert full names in block capitals.

(2) Insert full residential address.

(3) Insert infant's name in full.

(4) Insert names of both husband and wife if infant is placed with married couple.

THE ADOPTION RULES [ARRANGEMENT OF RULES]

Rule

1. Title

2. Interpretation

3. Application
4. Previous application to subordinate court
5. Previous application to High Court
6. Serial number
7. Safeguarding identity of applicant
8. Who are to be served
9. Consents in writing
10. Mode of service
11. Verification by affidavit
12. Guardian *ad litem*
13. Notice of hearing
14. Secrecy
15. Restriction as to service of orders
16. Duties of guardian *ad litem*
17. Information to be confidential
18. Presence of parties
19. Cases more fit for the High Court
20. Supervision of infant
21. Notice of further hearing
22. Prescribed officer
23. Costs
24. Safe custody of documents
25. Procedure governing applications
26. Fees, costs and allowances
27. Adoption and interim orders
28. Forms may be varied

FIRST SCHEDULE-Prescribed forms

SECOND SCHEDULE-Additional matters subject to investigation and report by guardian *ad litem*

SECTION 38-THE ADOPTION RULES Rules by the High Court

Government
Notices

1. These Rules may be cited as the Adoption Rules. Title
2. In these Rules, unless the context otherwise requires- Interpretation

"the Court" means the High Court or, as the case may be, a subordinate court of the first class sitting as a juvenile court, and having jurisdiction under section *ten* of the Act;

"the infant" means the child proposed for adoption;

"the petitioner" means the person or persons applying for the adoption.
3. An application to the High Court or to a subordinate court for an adoption order shall be made by a petition in Forms 1 and 2 respectively in the First Schedule. Application
4. If in the case of an application to a subordinate court it appears that the petitioner has previously made an application for an adoption order in respect of the same infant to any court other than a subordinate court, the Court shall not entertain the appeal; and if it appears that the petitioner has previously made an application for such an order to a subordinate court, the Court shall not entertain the application unless it is satisfied that there has been a substantial change in the circumstances since the previous application. Previous application to subordinate court
5. If it appears to the High Court that the petitioner has previously made an application for an adoption order in respect of the same infant to the High Court, the application shall not be proceeded with unless the Judge is satisfied that there has been a substantial change in the circumstances since the previous application. Previous application to High Court
6. If any person proposing to apply to the High Court or subordinate court for an adoption order desires that his identity should be kept confidential he may, before filing a petition, apply to the Registrar of the High Court or clerk of the court, as the case may be, for a serial number to be assigned to him for the purposes of the proposed petition, and the Serial number

Registrar or clerk of the court shall assign such a number to him accordingly.

7. Unless it appears from the petition or is otherwise shown to the satisfaction of the Court, that the petitioner does not desire that his identity should be kept confidential, the proceedings shall be conducted with a view to securing that he is not seen by or made known to any individual being a respondent to the proceedings (other than the infant or the spouse of the petitioner); and in particular the Court shall direct that the petitioner (unless his attendance is dispensed with under rule 18) shall attend and be heard and examined separately and apart from any such respondent.

Safe-guarding
identity of
applicant

8. The petition shall be served on-

Who are to be
served

- (a) the parent or parents of the infant;
- (b) the guardian or guardians of the infant;
- (c) the person or persons having the actual custody of the infant; and
- (d) the person or persons liable to contribute to the support of the infant;

but the Court may in its discretion dispense with service on any of those persons, and may in its discretion order the petition to be served on any other person.

9. Every consent required under section *four* of the Act shall be in writing and shall be in accordance with the form of consent as set out in Form 3 in the First Schedule and shall be attested by a magistrate.

Consents in
writing

10. Every petition, notice or other document required to be served by these Rules shall be served by being posted in a prepaid registered envelope addressed to the person to be served, unless the Court otherwise directs, and shall, at the expiration of such period of time as may to the Court seem proper from the time of posting, be deemed to have been served, unless the contrary appears. The service of every petition, notice or other document not served by the Court shall be verified by affidavit, unless the Court otherwise directs.

Mode of service

11. The petition shall, as to all its paragraphs, be verified by affidavit and there shall be annexed to the affidavit all certificates, consents and other documents necessary for proving the averments in the petition.

Verification by
affidavit

- 12.** The infant shall be a respondent to the petition and, as soon as practicable after the filing of the petition, the Court shall appoint a guardian *ad litem* to the infant and the Court shall thereupon cause the petition and all documents annexed thereto to be served on the guardian *ad litem*. Guardian *ad litem*
- 13.** When a guardian *ad litem* has been appointed, the Court shall appoint a day for the hearing of the petition and shall give notice to all parties, including the guardian *ad litem*, of the day so appointed. The notice shall be served not less than seven clear days before the day appointed for the hearing and shall be in accordance with Form 4 in the First Schedule. Notice of hearing
- 14.** All documents filed in the Court shall be confidential and shall be kept secret by the Court. Every petition and every application shall be heard and determined *in camera*. Secrecy
- 15.** No copy or duplicate of any order or any extract therefrom made by the Court shall be given to or served upon any person other than the petitioner and the Registrar-General, unless the Court otherwise directs. Restriction as to service of orders
- 16.** (1) It shall be the duty of the guardian *ad litem* to investigate as fully as possible all the circumstances of the infant and the petitioner and all other matters relevant to the proposed adoption with a view to safeguarding the interests of the infant, and in particular it shall be his duty to include in his investigation the following questions: Duties of guardian *ad litem*
- (a) whether the statements in the petition are true;
- (b) whether any payment or other award in consideration of the adoption has been received or agreed upon, and whether it is consistent with the welfare of the infant;
- (c) whether the means and status of the petitioner are such as to enable him to maintain and bring up the infant suitably, and what right to or interest in property the infant has;
- (d) what insurance, if any, has been effected on the life of the infant;

(e) whether it is desirable for the welfare of the infant that the Court should be asked to make an interim order or to impose, in making an adoption order, any particular terms or conditions or to require the petitioner to make any particular provision for the infant.

(2) The guardian *ad litem* shall make inquiries as to all matters alleged in the petition and as to the Additional Matters specified in the Second Schedule and report to the Court upon them. It shall also be his duty to attend the Court whenever required for the purpose and on the hearing of the petition.

17. The guardian *ad litem*, and, where a body of persons is appointed guardian *ad litem*, any officer or agent of that body, shall regard all information obtained in the course of the investigation or otherwise in relation to the matter as confidential and shall not divulge any part of it to any person save as may be necessary for the proper execution of his duty.

Information to be confidential

18. The Court may refuse to make an adoption order or an interim order unless all parties, including the infant, attend before the Court, but it shall have power in its discretion to dispense with the attendance of any party, including the infant; and the Court may direct that any of the parties shall attend separately and apart from the others, or that any party, including the infant, shall be interviewed privately by the Court or its officers.

Presence of parties

19. If, owing to special circumstances, an application appears to a subordinate court to be more fit to be dealt with by the High Court, it may on that ground expressly refuse to make an order, and shall transmit the petition together with all other documents relating to the application to the High Court, and the High Court may proceed to hear and determine the application as if the application had been commenced before the High Court.

Cases more fit for the High Court

20. An interim order may provide for the supervision of the infant by the guardian *ad litem* or otherwise as the Court may think fit.

Supervision of infant

21. Where the determination of an application is postponed and an interim order made, the petitioner shall, at least thirty days before the expiration of the date specified in the interim order, apply for the final

Notice of further hearing

determination of the application. The Court shall thereupon fix a time for the further hearing of the application and issue to every respondent a notice in Form 7 in the First Schedule.

- | | |
|---|--|
| <p>22. The Registrar of the High Court or a clerk of the court of a subordinate court shall be the prescribed officer for the purpose of subsection (5) of section <i>twelve</i> of the Act, and, upon the making of an adoption order, the prescribed officer shall forward a sealed copy thereof together with a copy of the petition to the Registrar-General in a registered, postal envelope marked "confidential".</p> | <p>Prescribed officer</p> |
| <p>23. The Court may make such orders as to costs as it shall think fit and may direct the costs to be taxed according to such one of the scale of costs applicable to actions in the High Court or subordinate court, as the case may be, as the Judge or magistrate shall determine. The Court may direct that all the costs of an application under the Act shall be borne and paid by the petitioner.</p> | <p>Costs</p> |
| <p>24. The Court shall keep in a place of special security all documents whatsoever relating to any application or order made under the Act.</p> | <p>Safe custody of documents</p> |
| <p>25. Subject to these Rules, the High Court Rules and the Subordinate Courts (Civil Jurisdiction) Rules respectively shall apply to proceedings under the Act so far as they are applicable.</p> | <p>Procedure governing applications.
Cap. 27
Cap. 28</p> |
| <p>26. Subject to these Rules, the fees to be taken and charged in respect of proceedings under the Act, and the costs, witnesses' expenses and travelling allowances to be allowed in such proceedings shall be, so far as may be applicable, the same as those prescribed for the time being by the High Court Rules and the Subordinate Courts (Civil Jurisdiction) Rules respectively.</p> | <p>Fees, costs and allowances
Cap. 27
Cap. 28</p> |
| <p>27. Forms 5 and 6 respectively in the First Schedule shall be used in making an adoption order and an interim order respectively.</p> | <p>Adoption and interim orders</p> |
| <p>28. The forms in the First Schedule shall be used with such variations as the circumstances may require.</p> | <p>Forms may be varied</p> |

FIRST SCHEDULE

PRESCRIBED FORMS

FORM 1
(Rule 3)

THE ADOPTION RULES
PETITION

In the High Court for Zambia.

In the matter of A.B. an Infant
and

In the matter of the Adoption Act.

To: A Judge of the High Court.

The Petition of C.D. of (and
E.D. (born) his wife of the same address)

SHOWETH.-

1. Your Petitioner(s) is (are) desirous of adopting the said A.B.
provisions of the Adoption Act.

2. Your Petitioner(s) is (are) resident at

3. Your Petitioner C.D. is unmarried (was married to your
Petitioner E.D. at on
the day of, 19.....).

4. Your Petitioner is by occupation a

5. Your Petitioner C.D. is years of age and your Petitioner
E.D. is years of age.

6. Your Petitioner(s) has (have) resident with him (them) the following persons,
namely

7. Your Petitioner C.D. (E.D.) is related to the said
..... as follows
(or, Your Petitioner(s) is not (are not nor is either of them) related to the said A.B.)

8. The said A.B. is-

(a) of the sex;

(b) unmarried;

(c) a child of and both of

(d) resident in Zambia;

(e) years of age, having been born on the day of.....
at.....

(f) resident at

(g) now in the actual custody of of

(h) under the guardianship of of

(i) is entitled to the following property, namely.....

9. of
(and of) is (are) liable to contribute to support of the said A.B.

10. The said A.B. has not been the subject of an adoption order application or petition for an adoption order save that (state order and application or petition, if any).

11. Your Petitioner(s) undertakes (undertake) if an order is made on this Petition, to make for the said A.B. the following provision, namely

Your Petitioner(s) will, if required, secure the above provision by bond or otherwise as the Court may require.

12. Consents to the making of an adoption order have been obtained from the following persons and are hereto, namely:

- (a) (Parents)
- (b) (Guardian)
- (c) (Actual custodian of Infant)
- (d) (Person or persons liable to contribute to support of Infant)
- (e) (Spouse of Petitioner)

13. Your Petitioner(s) has not (have not has either of them) received agreed to receive, and no person has given or agreed to make or give to the Petitioner(s) (or either of them) any payment or reward in consideration of the adoption of the said A.B. (except as follows, viz).

14. It is proposed that the costs of this Petition shall be provided for as follows, namely:

15. Your Petitioner(s) notified the Commissioner for Juvenile Welfare of his/her/their intention to apply for an adoption order in respect of the said A.B. on the day of, 19.....

16. Your Petitioner(s) desires that his/their identity shall be kept confidential (or does not desire that his/their identity should be kept confidential).

17. If an adoption order is made in pursuance of the Petition it is proposed that the said A.B. should be known as

Your Petitioner(s) prays (pray)-

- (i) That an order for the adoption of the said A.B..... by your Petitioner(s) may be made in pursuance of the Adoption Act with all necessary directions:
- (ii) That the costs of this Petition may be provided for as above mentioned or otherwise as the Court may order.
- (iii) Such further or other order as the nature of the case may require.

AND Your Petitioner(s) will ever pray.

NOTE-It is intended to serve this Petition on

FORM 2
(Rule 3)

THE ADOPTION RULES

PETITION

In the Subordinate Court of the First Class

Holden at

In the matter of A.B an Infant

and

In the matter of the Adoption Act.

To: The Magistrate of the said Court.

(the same as in Form 1)

FORM 3
(Rule 6)

THE ADOPTION RULES

CONSENT TO ADOPTION ORDER

In the matter of a Petition by
of _____ to the High Court
(or to the Subordinate Court of the First Class at _____)
for an order for the adoption of an Infant named

I, the undersigned,
of being-

- (a) the father of the Infant;
- (b) the mother of the Infant;
- (c) the guardian of the Infant;
- (d) a person liable to contribute to the maintenance of the Infant;
- (e) the person (acting on behalf of a body) having parental rights in respect of the Infant or liable to contribute to the maintenance of the Infant; or
- (f) the spouse of the Petitioner;

hereby state as follows:

- (1) I understand that the effect of an adoption order is to deprive a parent or guardian of all rights in respect of the maintenance and upbringing of the Infant:
- (2) I understand that when the Petition for an adoption order in respect of the said A.B. is heard by the Judge (or Magistrate) this document may be used as evidence of my consent to the making of the order unless I have notified the Court that I no longer consent:
- (3) I hereby consent to the making of an adoption order in pursuance of the said Petition (on condition that the religious persuasion in which the infant is brought up is):

Signature

Signed at on the
by the said [who satisfied me
that she fully understands the nature of the foregoing statement and was prepared to surrender her child for adoption].*

Before me (signature)
(Address)

Magistrate

* Delete words in square brackets except where the consenting party is the mother of the infant.

FORM 4
(Rule 13)

THE ADOPTION RULES
FORM OF NOTICE OF DAY APPOINTED FOR HEARING
(Heading as in Petition)

To of

TAKE NOTICE that a Petition has been presented in the above matter praying that an order may be made for the adoption of the above-named ..

by of and that of has been appointed guardian

ad litem to the said Infant, and that the said Petition will be heard at a Court to be held at

on the day of, 19....., at..... o'clock in the noon.

.....

*Registrar
of the High
Court
or
Magistrate*

FORM 5
(Rule 27)

THE ADOPTION RULES
ADOPTION ORDER IN RESPECT OF AN INFANT NAMED A.B.
(Hearing as in Petition)

UPON reading the Petition of
of (full address) .
(and of (born) his wife)
(hereinafter called the Petitioner(s)) for an Order under the Adoption Act
authorising him/her/them to adopt
A.B.
an Infant the child/adopted child of .

AND the said A.B. (hereinafter
called the Infant) being of the sex and never having been
married:

AND the Petitioner/one of Petitioners
having attained the age of twenty-five years and being at least twenty-one
years older than the Infant/having attained the age of twenty-one years
and being a relative of the Infant within the meaning of the said Act/being
the mother/father of the Infant:

[AND the names by which the Infant is to be known being
]

[AND it having been proved to the satisfaction of the Court that the
Infant is identical with
A.B.
to whom the entry numbered and made on the
..... day of , 19....., in the Register of
Births relates]:

AND the (probable) date of the birth of the Infant appearing to be the
day of, 19....., born
at

[AND the infant having been previously the subject of an adoption
order dated the
day of, 19....., of which particulars are
entered in the Adopted Children Register]:

AND all the Consents required by the said Act being obtained or
dispensed with:

IT IS ORDERED that the Petitioner/Petitioners be authorised to adopt
the Infant:

(And the following payment or reward is sanctioned:
):

(And as regards costs it is ordered that
):

AND it is directed that the Registrar-General shall make in the
Adopted Children Register an entry recording the adoption:

(And it is further directed that the Registrar-General shall cause the
said entry in the Register of Births to be marked with the word
"Adopted"):

(And it is further directed that the Registrar-General shall cause the
previous entry in the Adopted Children Register relating to the Infant to
be marked with the word "Re-adopted").

Dated this day of, 19.....

*Registrar
of the
High
Court
or
Magistrate*

FORM 6
(Rule 27)

THE ADOPTION RULES
INTERIM ORDER IN RESPECT OF AN INFANT NAMED A.B.
(Heading as in Petition)

UPON reading the Petition of, etc. (As in the Adoption Order, Form 5, down to and including the paragraph obtained or dispensed with").

IT IS ORDERED that the determination of the Application be postponed, and the custody of the Infant be the day of, 19....., by way of a probationary period, upon namely: and that the Petitioner(s) shall at least thirty days before that date, apply for the final determination of the Pet

As regards costs it is ordered that.

*Registrar of t
o
Magi*

FORM 7
(Rule 21)

THE ADOPTION RULES

NOTICE OF FURTHER HEARING OF AN APPLICATION FOR AN
ADOPTION ORDER IN RESPECT OF AN INFANT NAMED A.B.

Whereas a Petition for an order under the Adoption Act, authorising
the adoption of A.B.

an Infant of the sex born on the . day
of, 19.....,
was made by

AND WHEREAS

of was appointed guardian *ad litem* of the said Infant:

AND WHEREAS the determination of the said Petition was
postponed and an interim order was made by the

Court holden aton
the day of, 19.....:

TAKE NOTICE that the said Petition will be further heard before the

Court holden at on the day of,
19.....,

at the hour of o'clock in the noon, and that you may
appear to show cause why the adoption order should not be made.

Dated the day of,
19.....

*Registrar of
the High
Court
or
Magistrate*

SECOND SCHEDULE

THE ADOPTION RULES

(Rule 16)

ADDITIONAL MATTERS SUBJECT TO INVESTIGATION AND REPORT BY GUARDIAN AD LITEM

PART I

The Petitioner

1. In the case of a joint application, how long the persons concerned have been married.
2. In the case of an application by one only of two spouses-
 - (a) whether the other spouse consents to the application; and
 - (b) why he or she does not join in the application.
3. What other children (including adopted children) such persons have.
4. What is the age and sex of all children living in the home of those persons, and what is their relationship to them.
5. What number of living-rooms and bedrooms are contained in the said home, and what is the condition of the home.
6. What are the means of such persons.
7. Whether either of them suffers or has suffered from any serious illness, and whether there is any history of tuberculosis, epilepsy or mental illness in their families.
8. Whether any person specified in the notice of application as a person to whom reference may be made is a responsible person and recommends them without reservation.
9. Whether such persons understand that an adoption order is irrevocable and that the order if made will render them responsible for the maintenance and upbringing of the infant.

PART II

The Infant

10. Whether the infant has any right to or interest in any property.
11. Whether the infant (if of an age to understand the effect of an adoption order) wishes the order to be made.
12. Whether an order committing the infant to the care of a local

authority as a fit person under the Children and Young Persons Act, 1933, of the United Kingdom, or a resolution for the assumption by a local authority of parental rights, is in force in respect of the infant.

PART III

The Parents

13. Whether the mother consents to the adoption and identifies the birth certificate (if any) attached to the notice of application as the birth certificate of the infant.
14. Whether the father consents to the adoption.
15. If the infant is illegitimate, whether an affiliation order has been made against any person adjusted to be the putative father of the infant, or an agreement to contribute to the maintenance of the infant has been made by a person acknowledging himself to be the father of the infant, and in either case whether that person consents to the adoption.
16. When did the parent or parents part with the infant, and to whom?
17. What are the reasons of the parent or parents for consenting to the adoption order which is irrevocable, and that the order if made will deprive him or her of all rights in respect of the maintenance and upbringing of the infant?
19. Where the statement of application requests the Court to dispense with the consent of the parent, or either of the parents, on the ground that he or she cannot be found, what steps have been taken to trace him or her.

SECTION 37-THE ADOPTION (FEES) REGULATIONS Regulations by the Minister

Statutory
Instrument
58 of 1994
102 of 1996

1. These Regulations may be cited as the Adoption (Fees) Regulations. Title
2. A person who intends to adopt a child under the Adoption Act shall, before doing so, pay to the Court a fee as set out in the Schedule. Fee
Cap. 218

SCHEDULE

(Regulation 2)

PRESCRIBED FEES

	Fee Units
Adoption certificate	556
Search fee	14
Alteration of register	9
Affidavit in support of application for Registrar's certificate	14

(As amended by S.I. No. 102 of 1996)

CHAPTER 55

THE MAINTENANCE ORDERS ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title
2. Interpretation

PART II

REGISTRATION, ENFORCEMENT AND VARIATION OF CERTAIN MAINTENANCE ORDERS

3. Application of Part II
4. Registration of orders
5. Enforcement of registered orders
6. Variation of orders registered in subordinate courts
7. Cancellation of registration

PART III

ATTACHMENT OF EARNINGS ORDERS

8. Powers of courts to make orders attaching earnings of

defaulters under maintenance orders

9. Powers of courts to make attachment of earnings orders in proceedings under other Acts
10. Restriction of issue of orders, etc., of commitment on making of attachment of earnings orders
11. Variation and discharge, etc., of attachment of earnings orders
12. Liabilities of persons to whom attachment of earnings orders are directed
13. Powers of courts to obtain statements of earnings, etc.
14. Powers of courts to determine whether payments are earnings
15. Miscellaneous provisions as to payments under attachment of earnings orders
16. Application to earnings paid by the Government, etc.
17. Offences

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

Section

18. Special provisions for subordinate courts
19. Rules

SCHEDULE-Payments under attachment of earnings orders

CHAPTER 55

MAINTENANCE ORDERS

An Act to make provision for the registration in the High Court or a subordinate court of certain maintenance orders made by the order of those courts; to provide for the enforcement and variation of registered orders; to provide for the attachment of sums falling to be paid by way of wages, salary or other earnings or by way of pension for the purpose of enforcing certain maintenance orders; and to provide for matters incidental to or connected with the foregoing.

[26th August, 1960]

39 of 1960
13 of 1994
*Government
Notice*
497 of 1964
*Statutory
Instrument*
72 of 1964

PART I

PRELIMINARY

1. This Act may be cited as the Maintenance Orders Act*

Short title

* The provisions of this Act ceased with effect from 28th April, 1995, to apply to the maintenance of children. (See section 43 of Cap. 64)

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

Interpretation
Cap. 56

"affiliation order" means an order made under section 4 of the Bastardy Laws Amendment Act, 1872, of the United Kingdom, adjudging a man to be the putative father of a bastard child and ordering him to pay a sum of money weekly or otherwise to the mother of a bastard child or to any other person who is named in the order;

"attachment of earnings order" has the meaning assigned to it by subsection (1) of section *eight*;

"defendant", in relation to a maintenance order or a related attachment of earnings order, means the person liable to make payments under the maintenance order;

"earnings", in relation to a defendant, means any sums (other than excepted sums) payable to him-

(a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary by the person paying the wages or salary or payable under a contract of service);

(b) by way of pension (including an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment);

*The provisions of this Act ceased with effect from 28th April, 1995, to apply to the maintenance of children. (See section 43 of Cap. 64)

"employer" means a person by whom, as a principal and not as a servant or agent, earnings fall to be paid to a defendant, and reference to payment of earnings shall be construed accordingly;

"excepted sums" means-

(a) sums payable by any public department of the government of any country outside Zambia; and

(b) pension or allowances payable to the defendant in respect of his disablement or disability;

"magistrate's court" means a subordinate court presided over by a senior resident magistrate and a subordinate court presided over by a resident magistrate;

"maintenance order" means-

(a) an order for alimony, maintenance or other payments made or deemed to be made by a court in Zambia under any of the following enactments, that is to say:

ii(i) sections 19 to 27 of the Matrimonial Causes Act, 1950, of the United Kingdom;

i(ii) the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, of the United Kingdom;

(iii) section 11 of the Matrimonial Causes Act, 1937, of the United Kingdom; or

(iv) section 3 or 4 of the Bastardy Laws Amendment Act, 1872, of the United Kingdom;

(b) an order registered in a court under the Maintenance Orders (Enforcement) Act or confirmed by a court under that Act;

and includes any such order which has been discharged if any arrears are recoverable thereunder;

"prescribed" means prescribed by rules of court;

"proper officer", in relation to the High Court, has the meaning assigned from time to time to the expression by rules of the High Court; and in relation to a subordinate court means the clerk of the court.

(2) Any reference in this Act to a person entitled to receive payments under a maintenance order is a reference to a person entitled to receive such payments either directly or through another person or for transmission to another person.

(3) Any reference in this Act to proceedings relating to an order includes a reference to proceedings in which the order may be made.

(4) Any reference in this Act to costs incurred in proceedings relating to a maintenance order shall be construed in the case of a maintenance

order made by the High Court as a reference to such costs as are included in an order for costs relating solely to that maintenance order.

PART II

REGISTRATION, ENFORCEMENT AND VARIATION OF CERTAIN MAINTENANCE ORDERS

3. (1) The provisions of this Part shall have effect for the purpose of enabling maintenance orders to which this Part applies to be registered- Application of Part II

(a) in the case of an order made by the High Court, in a magistrate's court; and

(b) in the case of an order made by a subordinate court, in the High Court or in any other subordinate court;

and, subject to those provisions, while so registered-

(i) to be enforced in like manner as an order made by the court of registration; and

(ii) in the case of an order registered in a magistrate's court, to be varied by such court.

(2) This Part applies to maintenance orders made by the High Court or a subordinate court.

(3) Without prejudice to the provisions of section *two*, in this Part, unless the context otherwise requires, the following expressions have the following meanings:

"High Court order" and "subordinate court order" mean an order made by the High Court or a subordinate court, as the case may be;

"order" means a maintenance order to which this Part applies;

"original court" and "court of registration", in relation to an order, mean the court by which the order was made or, as the case may be, the court in which the order is registered;

"registered" means registered in accordance with the provisions of this Part, and "registration" shall be construed accordingly;

and, for the purposes of this Part, an order for the payment by the

defendant of any costs incurred in proceedings relating to a maintenance order, being an order for the payment of costs made while the maintenance order is not registered, shall be deemed to form part of that maintenance order.

4. (1) A person entitled to receive payments under a High Court order may apply for the registration of the order to the original court, and the court may, if it thinks fit, grant the application. Registration of orders

(2) Where an application for the registration of such an order is granted-

(a) no proceedings shall be begun, and no writ, warrant or other process shall be issued, for the enforcement of the order before the registration of the order or the expiration of the prescribed period from the grant of the application, whichever first occurs; and

(b) the original court shall, on being satisfied within the period aforesaid by the person who made the application that no such proceedings or process begun or issued before the grant of the application remain pending or in force, cause a certified copy of the order to be sent to the clerk of a subordinate court within whose area of jurisdiction the defendant appears to be;

but if at the expiration of the period aforesaid the original court has not been so satisfied, the grant of the application shall become void.

(3) A person entitled to receive payments under a subordinate court order who considers that the order could be more effectively enforced if it were registered may apply for the registration of the order to the original court, and the court shall grant the application on being satisfied in the prescribed manner that, at the time when the application was made, an amount equal to not less, in the case of an order for weekly payments, than four or, in any other case, than two of the payments required by the order was due thereunder and unpaid.

(4) Where an application for the registration of a subordinate court order is granted-

(a) no proceedings for the enforcement of the order shall be begun before the registration takes place and no warrant or other process for the enforcement thereof shall be issued in consequence of any such

proceedings begun before the grant of the application;

(b) any warrant of commitment issued for the enforcement of the order shall cease to have effect when the person in possession of the warrant is informed of the grant of the application, unless the defendant has then already been detained in pursuance of the warrant; and

(c) the original court shall, on being satisfied in the prescribed manner that no process for the enforcement of the order issued before the grant of the application remains in force, cause a certified copy of the order to be sent to the prescribed officer of the High Court where the application is for registration in the High Court or, where the application is for registration in another subordinate court, to the clerk of that subordinate court.

(5) The officer or clerk of a court who receives a certified copy of an order sent to him under this section shall cause the order to be registered in that court.

(6) Where a maintenance order is registered in any court under this Part, any provision of the order by virtue of which sums payable thereunder are required to be paid through or to any officer or person on behalf of the person entitled thereto shall be of no effect so long as the order is so registered.

(7) Where a maintenance order is registered under this Part, the court shall, unless it is satisfied that it is undesirable to do so, order that all payments to be made under the maintenance order (including any arrears accrued before the date of the registration) shall be made through the proper officer of the court of registration.

(8) An order made by a subordinate court under subsection (7) may be varied or revoked by a subsequent order.

(9) Where, by virtue of the provisions of this section or any order made thereunder, payments under a maintenance order cease to be or become payable through or to any officer or person, the person liable to make the payments shall, until he is given the prescribed notice to that effect, be deemed to comply with the maintenance order if he makes payments in accordance with the maintenance order and any order under this section

of which he has received such notice.

(10) In this section, "certified copy", in relation to an order of the court, means a copy certified by the proper officer of the court to be a true copy of the order or of the official record thereof.

(11) An order which is for the time being registered under this Part in any court shall not be registered thereunder in any other court.

5. (1) Subject to the provisions of this section, a registered order shall be enforceable in all respects as if it has been made by the court of registration and as if that court had had jurisdiction to make it; and proceedings for or with respect to the enforcement of a registered order may be taken accordingly.

Enforcement of registered orders

(2) Subject to the provisions of subsection (3), an order registered in a subordinate court shall be enforceable as if it were an affiliation order; and the provisions of any law with respect to the enforcement of affiliation orders (including laws relating to the accrual of arrears and the remission of sums due) shall apply accordingly.

(3) Where an order remains or becomes registered after the discharge of the order, no proceedings shall be taken by virtue of that registration except in respect of arrears which were due under the order at the time of the discharge and have not been remitted.

6. (1) The provisions of this section shall have effect with respect to the variation of orders registered in subordinate courts, and references in this section to registered orders shall be construed accordingly.

Variation of orders registered in subordinate courts

(2) Subject to the following provisions of this section-

(a) the court of registration may exercise the same jurisdiction to vary any rate of payments specified by a registered order (other than jurisdiction in a case where a party to the order is not present in Zambia when the application for variation is made) as is exercisable, apart from

this subsection, by the original court; and

(b) a rate of payments specified by a registered order shall not be varied except by the court of registration.

(3) A rate of payments specified by a registered order shall not be varied by virtue of subsection (2) so as to exceed whichever of the following rates is the greater, that is to say:

(a) the rate of payments specified by the order as made or last varied by the original court; or

(b) in the case of payments for the maintenance of a person as a party to a marriage (including a marriage which has been dissolved or annulled), ten kwacha a week and, in the case of payments for the maintenance of a child or children, three kwacha a week in respect of each child.

(4) If it appears to the court to which an application is made by virtue of subsection (2) for the variation of a rate of payments specified by a registered order that, by reason of the limitations imposed on the court's jurisdiction by subsection (3) or for any other reason, it is appropriate to remit the application to the original court, the first-mentioned court shall so remit the application, and the original court shall thereupon deal with the application as if the order were not registered.

(5) Nothing in subsection (2) shall affect the jurisdiction of the original court to vary a rate of payments specified by a registered order if an application for the variation of that rate is made to that court-

(a) in proceedings for a variation of provisions of the order which do not specify a rate of payments; or

(b) at a time when a party to the order is not present in Zambia.

(6) No application for any variation of a registered order shall be made to any court while proceedings for any variation of the order are pending in any other court.

(7) Where a subordinate court, in exercise of the jurisdiction conferred by subsection (2), varies or refuses to vary a registered order, an appeal from the variation or refusal shall lie to the High Court.

7. (1) If a person entitled to receive payments under a registered order desires the registration to be cancelled, he may give notice under this section. Cancellation of registration

(2) Where the original court varies or discharges an order registered in a subordinate court, the original court may, if it thinks fit, give notice under this section.

(3) Where a subordinate court discharges an order registered in the High Court and it appears to the subordinate court, whether by reason of the remission of arrears by that court or otherwise, that no arrears under the order remain to be recovered, the subordinate court shall give notice under this section.

(4) Notice under this section shall be given to the court of registration; and where such notice is given-

(a) no proceedings for the enforcement of the registered order shall be begun before the cancellation of the registration and no writ, warrant or other process for the enforcement thereof shall be issued in consequence of any such proceedings begun before the giving of the notice;

(b) where the order is registered in a subordinate court, any warrant of commitment issued for the enforcement of the order shall cease to have effect when the person in possession of the warrant is informed of the giving of the notice, unless the defendant has then already been detained in pursuance of the warrant; and

(c) the court of registration shall cancel the registration on being satisfied in the prescribed manner-

(i) that no process for the enforcement of the registered order issued before the giving of the notice remains in force; and

(ii) in the case of an order registered in a subordinate court, that no proceedings for the variation of the order are pending in a subordinate

court.

(5) On the cancellation of the registration of an order, any order made in relation thereto under subsection (7) of section *four* shall cease to have effect, but until the defendant receives the prescribed notice of the cancellation he shall be deemed to comply with the order if he makes payments in accordance with any order under the said subsection (7) which was in force immediately before the cancellation and of which he has notice.

PART III

ATTACHMENT OF EARNINGS ORDERS

8. (1) If, on the application of a person entitled to receive payments under a maintenance order, it appears to the High Court or a magistrate's court by which payment of any arrears under the order is enforceable-

Powers of courts to make orders attaching earnings of defaulters under maintenance orders

(a) that, at the time when the application was made, there was due under the order and unpaid an amount equal to not less, in the case of an order for weekly payments, than four or, in any other case, than two of the payments required by the order; and

(b) that the defendant is a person to whom earnings fall to be paid; then, subject to subsection (2), the court may, if it thinks fit, by an order or orders require the person to whom the order in question is directed, being a person appearing to the court to be the defendant's employer in respect of those earnings or a part thereof, to make out of those earnings or that part thereof payments in accordance with the Schedule; and any such order is in this Act referred to as an "attachment of earnings order".

(2) A court shall not make an attachment of earnings order if it appears to the court that the failure of the defendant to make payments in accordance with the maintenance order in question was not due to his wilful refusal or culpable neglect.

(3) An attachment of earnings order shall-

(a) specify the normal deduction rate, that is to say, the rate at which the court making or varying the attachment of earnings order thinks it reasonable that the earnings to which that order relates should be applied from time to time in satisfying the requirements of the maintenance order, not exceeding the rate appearing to that court to be necessary for the purpose of-

(i) securing payment of the sums falling due from time to time under the maintenance order; and

(ii) securing payment within a reasonable period of any sums already due and unpaid under the maintenance order and any costs incurred in proceedings relating to the maintenance order which are payable by the defendant;

(b) specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and needs of the defendant and the needs of persons for whom he must or reasonably may provide, the court aforesaid thinks it reasonable that the relevant earnings within the meaning of the Schedule should not be reduced by a payment made in pursuance of the attachment of earnings order;

(c) designate the officer to whom any payment under the Schedule is to be made, being-

(i) if the order is made by the High Court, the proper officer of the High Court; and

(ii) if the order is made by a magistrate's court, the clerk of that court; and

(d) contain, so far as they are known to the court making the order, such particulars as may be prescribed for the purpose of enabling the defendant to be identified by the person to whom the order is directed.

(4) An attachment of earnings order shall not come into force until the expiration of fourteen days from the date when a copy of the order is served on the person to whom the order is directed.

9. Without prejudice to the powers to make attachment of earnings orders conferred by the last foregoing section, where proceedings are brought in the High Court or a magistrate's court under section *four* of

Powers of courts to make attachment of

the Debtors Act (which authorises the committal to prison of persons refusing or neglecting to pay certain debts which they have had the means to pay) in respect of a default in making payments under a maintenance order, and it appears to the court that, at the date when the proceedings were begun, such an amount as is mentioned in paragraph (a) of subsection (1) of section *eight* was due under the maintenance order and unpaid and that the defendant is a person to whom earnings fall to be paid, then, subject to subsection (2) of that section, the court may, if it thinks fit, make an attachment of earnings order instead of making any other order to enforce the making of payments under the maintenance order.

earnings orders
in proceedings
under other
Acts.
Cap. 77

10. Where an attachment of earnings order is made, no order or warrant of commitment shall be issued in consequence of any proceedings for the enforcement of the related maintenance order begun before the making of the attachment of earnings order.

Restriction of
issue of orders,
etc., of
commitment on
making of
attachment of
earnings orders

11. (1) The court by which an attachment of earnings order has been made may, if it thinks fit, on the application of the defendant or a person entitled to receive payments under the related maintenance order, make an order discharging or varying the attachment of earnings order.

Variation and
discharge, etc.,
of attachment of
earnings orders

(2) An attachment of earnings order shall cease to have effect-

(a) upon the grant of an application under section *four* for the registration of the related maintenance order under Part II, notwithstanding that in the case of an application under subsection (1), the grant may subsequently become void under this subsection;

(b) where the related maintenance order is registered under Part II, upon the giving of notice with respect thereto under section *seven*;

(c) upon the making of an order of commitment for the enforcement or the issue of a warrant of commitment for the enforcement of the related maintenance order or upon the exercise for that purpose of any power conferred on a subordinate court to postpone the issue of such a warrant; t27(d) upon the discharge of the related maintenance order while it is not registered under Part II;

and where an attachment of earnings order ceases to have effect as aforesaid, the proper officer of the prescribed court shall give notice of the cessation to the person to whom the order was directed:

Provided that where the related maintenance order is discharged as mentioned in paragraph (d) and it appears to the court discharging the order that arrears thereunder will remain to be recovered after the discharge, that court may, if it thinks fit, direct that this subsection shall not apply.

(3) Where notice is given to a court in pursuance of subsection (4) of section *twelve*, the court shall discharge the attachment of earnings order to which the notice relates.

(4) Where at any time it appears to the officer designated in pursuance of paragraph (c) of subsection (3) of section *eight* by an attachment of earnings order made by the High Court that-

(a) the aggregate of the payments made for the purposes of the related maintenance order by the defendant (whether under the attachment of earnings order or otherwise) exceeds the aggregate of the payments required up to that time by the maintenance order; and

(b) the normal deduction rate specified by the attachment of earnings order (or where two or more such orders are in force in relation to the maintenance order, the aggregate of the normal deduction rates specified by those orders) exceeds the rate of payments required by the maintenance order; and

(c) no proceedings for the variation or discharge of the attachment of earnings order are pending;

the said officer shall give the prescribed notice to the person to whom he is required to pay sums received under the attachment of earnings order and to the defendant, and the court which made that order-

(i) shall make the appropriate variation order unless the defendant requests the court in the prescribed manner and before the expiration of the prescribed period to proceed under paragraph (ii) and the court decides to proceed thereunder;

(ii) if the court decides to proceed under this paragraph, shall make an order either discharging the attachment of earnings order or varying that order in such manner as the court thinks fit.

In this subsection and in subsection (5), "the appropriate variation order" means an order varying the attachment of earnings order in question by reducing the normal deduction rate specified thereby so as to secure that that rate (or, in the case mentioned in paragraph (b), the aggregate of the rates therein mentioned) is the same as the rate of payments required by the maintenance order or is such lower rate as the court thinks fit having regard to the amount of the excess mentioned in paragraph (a).

(5) Where at any time it appears to the officer designated as aforesaid by an attachment of earnings order made by a magistrate's court that the conditions specified in paragraphs (a) to (c) of subsection (4) are satisfied, that officer shall make an application to that court for the appropriate variation order, and the court-

(a) shall grant the application unless the defendant appears at the hearing thereof and requests the court to proceed under paragraph (b) and the court decides to proceed thereunder;

(b) if the court decides to proceed under this paragraph, shall make an order either discharging the attachment of earnings order or varying that order in such manner as the court thinks fit.

(6) An order varying an attachment of earnings order shall not come into force until the expiration of seven days from the date when a copy of the first-mentioned order is served on the person to whom the attachment of earnings order is directed; and where an attachment of earnings order ceases to have effect under subsection (2), or is discharged otherwise than under subsection (3), the said person shall not incur any liability in consequence of his treating the order as still in force at any time before the expiration of seven days from the date when the notice required by subsection (2) or, as the case may be, a copy of the discharging order is served on him.

12. (1) A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other law but subject to the following provisions of this Act, comply with the order or, if the order is subsequently varied under the last foregoing section, with the order as so varied.

Liabilities of persons to whom attachment of earnings orders

are directed

(2) Where on any occasion on which earnings fall to be paid to a defendant, there are in force two or more attachment of earnings orders relating to those earnings, then, for the purpose of complying with the Schedule, the employer shall-

(a) deal with those orders according to the respective dates on which they came into force, disregarding any later order until any earlier order has been dealt with;

(b) deal with any later order as if the earnings to which it relates were the residue of the defendant's earnings after the making of any payment under the Schedule in pursuance of any earlier order.

(3) An employer who, in pursuance of an attachment of earnings order, makes a payment under the Schedule shall give to the defendant a statement in writing specifying the amount of that payment.

(4) A person to whom an attachment of earnings order is directed who, at the time when a copy of the order is served on him or at any time thereafter, has on no occasion during the period of four weeks immediately preceding that time been the defendant's employer shall forthwith give notice in writing in the prescribed form to the court which made the order.

(5) A person to whom an attachment of earnings order is directed shall, where the defendant ceases thereafter to be employed by him, within fourteen days of such cessation give notice thereof to the court which made the order.

13. (1) Where proceedings relating to an attachment of earnings order are brought in any court, the court may, either before or at the hearing-

Powers of courts to obtain statements of earnings, etc.

(a) order the defendant to give to the court, within such period as may be specified by the order, a statement signed by him of-

(i) the name and address of his employer, or of each of his employers if he has more than one;

(ii) such particulars as to the defendant's earnings as may be so specified; and

(iii) such prescribed particulars as may be so specified for the purpose of enabling the defendant to be identified by any employer of his;

(b) order any person appearing to the court to be an employer of the defendant to give to the court, within such period as may be specified by the order, a statement signed by him or on his behalf of such particulars as may be specified by the order of all earnings of the defendant which fell to be paid by that person during such period as may be so specified.

(2) A document purporting to be such a statement as is mentioned in subsection (1) shall, in any such proceedings as are so mentioned, be received in evidence and be deemed to be such a statement without further proof unless the contrary is shown.

14. (1) The court by which an attachment of earnings order has been made shall, on the application of the person to whom the order is directed or of the defendant or of the person in whose favour the order was made, determine whether payments to the defendant of a particular class or description specified by the application are earnings for the purposes of that order; and the person to whom the order is directed shall be entitled to give effect to any determination for the time being in force under this subsection.

Powers of courts to determine whether payments are earnings

(2) A person to whom an attachment of earnings order is directed who makes an application under subsection (1) shall not incur any liability for failing to comply with the order as respects any payments of the class or description specified by the application which are made by him to the defendant while the application, or any appeal in consequence thereof, is pending:

Provided that this subsection shall not apply as respects such payments if the said person subsequently withdraws the application or, as the case may be, abandons the appeal.

15. (1) The officer to whom an employer pays any sum in pursuance of an attachment of earnings order shall pay that sum in accordance with rules of court to such person entitled to receive payments under the

Miscellaneous provisions as to payments under

related maintenance order as is specified by the attachment of earnings order.

attachment of earnings orders

(2) Any sums received by virtue of an attachment of earnings order by the person aforesaid shall be deemed to be payments made by the defendant so as to discharge first any sums for the time being due and unpaid under the related maintenance order (a sum due at an earlier date being discharged before a sum due at a later date) and secondly any costs incurred in proceedings relating to the maintenance order which were payable by the defendant when the attachment of earnings order was made or last varied.

(3) On any occasion on which an employer makes a payment under the Schedule in respect of a defendant, the employer may, notwithstanding anything in any other law, retain for his own use out of any balance of the defendant's earnings remaining after the making of that payment the sum of five ngwee or, if on that occasion the employer makes such payments in pursuance of two or more attachment of earnings orders relating to the defendant, the sum of five ngwee in respect of each such payment.

16. (1) In relation to earnings falling to be paid by the Government, this Act shall have effect subject to the following modifications, that is to say:

Application to earnings paid by the Government, etc.

(a) the earnings shall be treated as falling to be paid by the chief officer for the time being of the department, office or other body concerned; and

(b) section *seventeen* shall not apply except in relation to a failure by the defendant to comply with an order under section *thirteen*.

(2) If any question arises, in connection with any proceedings relating to an attachment of earnings order, as to what department, office or other body is concerned for the purposes of this section, or as to who for those purposes is the chief officer thereof, that question shall be referred to and determined by the Minister responsible for finance, but the said Minister shall not be under any obligation to consider a reference under this subsection unless it is made by a court.

(3) A document purporting to set out a determination of the Minister responsible for finance under subsection (2) and to be signed by an official of the Ministry of Development and Finance shall, in any such proceedings as are mentioned in that subsection, be admissible in evidence and deemed to contain an accurate statement of such a determination unless the contrary is shown.

(4) The provisions of this Act shall apply in relation to a pension or other allowance granted under the European Officers' Pensions Act, notwithstanding the provisions of section *fourteen* of that Act.

Cap. 266

(As amended by S.I. No. 72 of 1964)

17. (1) A person who-

Offences

(a) fails to comply with subsection (1) or (4) of section *twelve* or an order of a subordinate court under section *thirteen*; or

(b) gives such a notice as is mentioned in subsection (4) of section *twelve*, or a statement in pursuance of such an order as aforesaid, which he knows to be false in a material particular; or

(c) recklessly gives such a notice or statement which is false in a material particular;

shall, subject to subsection (2), be liable on summary conviction to a fine not exceeding three hundred penalty units and in the case of a second or subsequent conviction (being, in the case of a failure to comply with subsection (1) of section *twelve*, a second or subsequent conviction relating to the same attachment of earnings order) to a fine not exceeding seven hundred and fifty penalty units

(2) It shall be a defence for a person charged with failing to comply with subsection (1) of section *twelve* to prove that he took all reasonable steps to comply with the attachment of earnings order to which the failure relates.

(As amended by Act No. 13 of 1994)

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

18. (1) Notwithstanding anything in this Act, the clerk of a subordinate court who is entitled to receive payments under a maintenance order for transmission to another person shall not apply for an attachment of earnings order, or (except as required by section *eleven*) an order discharging or varying an attachment of earnings order, in respect of those payments, unless he is requested in writing to do so by a person entitled to receive the payments through him; and where the clerk is requested as aforesaid-

Special provisions for subordinate courts

(a) he shall comply with the request unless it appears to him unreasonable in the circumstances to do so;

(b) the person by whom the request was made shall have the same liabilities for all the costs properly incurred in or about any proceedings taken in pursuance of the request as if the proceedings had been taken by that person;

and, for the purposes of paragraph (b), any application made by the clerk as required by section *eleven* shall be deemed to be made on the request of the person in whose favour the attachment of earnings order in question was made.

(2) An application to a magistrate's court for an attachment of earnings order or an order discharging or varying an attachment of earnings order or for a determination under section *fourteen* shall be made by complaint.

(3) For the purposes of the issue of a summons under a complaint made to a magistrate's court-

(a) the power to make an order in pursuance of a complaint by the defendant for the discharge or variation of an attachment of earnings order shall be deemed to be a power to make an order against the person in whose favour the attachment of earnings order was made; and

(b) the power to make an attachment of earnings order, or an order discharging or varying an attachment of earnings order, in pursuance of a complaint by any other person shall be deemed to be a power to make an order against the defendant.

(4) On making a determination under subsection (1) of section *fourteen* the court may in its discretion make such order as it thinks just and reasonable as to the payment by any of the persons mentioned in that subsection of the whole or any part of the costs of the determination and costs ordered to be paid under this subsection shall-

(a) in the case of costs to be paid by the defendant to the person in whose favour the attachment of earnings order in question is made, be deemed to be a sum due under the related maintenance order; and

(b) in any other case, be enforceable as a civil debt.

(5) Any complaint referred to in this section may be made at any time notwithstanding any limitations of time contained in any other law.

(6) A subordinate court by which payment of any arrears under a maintenance order is enforceable shall have jurisdiction to issue and entertain complaints under this Act against any person resident in Zambia, whether within or without the territorial jurisdiction of the subordinate court.

19. For the purposes of this Act, rules may be made under the provisions of the High Court Act and of the Subordinate Courts Act.

Rules.
Cap. 27
Cap. 28

SCHEDULE

(Sections 8, 12 and 15)

PAYMENTS UNDER ATTACHMENT OF EARNINGS ORDERS

1. The provisions of this Schedule shall have effect in respect of each occasion (in this Schedule referred to as a "pay-day") on which any earnings to which an attachment of earnings order relates fall to be paid.

2. In this Schedule, the following expressions have the following

meanings respectively:

"normal deduction" and "protected earnings", in relation to any pay-day, mean the amount which would represent a payment at the normal deduction rate specified by the order or, as the case may be, at the protected earnings rate so specified in respect of the period between the pay-day in question and either the last preceding pay-day or, where there is no last preceding pay-day, the date last before the pay-day in question on which the employer became the defendant's employer;

"relevant earnings", in relation to any pay-day, means the amount of the earnings aforesaid falling to be paid on the pay-day in question after the deduction from those earnings of any deductions falling to be deducted by the employer under any law, and deductions lawfully made by an employer in pursuance of a request in writing requiring or authorising deductions to be made for the purposes of the payment of income tax or of contributions to a medical aid scheme.

3. If the relevant earnings exceed the sum of-
 - (a) the protected earnings; and
 - (b) so much of any amount by which the relevant earnings falling to be paid on any previous pay-day fell short of the protected earnings for the purposes of that pay-day as has not been made good by virtue of this sub-paragraph on any other previous pay-day;the employer shall, so far as that excess permits, pay to the officer designated for the purpose in the order-
 - (i) the normal deduction; and
 - (ii) so much of the normal deduction for any previous pay-day as was not paid on that pay-day and has not been paid by virtue of this sub-paragraph on any other previous pay-day.

CHAPTER 56

THE MAINTENANCE ORDERS (ENFORCEMENT) ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Registration of order made in England or Ireland
4. Transmission to Secretary of State of order made in Zambian

court

5. Provisional order may be made *in absentia* and procedure thereon
6. Procedure on provisional order made in England or Ireland
7. Enforcement of order
8. Rules
9. Signature on documents of court officers
10. Depositions may be received in evidence
11. Provisions for reciprocity with other Commonwealth countries

CHAPTER 56

MAINTENANCE ORDERS (ENFORCEMENT)

20 of 1921

39 of 1929

An Act to make provision for the registration in Zambia of maintenance orders made in England and Ireland and for reciprocity for orders made in Zambia; to prescribe the procedure for the confirmation of provisional orders; to provide for the enforcement of registered and confirmed orders; to provide for reciprocity with other Commonwealth countries; and to provide for matters incidental to or connected with the foregoing.

36 of 1933

13 of 1954

Government

Notice

497 of 1964

[29th November, 1921]

1. This Act may be cited as the Maintenance Orders (Enforcement) Act.*

Short title

* The provisions of this Act ceased to apply to the maintenance of children with effect from 28th April 1995.

2. In this Act, unless the context otherwise requires-

Interpretation

"certified copy", in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

"dependants" means such persons as that person is, according to the law in force where the maintenance order was made, liable to maintain;

"maintenance order" means an order, other than an order of affiliation,

for the periodical payment of sums of money toward the maintenance of the wife or other dependants of the person against whom the order is made and, in the case of orders made in Ireland, shall include any order or decree for the recovery or repayment of the cost of relief or maintenance made by virtue of the provisions of the Poor Relief (Ireland) Acts, 1839 to 1914, of the United Kingdom.

3. (1) Where a maintenance order has, whether before or after the commencement of this Act, been made against any person by any court of England or Ireland and a certified copy of the order has been transmitted by a Secretary of State to the President, the President shall send a copy of the order to the prescribed officer of a court in Zambia for registration; and on receipt thereof the order shall be registered in the prescribed manner, and shall, from the date of such registration, be of the same force and effect, and, subject to the provisions of this Act, all proceedings may be taken on such order as if it had been an order originally obtained in the court in which it is so registered, and that court shall have power to enforce the order accordingly.

Registration of order made in England or Ireland

* The provisions of this Act ceased to apply to the maintenance of children with effect from 28th April 1995.

(2) The court in which an order is to be registered as aforesaid shall, if the court by which the order was made was a court of superior jurisdiction, be the High Court, and, if the court was not a court of superior jurisdiction, be a subordinate court.

(As amended by No. 36 of 1933)

4. Where a court in Zambia has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to that court that the person against whom the order was made is resident in England or Ireland, the court shall send to the President for transmission to a Secretary of State, a certified copy of the order.

Transmission to Secretary of State of order made in Zambian court

5. (1) Where an application is made to a court in Zambia for a maintenance order against any person, and it is proved that that person is resident in England or Ireland, the court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the

Provisional order may be made in absentia and procedure thereon

hearing, but in such case the order shall be provisional only, and shall have no effect unless and until confirmed by a competent court in England or Ireland.

(2) The evidence of any witness who is examined on any such application shall be put into writing, and such deposition shall be read over to and signed by him.

(3) Where such an order is made, the court shall send to the President for transmission to a Secretary of State the depositions so taken and a certified copy of the order, together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing, and such information as the court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(4) Where any such provisional order has come before a court in England or Ireland for confirmation, and the order has by that court been remitted to the court which made the order for the purpose of taking further evidence, that court shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application. If upon the hearing of such evidence it appears to the court that the order ought not to have been made, the court may rescind the order, but in any other case the depositions shall be sent to the President and dealt with in like manner as the original depositions.

(5) The confirmation of an order made under this section shall not affect any power of a court to vary or rescind that order:

Provided that, on the making of a varying or rescinding order, the court shall send a certified copy thereof to the President for transmission to a Secretary of State, and that in the case of any order varying the original order the order shall not have any effect unless and until confirmed in like manner as the original order.

(6) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as he would have had against a

refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

6. (1) Where a maintenance order has been made by a court in England or Ireland and the order is provisional only and has no effect unless and until confirmed by a court in Zambia, and a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted to the President, and it appears to the President that the person against whom the order was made is resident in Zambia, the President may send the said documents to the prescribed officer of a court with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and upon receipt of such documents and requisitions the court shall issue such a summons and cause it to be served upon such person.

Procedure on
provisional
order made in
England or
Ireland

(2) A summons so issued may be served in Zambia in the same manner as if it had been originally issued or subsequently endorsed by a court having jurisdiction in the place where the person happens to be.

(3) At the hearing it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with the summons does not appear, or on appearing fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modifications or with such modifications as to the court, after hearing the evidence, may seem just.

(5) If the person against whom the summons was issued appears at the hearing and satisfies the court that for the purpose of any defence it is necessary to remit the case to the court which made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming court, and where on an application for rescission or variation the court is satisfied that it is necessary to remit the case to the court which made the order for the purpose of taking any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(7) Where an order has been so confirmed, the person bound thereby shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the court confirming the order.

7. (1) A court in which an order has been registered under this Act, or by which an order has been confirmed under this Act, and the officers of such court, shall take all such steps for enforcing the order as may be prescribed. Enforcement of order

(2) Every such order shall be enforceable in like manner as if the order were for the payment of a civil debt recoverable summarily.

(3) A warrant of execution or an order of commitment issued by a subordinate court for the purpose of enforcing any order so registered or confirmed may be executed in any part of Zambia in the same manner as if the warrant or order had been originally issued or subsequently endorsed by a subordinate court having jurisdiction in the place where the warrant or order is executed.

(As amended by No. 36 of 1933)

8. The High Court may, by statutory instrument, make rules- Rules

(a) regulating the procedure and practice of the High Court and subordinate courts for carrying out the provisions of this Act;

(b) as to the manner in which cases may be remitted by a court authorised to confirm a provisional order to the court which made the provisional order;

(c) generally for facilitating communications between such courts.

(No. 36 of 1933)

9. Any document purporting to be signed by a Judge or officer of a court outside Zambia shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

Signature on documents of court officers

10. Depositions taken in a court in England or Ireland for the purposes of this Act may be received in evidence in proceedings before courts in Zambia under this Act.

Depositions may be received in evidence

11. Where the President is satisfied that reciprocal provisions have been made by the legislature of any country within the Commonwealth for the enforcement within such country of maintenance orders made by courts in Zambia, the President may, by statutory Proclamation, extend this Act to such country, and this Act shall thereupon apply in respect of such country as though the references to England or Ireland were references to such country and the references to a Secretary of State were references to the Governor or other appropriate authority of such country.

Provision for reciprocity with other Common-wealth countries

(No. 39 of 1929 as amended by No. 13 of 1954)

SUBSIDIARY LEGISLATION

MAINTENANCE ORDERS (ENFORCEMENT)

CAP. 56

SECTION 8-THE MAINTENANCE ORDERS (ENFORCEMENT) RULES **Rules by the High Court**

Government Notices
142 of 1958
497 of 1964

1. These Rules may be cited as the Maintenance Orders (Enforcement) Rules.

Title

2. In these Rules, unless the context otherwise requires-

Interpretation

"Registrar of the High Court" includes any Deputy Registrar, Assistant Registrar or District Registrar.

- | | |
|--|--|
| <p>3. The copy of an order made by a court outside Zambia and received by the President under section <i>three</i> of the Act shall, if the order was made by a court of superior jurisdiction, be sent to the Registrar of the High Court, who shall-</p> <p>(a) if the defendant is alleged to be living in the area of jurisdiction of the District Registry as defined in Government Notice No. 25 of 1957 or any subsequent notice amending the same or prescribing a new area of jurisdiction for any such District Registry, transmit the order to the District Registrar of the District Registry concerned;</p> <p>(b) if the defendant is alleged to live outside the area of jurisdiction of any District Registry, retain the same at the Principal Registry for registration as hereinafter mentioned.</p> | <p>Transmission of copy of order of court of superior jurisdiction</p> |
| <p>4. Any Registrar or District Registrar receiving such order shall thereupon enter the order in a register to be kept for that purpose at the Principal Registry or District Registry, as the case may be, and the copy so received shall be filed in the Registry or District Registry, as the case may be, of the High Court.</p> | <p>Registration of orders by Registrar or District Registrar</p> |
| <p>5. The copy of an order made by a court not of superior jurisdiction outside Zambia and received by the President as aforesaid under section <i>three</i> of the Act shall be sent to a magistrate holding a subordinate court of the first class having jurisdiction within the area in which the defendant is alleged to be living.</p> | <p>Transmission of copy of order of court not of superior jurisdiction</p> |
| <p>6. The copy of a provisional order made by a court outside Zambia and received by the President as aforesaid shall likewise be sent to a magistrate holding a subordinate court of the first class having jurisdiction as provided by rule 5 with the accompanying documents and a requisition for the issue of a summons.</p> | <p>Transmission of copy of provisional order</p> |
| <p>7. The magistrate to whom any order is sent in accordance with the above rules shall enter it in his civil register on the date on which he receives it in the same manner as though the proceedings had been had and the order had been made at his court, provided that each such entry shall be headed as follows:</p> | <p>Registration by a magistrate</p> |

"In the matter of the Maintenance Orders (Enforcement) Act".

- 8.** When an order provisionally made outside Zambia has been confirmed, with or without modification under section *six* of the Act, by a magistrate holding a subordinate court of the first class or such court has decided not to confirm it, the magistrate shall send notice thereof to the President for transmission to the court from which it was issued. Notice of confirmation of order or otherwise
- 9.** When an order has been registered in any court in Zambia under section *three* of the Act, or a provisional order has been confirmed by a subordinate court under section *six*, that court shall, unless satisfied that it is undesirable to do so, direct that all payments due thereunder shall be made through an officer of the court, or such other person as it may specify for the purpose. Direction as to payments
- 10.** The person through whom the payments are directed to be made shall collect the moneys due under the order and may take proceedings in his own name for enforcing payment and shall send the moneys when so collected to the President for transmission to the court from which the order originally issued. The person through whom payments are directed to be made may retain out of such moneys as come into his hands the amount of all disbursements necessarily or reasonably made. Collection of payments
- 11.** An application for the variation or rescission of a confirmed order shall be made with notice to the person through whom payments are directed to be made; and the applicant shall cause a copy of any order varying or rescinding a confirmed order to be served upon that person. The fees and costs payable upon the lodging of an application under subsection (6) of section *six* of the Act shall be the fees and costs payable in respect of interlocutory applications in the High Court or subordinate court, as the case may be. Variation or rescission of order
- 12.** An appeal against an order in confirmation lodged under subsection (7) of section *six* of the Act shall be presented to the High Court and shall be heard in like manner as a civil appeal from a subordinate court under the Subordinate Courts Act. Where a person through whom payments are directed to be made has been nominated, the appellant shall cause notice of the appeal and of any order made by the High Court in the course of the hearing of the appeal to be served upon such person. The fees payable in connection with appeals shall be those payable in respect of civil appeals from subordinate courts to the High Court. Appeals
Cap. 28

13. (1) The registers to be kept under rule 4 and the entries to be made in the civil register of a subordinate court of the first class under rule 7 shall be open to inspection on the payment of a fee of four fee units. Inspection and copies of registers

(2) Copies of any orders registered in accordance with these Rules shall be supplied upon payment of the copying fee appropriate to the High Court or the subordinate court, as the case may be.

14. Where an order is registered in any court in Zambia under the Act, the Registrar of the High Court may request the Attorney-General to act as legal representative of the party in whose favour such order was made or given and in such cases shall forward all papers lodged in such court, other than those required for registration, to the Attorney-General who may cause such application to be made and such steps to be taken as may be necessary to enforce such order. Steps to be taken by Registrar. Powers of Attorney-General

15. The Attorney-General or any person acting for him under rule 14 shall thereupon be deemed to be the legal representative of the party in whose favour such order was made or given unless and until some legal practitioner is appointed in his place either by him or such party. Legal representative of the party

SECTION 11-APPLICATION TO RECIPROCATING COMMONWEALTH COUNTRIES UNDER SECTION 11-NORTHERN TERRITORY OF AUSTRALIA
Proclamation by the President

Statutory Instrument
16 of 1972

WHEREAS it is provided by section *eleven* of the Maintenance Orders (Enforcement) Ordinance that where the President is satisfied that reciprocal provisions have been made by the legislature of any country within the Commonwealth for the enforcement within such country of maintenance orders made by courts in Zambia the President may by Proclamation extend the said Ordinance to such country and that the said Ordinance shall thereupon apply in respect of such country as if references therein to a Secretary of State were references to the Governor or other appropriate authority of such country;

AND WHEREAS I am satisfied that reciprocal provisions have been made by the Northern Territory of Australia for the enforcement therein of maintenance orders made by courts in Zambia:

NOW THEREFORE, I, KENNETH DAVID KAUNDA, President of the Republic of Zambia, in exercise of the powers contained in section *eleven* of the Maintenance Orders (Enforcement) Ordinance, as read with section *twenty* of the Interpretation and General Provisions Ordinance, do hereby declare and notify that from and after the date of publication hereof in the Gazette the Maintenance Orders (Enforcement) Ordinance shall be extended to the Northern Territory of Australia.

(See section 43 of Cap. 64)

THE MAINTENANCE ORDERS (ENFORCEMENT) ACT

Statutory
Instrument
267 of 1970

Proclamation by the President

WHEREAS it is provided by section *eleven* of the Maintenance Orders (Enforcement) Act that where the President is satisfied that reciprocal provisions have been made by the legislature of any country within the Commonwealth for the enforcement within such country of maintenance orders made by courts in Zambia the President may by Proclamation extend the said Act to such country and that the said Act shall thereupon apply in respect of such country as if references therein to a Secretary of State were references to the Governor or other appropriate authority of such country;

AND WHEREAS I am satisfied that reciprocal provisions have been made by the Australian States of Queensland, South Australia and Tasmania for the enforcement within the said States of maintenance orders made by courts in Zambia;

NOW THEREFORE, I, KENNETH DAVID KAUNDA, President of Zambia, in exercise of the powers conferred by section *eleven* of the Maintenance Orders (Enforcement) Act, as read with section *twenty* of the Interpretation and General Provisions Act, do hereby declare and notify that from and after the date hereof the Maintenance Orders (Enforcement) Act shall be extended to the Australian States of Queensland, South Australia and Tasmania.

GIVEN under my hand and the Public Seal of the Republic of Zambia at Lusaka this 14th day of October, 1970.

KENNETH D. KAUNDA

President

(S.I. No. 267 of 1970)

CHAPTER 57

THE DECEASED BROTHER'S WIDOW'S MARRIAGE ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Marriage with a deceased brother's widow not to be void as a civil contract except in certain cases
4. Saving of existing rights and interest
5. Marriage by a man to the divorced wife of his brother or wife of his brother who has divorced his brother unlawful during lifetime of such brother
6. Liability of minister to ecclesiastical censure

CHAPTER 57

DECEASED BROTHER'S WIDOW'S MARRIAGE

An Act to amend the law relating to marriage with a deceased brother's widow; and to provide for matters incidental thereto.

[12th October, 1926]

*6 of 1926
Government
Notice
497 of 1964
Statutory
Instrument
72 of 1964*

1. This Act may be cited as the Deceased Brother's Widow's Marriage Act. Short title
2. In this Act, unless the context otherwise requires- Interpretation

"brother" includes a brother of the half-blood.

3. No marriage heretofore or hereafter contracted between a man and his deceased brother's widow within Zambia or without, shall be deemed to have been or shall be void or voidable, as a civil contract, by reason only of such affinity:

Marriage with a deceased brother's widow not to be void as a civil contract except in certain cases

Provided that-

(i) no minister of any church, denomination or religious body shall be liable to any suit, penalty or censure, whether civil or ecclesiastical, for anything done or omitted to be done by him in the performance of the duties of his office to which suit, penalty or censure he would not have been liable if this Act had not been passed;

(ii) when any minister appointed to solemnise marriages in Zambia under the provisions of subsection (2) of section *five* of the Marriage Act at any place of public worship within Zambia licensed as a place for the solemnisation of marriages under the provisions of subsection (1) of section *five* of the said Act shall refuse to perform such marriage service between any persons who, but for such refusal, would be entitled to have the same service performed in such place of public worship, such minister may permit any other minister of the church, denomination or body to which such place of worship belongs who has been appointed under the provisions of subsection (2) of section *five* of the said Act to solemnise marriages in Zambia, to perform such marriage service in such place of public worship;

Use of place of public worship. Cap. 50

(iii) in case, before the commencement of this Act, any such marriage shall have been annulled, or either party thereto (after the marriage and during the life of the other) shall have lawfully married another, it shall be deemed to have become and to be void upon and after the day upon which it was so annulled, or upon which either party thereto lawfully married another as aforesaid.

Subsequent marriage after prior annulment valid

4. (1) No right, title, estate or interest, whether in possession or expectancy, and whether vested or contingent at the commencement of this Act, existing in, to, or in respect of, any dignity, title of honour, or property, and no act or thing lawfully done or omitted before the

Saving of existing rights and interest Claim by the

commencement of this Act, shall be prejudicially affected, nor shall any will be deemed to have been revoked by reason of any marriage heretofore contracted as aforesaid being made valid by this Act. And no claim by the Republic for duties leviable on or with reference to death, and before the commencement of this Act due and payable, and no payment, commutation, composition, discharge, or settlement of account in respect of any duties leviable on or with reference to death before the commencement of this Act duly made or given shall be prejudicially affected by anything herein contained.

Republic

(2) Nothing in this Act shall affect the devolution or distribution of the real or personal estate of any intestate, not being a party to the marriage, who at the commencement of this Act shall be, and shall until his death continue to be, a lunatic, so found by inquisition.

Lunatic not affected

(As amended by S.I. No. 72 of 1964)

5. Notwithstanding anything contained in this Act or the Matrimonial Causes Act, 1857, of the United Kingdom, it shall not be lawful for a man to marry the divorced wife of his brother, or the wife of his brother who has divorced his brother during the lifetime of such brother.

Marriage by a man to the divorced wife of his brother or wife of his brother who has divorced his brother unlawful during lifetime of such brother

6. Nothing in this Act shall relieve a minister of any church, denomination or religious body from any ecclesiastical censure, to which he would have been liable if this Act had not been passed by reason of his having contracted or hereafter contracting a marriage with his deceased brother's widow.

Liability of minister to ecclesiastical censure

CHAPTER 58

THE ADMINISTRATOR-GENERAL'S ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Appointment of Administrator-General
4. District Secretary to act as agent of Administrator-General
5. Duties of District Secretary
6. Intermeddling with property of deceased prohibited
7. Cases in which Administrator-General may apply for probate or letters of administration
8. Administrator-General or agent may protect property pending application
9. Administrator-General may be appointed executor
10. Notice of application to Court
11. Granting of probate or letters of administration
12. No bond required from Administrator-General
13. Grant of probate or letters of administration vest property in Administrator-General
14. Administrator-General as trustee
15. Where deceased member of partnership, surviving partner to account
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23. Fees of Administrator-General
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- 28. Power of President to dispose of same
- 29. Power for Administrator-General to administer where assets are less than K200
- 30. Administrator-General or his agents not liable for acts done in performance of their duties
- 31. Estates being administered by Registrar of High Court
- 32. This Act not to apply to estates administered in terms of African customary law
- 33. Rules

CHAPTER 58

ADMINISTRATOR-GENERAL

20 of 1925

10 of 1926

31 of 1937

An Act to make provision for the appointment and duties of an Administrator-General.

31 of 1959

14 of 1968

13 of 1994

[13th June, 1925] *Government Notices*

303 of 1964

497 of 1964

Statutory

Instrument

72 of 1964

1. This Act may be cited as the Administrator-General's Act.

Short title

2. In this Act, unless the context otherwise requires-

Interpretation

"Administrator-General" means the Administrator of Estates appointed under this Act and includes an Assistant Administrator-General;

"Commonwealth" means-

(a) the self-governing members of the Commonwealth;

(b) all British Colonies;

(c) all states and territories under the protection of Her Britannic Majesty through Her Government in the United Kingdom; and

(d) all territories administered by governments of the Commonwealth in accordance with a mandate from the League of Nations or under the trusteeship system of the United Nations;

"Court" means the High Court, or any court subordinate thereto to which jurisdiction hereafter may be given;

"letters of administration" includes any letters of administration whether general or with a copy of the will annexed or limited in time or otherwise;

"next of kin" includes a widower or widow of a deceased person or any other person who by law would be entitled to letters of administration in preference to a creditor or legatee of the deceased.

(As amended by No. 31 of 1959, S.I. No. 72 of 1964 and No. 14 of 1968)

3. (1) The Public Service Commission may appoint an Administrator-General and as many Assistant Administrators-General as may from time to time be required.

Appointment of
Administrator-General

(2) The Administrator-General shall be a corporation sole by the name of the Administrator-General and shall have perpetual succession, and an official seal, and may sue and be sued in his corporate name.

(3) The Administrator-General shall be entitled to appear in Court, either in person or by counsel, in any proceeding to which he is a party.

(4) The Administrator-General, in his capacity of personal representative of any estate, may institute and carry on proceedings against another estate notwithstanding that he is personal representative of such other estate:

Provided that in any such proceedings he shall not be entitled to appear in Court in person on behalf of both estates.

(As amended by No. 31 of 1959 and G.N. No. 303 of 1964)

- 4.** The District Secretary of any District shall, at the request of the Administrator-General act as his agent within such District: District Secretary to act as agent of Administrator-General

Provided that nothing herein contained shall affect the power of the Administrator-General to appoint such other agents as he shall think fit.

- 5.** (1) When a person dies in Zambia, the District Secretary of the District in which the death occurs shall, upon receiving notice of such death or upon such death coming to his knowledge, forthwith report such death to the Administrator-General. Duties of District Secretary

(2) When a person dies outside Zambia leaving property in Zambia, the District Secretary of the District in which such property is situate shall, upon such death coming to his knowledge forthwith report such death to the Administrator-General.

(3) The District Secretary of the District in which the death occurs and the District Secretary of the District in which property belonging to such deceased person is situate shall perform such further duties in connection with the estate of the deceased person and provide such further information about the deceased person as the Administrator-General may from time to time require.

(No. 31 of 1959)

- 6.** (1) When a person dies, whether within or without Zambia, leaving property within Zambia, any person who, without being duly authorised by law, or without the authority of the Administrator-General or a District Secretary, takes possession of, causes to be moved or otherwise intermeddles with any such property, save in so far as may be urgently necessary for the preservation thereof, shall be guilty of an offence; and any person taking any action in regard to any such property for the preservation thereof shall forthwith report particulars of the property and of the steps taken to the Administrator-General; and if he fails so to report, he shall be guilty of an offence. Intermeddling with property of deceased prohibited

(2) Any person convicted of an offence under this section shall be liable to imprisonment with or without hard labour for a period not exceeding three months or to a fine not exceeding one thousand five hundred penalty units, or to both, but without prejudice to any civil liabilities he may have incurred.

(As amended by No. 31 of 1959 and Act No. 13 of 1994)

7. When a person dies leaving property in Zambia, the Administrator-General may apply to the Court for probate or letters of administration (as the case requires) in the following cases:

Cases in which Administrator-General may apply for probate or letters of administration

(a) where the deceased has left a will, but has failed to appoint an executor;

(b) where the deceased has left a will, and the executor therein named has pre-deceased the testator or renounced probate or signified his intention of not applying for probate;

(c) where the deceased has left a will appointing the Administrator-General his executor;

(d) where the deceased has died intestate as to his property in Zambia;

and if no person to whom the Court would have jurisdiction to grant probate or letters of administration has, in the opinion of the Administrator-General, taken or is taking action with reasonable expedition to obtain probate or letters of administration, the Administrator-General shall, within a reasonable time after he has had notice of the death of any such person or the death has come to his knowledge, apply to the Court for probate or letters of administration (as the case requires).

Cases in which Administrator-General must apply

(As amended by No. 31 of 1959)

8. When any person dies leaving property within Zambia, the Administrator-General or the District Secretary within whose District such property may be, may, when he shall deem it advisable for the protection of such property, take possession thereof without any order of the Court, but shall not deal therewith otherwise than may be urgently necessary, before a grant of probate or letters of administration.

Administrator-General or agent may protect property pending application

9. Any person may appoint the Administrator-General to be executor of his will. Administrator-General may be appointed executor

10. The Administrator-General shall cause notice of his intention to apply for probate or letters of administration to be published in the *Gazette* at least fourteen days before making the application and the cost of such publication shall in every case be deemed to be a testamentary expense and be payable out of the estate of the deceased, whether such estate be administered by the Administrator-General or any other person. Notice of application to Court

11. Upon such application, the Court may grant probate or letters of administration (as the case may be) to the Administrator-General accordingly: Granting of probate or letters of administration

Provided always that in any case where the Court is satisfied that danger of misappropriation, deterioration or waste of the estate is otherwise to be apprehended, or that great expense would be incurred by delay in the matter, the aforesaid notice of intention to apply may be dispensed with.

12. The Administrator-General shall not be required by the Court to enter into any administration bond, or to give other security to the Court on the grant of any letters of administration to him by that name. No bond required from Administrator-General

13. Where probate or letters of administration of the estate of a deceased person is or are granted to the Administrator-General, all the property of the deceased person and the rights and duties of an executor or administrator in relation thereto, as the case may be, shall vest in the Administrator-General as holder of the office of Administrator-General. Grant of probate or letters of administration vest property in Administrator-General

14. (1) The Administrator-General may act as trustee in the administration of trusts, contained in any will or implied by law, to which property vested in him as the personal representative of a deceased person becomes subject by the terms of such will or by operation of law. Administrator-General as trustee

(2) For the purposes of any law requiring that there be either two or more personal representatives or trustees or a trust corporation, the Administrator-General shall be deemed to be a trust corporation.

(No. 31 of 1959)

15. (1) When a person dies being a member of a partnership carrying on business in Zambia, the surviving partner or partners shall, as soon as possible, and in no case later than two months after the death, furnish to the Administrator-General a full and true statement of the affairs of the partnership at the time of death:

Where deceased member of partnership, surviving partner to account

Provided that when no surviving partner is in Zambia at the time of death, such statement shall be furnished within two months after the arrival of any partner within Zambia. Such statement shall contain-

- (i) particulars, including values, of the freehold and leasehold property of the partnership;
- (ii) particulars of cash of the partnership in hand or in bank;
- (iii) particulars of the book and other debts of the partnership showing the names and addresses of debtors;
- (iv) particulars of the stock-in-trade, plant, machinery, fittings and other personal estate not included under the foregoing headings;
- (v) particulars of the liabilities of the partnership with the names and addresses of the creditors;
- (vi) such other particulars as the Administrator-General upon reasonable notice may require.

(2) Any person refusing or neglecting to comply with this section shall be guilty of an offence and liable on conviction to imprisonment with or without hard labour for any period not exceeding six months or to a fine not exceeding three thousand penalty units, or to both.

(As amended by Act No. 13 of 1994)

16. When the Administrator-General believes that any person is capable of giving information concerning a deceased person or his property, he may by written notice require such person to supply such information within the time stated in the written notice, and any person being capable of giving such information who fails to comply with such written notice shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three months or to a fine not exceeding one thousand five hundred penalty units, or to both.

Duty to supply information

(As amended by Act No. 31 of 1959 and Act No. 13 of 1994)

17. At any time after grant of probate or letters of administration to the Administrator-General under this Act, any person to whom the Court might have granted administration if no such grant had been made to the Administrator-General, may apply to the Court for revocation of such grant, and for grant to himself of probate or letters of administration; but no such application shall be made until seven days after notice of intention to make it shall have been given to the Administrator-General.

Grant to Administrator-General may be revoked and grant made to other person

18. (1) Upon such application, the Court, after hearing the Administrator-General if he appears, may revoke the grant to the Administrator-General and grant probate or letters of administration to the applicant, subject to such limitations and conditions as it may think fit.

Application to Court for revocation

(2) Upon such revocation and new grant, all the interest, powers, rights and duties of the Administrator-General in regard to the estate affected by such grant, and all liabilities of the Administrator-General under any contract or agreement entered into by him in relation to such estate or any part thereof, shall cease; and such portion of the estate as shall be left unadministered by the Administrator-General shall vest in the executor or administrator obtaining such new grant, subject nevertheless to all lawful contracts theretofore made relating to such estate and to the allowance and payment of all outlays, disbursements, costs, fees, charges and expenses reasonably incurred in the administration thereof.

19. (1) The Administrator-General shall cause a complete inventory to be made of every estate of which administration is committed to him, and shall keep an account of all receipts, payments and dealings with every such estate; and he shall retain

Administrator-General to make inventory and keep accounts

all letters received, and copies of all letters written by him, and all deeds, writings and papers relating to such estate:

Provided that the Administrator-General may in his discretion destroy any private papers, bills, receipts, memoranda and other similar documents of no value, which he has received along with the estate.

(2) For the purpose of keeping the said accounts, the Administrator-General shall cause to be opened at a bank to be approved by the Minister an account to be called the "Administrator-General's Account" and payments of money into and out of such account shall be made in such manner and subject to such conditions as the Minister may direct.

(3) The Administrator-General's Account shall be audited by or on behalf of the Auditor-General at such intervals as the Auditor-General shall deem necessary.

(As amended by No. 31 of 1959 and G.N. No. 303 of 1964)

20. In every case where administration shall have been committed to him, the Administrator-General shall cause a notice to be published in the *Gazette* calling upon creditors and others to send in to him their claims against the estate on or before the date mentioned in such notice, which shall not be less than one month after the date of the publication of such notice.

Notice to
creditors and
claimants

21. At the expiration of the time mentioned in the notice referred to in the preceding section for sending in claims, the Administrator-General shall be at liberty to distribute the assets or any part thereof amongst the parties entitled thereto, having regard to the claims of which he shall then have had notice, and he shall not be liable for the assets or any part thereof so distributed to any person of whose claim he shall not have had notice at the time of the distribution of the said assets or any part thereof, as the case may be; but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

Distribution of
assets

22. When the Administrator-General has received notice of a claim against an estate, administration of which has been committed to him, he

Proof of claims
may be required

may by a written notice served personally or by post require the claimant prior to a date to be named in such notice, which shall not be less than one month from the service of such notice, either to institute proceedings to establish the claim, or to satisfy the Administrator-General of the validity of the claim by affidavit or otherwise; at the expiration of the time mentioned in such notice, the Administrator-General shall be at liberty to distribute the assets or any part thereof amongst the parties entitled thereto, without having regard to the claims of persons who shall have been served with such notice, but shall have failed to comply with the requirements thereof, and he shall not be liable to any such person for the assets or any part thereof; but nothing herein contained shall prejudice the right of any such person to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

23. (1) There shall be charged in respect of the duties of the Administrator-General such fees as may from time to time be prescribed. Fees of Administrator-General

(2) Any expenses which might be retained or paid out of any estate in the charge of the Administrator-General, if he were a private administrator of such estate, shall be so retained and paid and the fees prescribed under subsection (1) shall be retained and paid in like manner in addition to such expenses: such fees, charges and reimbursements shall have priority over all debts of the deceased and may be deducted from any moneys received by the Administrator-General in the course of the administration. Expenses

24. When the Administrator-General has been granted letters of administration of the estate in Zambia of any person who was at the time of his death domiciled, or who appears to the Administrator-General to have been then domiciled in any part of the Commonwealth other than Zambia, and probate of whose will or administration of whose estate in the place of such domicile or apparent domicile has been granted to some person there, the Administrator-General may pay over to such person the balance of the estate after payment of proved debts of creditors resident in Zambia and funeral and administration expenses, without seeing to the application of such balance and without incurring any liability in regard to such payment. Payments to executors, etc., in country of domicile

(As amended by No. 31 of 1959 and No. 14 of 1968)

25. Where administration of an estate has been committed to the Assets received

Administrator-General and he receives assets which at the time of the death of the deceased were situate outside Zambia, such assets shall be treated in the same manner as assets within Zambia at the time of death.

from outside
Zambia

26. Where any person entitled to a share under the will or in the distribution of the estate of a deceased person whose estate is being administered by the Administrator-General is a minor, the Court may, upon the application of the Administrator-General, appoint the father or mother of such minor or some other suitable person to receive the share of such minor on his behalf and, upon such appointment being made, the Administrator-General may pay the share of such minor to such person on behalf of such minor, and the receipt of such person shall be a full and complete discharge to the Administrator-General so far as regards such share.

Court may
appoint persons
to receive
minor's share

27. (1) All assets in charge of the Administrator-General which have been in his custody for a period of twelve years or upwards without any application for payment thereof having been made and granted by him, shall be transferred to the credit of the general revenues of the Republic:

Assets
unclaimed for
twelve years to
be transferred to
general
revenues

Provided that this section shall not authorise the transfer of such assets as aforesaid if any suit or proceeding is pending in respect thereof in any Court.

(2) If, before the end of such twelve years, it is claimed and proved by the Government to the satisfaction of the Court that any assets in the hands of the Administrator-General are *bona vacantia*, then such assets shall at once become the absolute property of the Government, but shall be subject to the power of disposal conferred on the President by section *twenty-eight*.

(As amended by No. 31 of 1937)

28. It shall be lawful for the President to dispose of or distribute either the whole or any part of the assets transferred to the Government under the provisions of section *twenty-seven* to or amongst any kindred of the deceased or such other persons in such shares or manner as he shall think fit.

Power of
President to
dispose of same

29. (1) When the gross value of the estate situated in Zambia of a deceased person does not exceed two hundred kwacha, and the Administrator-General is entitled in terms of section *seven* to apply to the Court for probate or letters of administration (as the case requires), the Administrator-General may, if he thinks fit, himself undertake the administration of the estate without obtaining probate or letters of administration: Power for Administrator-General to administer where assets are less than K200

Provided that the Administrator-General shall not, under the power conferred by this section, undertake the administration of an estate if there has been any previous grant of probate of the will of the deceased or of letters of administration of his estate, unless and until such grant has been revoked.

(2) The Administrator-General shall inform the Court of every administration which he undertakes under this section, and shall publish in the *Gazette* a notice (which may be combined with the notice for creditors) of his having undertaken the administration and, on the publication of such notice, the estate of the deceased shall vest in the Administrator-General as such:

Provided that when the gross value of the estate in Zambia does not exceed the sum of forty kwacha, the Court may direct that publication of any notice required under this Act may be dispensed with and, upon such direction being given, the estate of the deceased shall vest in the Administrator-General as such.

(3) The Administrator-General shall, for the purpose of an administration under this section, have the same powers and be subject to the same obligations as if letters of administration of the estate of the deceased had been duly granted to him.

(4) The Administrator-General shall have full power to settle finally and without appeal all disputes and questions which may arise in the course of an administration by him under this section, including claims by creditors, but may, if he thinks fit, allow an appeal to the Court or may himself apply to the Court for directions.

(5) In settling such disputes or questions, the Administrator-General

may, if he thinks it expedient in the interests of justice or with a view to saving expense, act on information which appears to him to be credible though it is not legal evidence.

(No. 10 of 1926 as amended by No. 31 of 1959)

30. Neither the Administrator-General nor any of his agents shall be personally liable to any person in respect of goods or chattels in the possession at the time of the death of any person whose estate shall be administered by the Administrator-General which shall be sold by the Administrator-General or such agents, unless the Administrator-General or agent shall know or have actual notice before the sale that such goods or chattels were not in fact the property of the person whose estate is being administered by him, and generally neither the Administrator-General nor any agent shall be liable for any act done by him *bona fide* in the supposed and the intended performance of his duties, unless it shall be shown that such act was done not only illegally, but wilfully or with gross negligence:

Administrator-General or his agents not liable for acts done in performance of their duties

Provided always that, in case of any sale by the Administrator-General or any agent of goods or chattels belonging in fact to any third person, the amount realised by such sale shall be paid over to the owner upon proof by him of such ownership, unless the same shall have already been applied in payment of the debts of the deceased or shall have been distributed in the ordinary course of administration whilst the Administrator-General or agent was in ignorance and without actual notice of the claim of such person to the goods or chattels sold.

31. The Administrator-General shall be deemed to have been granted letters of administration to all estates which would have been subject to this Act but which were at the commencement of this Act being administered by the Registrar of the High Court.

Estates being administered by Registrar of High Court

32. (1) This Act shall not apply to the administration of the estate of any person to which the provisions of subsection (1) of section *thirty-six* of the Local Courts Act apply, unless the Court shall have first made an order or given directions that such estate shall not be administered in terms of African customary law.

This Act not to apply to estates administered in terms of African customary law.

(2) Nothing contained in this Act or in any other written law shall

require or be deemed to require the Administrator-General, except where he thinks it is in the interest of justice so to do, to make an application to a local court claiming that the estate of a deceased person should not be administered in terms of African customary law.

(No. 14 of 1968)

33. The Minister may, by statutory instrument, make rules for the better carrying out of the purposes and provisions of this Act, and for regulating the proceedings of the Administrator-General.

Rules

(As amended by G.N. No. 303 of 1964)

SUBSIDIARY LEGISLATION

ADMINISTRATOR-GENERAL

CAP. 58

SECTIONS 19 AND 33-THE INTEREST ON ADMINISTRATOR-GENERAL'S INVESTMENTS RULES

Government
Notice
105 of 1950
Act No.13 of
1994

Rules by the Minister

WHEREAS the Administrator-General has at all times in his hands moneys standing to the credit of various estates, being temporary cash balances awaiting distribution or investment:

AND WHEREAS in cases where moneys have so stood to the credit of an estate and the Administrator-General has deemed it impracticable or not for the benefit of the estate to keep the moneys separate and earn interest thereon, it has been his practice to pay such moneys until required into an account at a certain bank in accordance with section *nineteen* (2) of the Administrator-General's Act:

AND WHEREAS the Administrator-General has from time to time invested in securities issued by the Governments of the former Protectorate of Northern Rhodesia and of Southern Rhodesia and in the Post Office Savings Bank, and on fixed deposit with certain banks, the cash balance standing to the credit of the said account which in his opinion was in excess of that required for the time being to answer demands in respect of beneficiaries, creditors and other persons:

AND WHEREAS he has credited from time to time to the various estates under his administration the interest which in his opinion a private executor or administrator could have obtained and was under a duty to obtain for the benefit of each estate:

AND WHEREAS it is expedient to legalise the said dealings by the Administrator-General with the moneys as aforesaid and to provide for the payment into general revenue of the balance of the dividends and interest not so credited to individual estates by the Administrator-General:

NOW WHEREAS, the following Rules have been made:

1. These Rules may be cited as the Interest on Administrator-General's Investments Rules.
2. The said dealings by the Administrator-General with the moneys aforesaid shall be deemed always to have been lawful.
3. The Administrator-General shall pay into general revenue the dividends and interest at present held by him which in his opinion are not required to be credited to individual estates as aforesaid.
4. The Administrator-General may continue to invest in securities issued by the Government and in the Post Office Savings Bank, and place on fixed deposit with approved banks, the cash balance standing to the credit of the said account which in his opinion is in excess of that required for the time being to answer demands as aforesaid, and may in his sole discretion continue to credit interest to individual estates as aforesaid and shall annually pay into general revenue such dividends and interest as in his opinion are not required therefor.

SECTIONS 23 AND 33-THE ADMINISTRATOR-GENERAL (FEES) RULES

Government
Notice
95 of 1950

Rules by the Minister

1. These Rules may be cited as the Administrator-General (Fees) Rules.

Title

2. In these Rules, unless the context otherwise requires-

Interpretation

"gross value of the estate" means the gross value at the date of death of all property which vests in the Administrator-General and shall include the increase in value of any particular item which may occur on its realisation by him.

3. Where the Administrator-General is acting as executor, administrator or trustee in any estate, the following fees shall be charged: Prescribed fees

(a) upon the gross value of the estate, according to the following scale:

	Fee units
where the gross value does not exceed K50	45
where the gross value does not exceed K100	60
where the gross value does not exceed K150	75
where the gross value does not exceed K200	90

where the gross value exceeds K200:

- 5 per centum on the first K2,000
- 4 per centum on the next K2,000
- 3 per centum on the next K2,000
- 2 per centum on the next K2,000
- 1 per centum on the next K12,000 and
- 1/2 per centum on the remainder; and

(b) upon all income received and accounted for by the Administrator-General, 5 per centum; and

(c) upon every K200 or part thereof available for dividend in an insolvent estate, the sum of 60 fee units.

(As amended by Act No. 13 of 1994)

4. Such fees shall be payable on completion of the administration of the estate, but where, prior to the completion of an administration, accounts are submitted to beneficiaries, a *pro rata* proportion of the fees shall then be payable. On payment thereof, the Administrator-General shall make and initial or cause to be made and initialed a note on his account showing the fee paid and the number of the receipt recording the payment. Time for payment

5. Where it appears to the Administrator-General that the circumstances of an administration are such as to render his duties in relation thereto- Waiver, reduction or increase of fees

(a) exceptionally simple or otherwise are of an exceptional Cap. 27

character, he may remit all or any part of the above fees; or

(b) exceptionally onerous, he may charge a special fee in addition to the above fees. In such estate the total of fees to be charged will be those which a solicitor would be entitled to charge under the High Court Rules, if a solicitor had been appointed executor and had been authorised to charge for his services.

CHAPTER 59

THE INTESTATE SUCCESSION ACT

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CHAPTER 59

INTESTATE SUCCESSION

*Act No.
5 of 1989
13 of 1994*

An Act to provide a uniform intestate succession law that will be applicable throughout the country; to make adequate financial and other provisions for the surviving spouse, children, dependants and other relatives of an intestate to provide for the administration of the estates of persons dying not having made a will; and to provide for matters connected with or incidental to the foregoing.

[19th May, 1989]

PART I

PRELIMINARY

1. This Act may be cited as the Intestate Succession Act. Title and commencement
2. (1) Except to the extent specifically provided in this Act, this Act shall apply to all persons who are at their death domiciled in Zambia and Application

shall apply only to a member of a community to which customary law would have applied if this Act had not been passed.

(2) This Act shall not apply to-

(a) land which at the time of death of the intestate had been acquired and was held under customary law;

(b) property which immediately before the death of the intestate was institutionalised property of a chieftainship and had been acquired and was being held as part of chieftainship property;

(c) family property.

3. In this Act, unless the context otherwise requires-

Interpretation

"administrator" means a person to whom a grant of letters of administration has been made and includes the Administrator-General;

"Administrator-General" has the meaning assigned to it by section *six* of the Administrator-General's Act; Cap. 58

"brother or sister" includes a half-brother or half-sister and brother or sister by adoption;

"child" means a child born in, or out of marriage, an adopted child, a child who is conceived but not yet born;

"common property" in relation to a polygamous marriage, means all personal chattels of the deceased which were used in common by him, his wives and children of every household to which the deceased was connected by his marriage, not being household property;

"Court" means the High Court, subordinate court or a local court;

"death duty" means estate duty chargeable under the Estate Duty Act and any other duty payable on death; Cap. 334

"dependant" in relation to a deceased person means a person who was maintained by that deceased person immediately prior to his death and

who was-

(a) a person living with that deceased person; or

(b) a minor whose education was being provided for by that deceased person; and who is incapable, either wholly or in part of maintaining himself;

"estate" means all the assets and liabilities of a deceased, including those accruing to him by virtue of death or after his death and for the purposes of administration of the estate under Part III includes personal chattels;

"family property" means any property, whether movable or immovable, which belongs to the members collectively of a particular family or is held for the benefit of such members and any receipts or proceeds from such property;

"homestead property" in relation to a polygamous marriage means all personal chattels of the deceased and used by him, his wife and children of a particular household to which the deceased was connected by his marriage, not being common property;

"intestate" means a person who dies without having made a will and includes a person who leaves a will but dies intestate as to some beneficial interest in his movable or immovable property;

"issue" in relation to any person means the children, grandchildren and other remoter descendants of that person;

"local court" means a court recognised or established under section *four* Cap. 29 of the Local Courts Act;

"marriage" includes a polygamous marriage and "husband", "surviving spouse", "wife" or "widow" shall be construed accordingly;

"minor" means a person who has not attained the age of eighteen years;

"near relative" means issue, brother, sister, grandparent and other remoter descendants of the deceased;

"parent" includes a guardian who has been responsible for the welfare and education of the deceased;

"personal chattel" means clothing, articles of personal use or adornment, furniture and furnishing, appliances, utensils and all other articles of household use or decoration, simple agricultural equipment, hunting equipment, books, motor vehicles and consumable stores but does not include chattels used for business purposes, money or securities for money;

"priority dependant" means a wife, husband, child or parent;

"subordinate court" means a court constituted under section *three* of the Subordinate Courts Act; Cap. 28

"syndic" means a person deputed to represent and transact the affairs of a corporation.

PART II

SUCCESSION

4. (1) A person dies intestate under this Act if at the time of his death he has not made a will disposing of his estate. Intestacy and partial intestacy

(2) Any person who dies leaving a will disposing of part of his estate has died intestate under this Act in respect of that part of his estate which is not disposed of in the will.

5. (1) Subject to sections *eight, nine, ten* and *eleven* the estate of an intestate shall be distributed as follows: Distribution of estate

(a) twenty per cent of the estate shall devolve upon the surviving spouse; except that where more than one widow survives the intestate, twenty per cent of the estate shall be distributed among them proportional to the duration of their respective marriages to the deceased, and other factors such as the widow's contribution to the deceased's property may be taken into account when justice so requires;

(b) fifty per cent of the estate shall devolve upon the children in such proportions as are commensurate with a child's age or educational needs or both;

(c) twenty per cent of the estate shall devolve upon the parents of the deceased;

(d) ten per cent of the estate shall devolve upon the dependants, in equal shares:

Provided that a priority dependant whose portion of the estate under this section is unreasonably small having regard to his degree of dependence on the deceased shall have the right to apply to a court for adjustment to be made to the portions inherited and in that case, Part III of the Wills and Administration of Testate Estates Act shall apply, with the necessary changes, to the application. Cap. 60

(2) In respect of a minor, the mother, father or guardian shall hold his share of the estate in trust until he ceases to be a minor.

6. Where an intestate leaves-

(a) no spouse, the portion of the estate which the spouse would have inherited shall be distributed to the children in such proportions as are commensurate with a child's age or educational needs or both;

Distribution where intestate survived by no spouse, etc.

(b) no spouse or children; the aggregate portion of the estate which the spouse and children would have inherited shall be distributed equally to the parents of the deceased;

(c) no spouse, children or parents, the estate shall be distributed to dependants in equal shares;

(d) no spouse, children, parents, or dependants, the estate shall be distributed to near relatives in equal shares;

(e) no spouse, children, parents, dependants or near relatives, the estate shall be *bona vacantia* and shall devolve upon the State;

7. Where an intestate leaves-

(a) a spouse, children, dependants but no parents, the proportion of the estate which the parents would have inherited shall be shared equally

Distribution where intestate survived by

between the surviving spouse and children on the one hand and the dependants on the other; spouse, etc.

(b) a spouse, parents, dependants but no children, the portion of the estate which the children would have inherited shall be distributed to the surviving spouse, parents and dependants in proportion to their shares of the estate as specified in section *five*;

(c) a spouse, children, parents but no dependants, the portion which the dependants would have inherited shall be distributed equally to the parents;

(d) a spouse and dependants but no children or parents, the portion of the estate which the children and parents would have inherited shall be distributed to the surviving spouse and the dependants in proportion to their shares of the estate as specified in section *five*;

(e) a spouse and children but no parents or dependants, the portion of the estate which the parents and dependants would have inherited shall be shared equally among the surviving spouse on the one hand and the children on the other;

(f) a spouse but no children, parents or dependants, the portion of the estate which the children, parents and dependants would have inherited shall be distributed equally between the surviving spouse on the one hand and the near relatives on the other.

8. Notwithstanding section *five* where the intestate in the case of a monogamous marriage is survived by a spouse or child or both, the spouse or child or both of them, as the case may be, shall be entitled equally and absolutely to the personal chattels of the intestate. Devolution of personal chattels in monogamous marriages

9. (1) Notwithstanding section *five* where the estate includes a house the surviving spouse or child or both, shall be entitled to that house: Surviving spouse or child or both to be entitled to house

Provided that-

(a) where there is more than one surviving spouse or child or both they shall hold the house as tenants in common; and

(b) the surviving spouse shall have a life interest in that house which shall determine upon that spouse's remarriage.

(2) Where the estate includes more than one house the surviving spouse or child or both shall determine which of the houses shall devolve upon them and the remainder shall form part of the estate.

10. Notwithstanding section *five* where the intestate is survived by more than one widow or a child from any of them, then, each widow or her child or both of them shall be entitled-

(a) absolutely to the homestead property of the intestate; and

(b) in equal shares to the common property of the intestate.

Devolution of homestead and common property in polygamous marriage

11. Notwithstanding section *five*, where the total value of the estate does not exceed K30,000 the estate shall-

(a) devolve upon the surviving spouse or child of the intestate or to both; or

(b) where there is no surviving spouse or children, devolve upon the surviving parent.

Small estates

12. The Minister, may by statutory instrument, vary the maximum value of the estate prescribed under section *eleven*.

Minister to alter value of small estates

13. Notwithstanding anything in this Act, any person entitled to share in the estate may transfer his share in the estate to a priority dependant.

Transfer of share in estate to priority dependant

14. Any person who-

(a) unlawfully deprives any person of the use of-

(i) any part of the property of the deceased to which that person is entitled under this Act; or

(ii) any property shared with the deceased to which this Act applies; or

(b) otherwise unlawfully interferes with the use by any person of

Offences against an entitled person

any property referred to in paragraph (a);

shall be guilty of an offence and liable on conviction to a fine not exceeding seven hundred and fifty penalty units or imprisonment not exceeding two years, or both.

(As amended by Act No. 13 of 1994)

PART III

ADMINISTRATION OF ESTATES

15. (1) Where the deceased has died intestate the court may, on the application of any interested person, grant letters of administration of the estate to that interested person.

Letters of
administration
on intestacy

(2) Subject to section *sixteen* where more than one person applies for letters of administration, the court may make a grant to any one or more of them, and in the exercise of its discretion the court shall take into account greater and immediate interests in the deceased's estate in priority to lesser or more remote interests.

(3) Where no person applies for letters of administration, letters of administration may be granted to the Administrator-General or to a creditor of the deceased.

(4) Where it appears to the court to be necessary or convenient to appoint some person to administer the estate or any part of it other than the person who under subsection (1) in ordinary circumstances would be entitled to a grant of letters of administration, the court may, having regard to consanguinity, amount of interest, the security of the estate and the probability that it will be properly administered, appoint such person as it thinks fit to be administrator.

(5) Where letters of administration are granted under subsection (4) the grant may be limited or not limited as the court thinks fit.

16. (1) Letters of administration shall not be granted to more than four persons in respect of the same estate and if there is a minority or a life interest, letters of administration shall be granted to the

Number of
administrators

Administrator-General, to a trust corporation solely or jointly with an individual or to not less than two individuals.

(2) If there is only one administrator (not being a trust corporation or the Administrator-General) then, during the minority of a beneficiary or the subsistence of a life interest, the court may appoint one or more administrators in addition to the existing administrator.

17. Where a person who is entitled to letters of administration is absent from Zambia, and there is no other person equally entitled who is willing to act as administrator, letters of administration may be granted to a lawfully constituted attorney, of the administrator ordinarily resident in Zambia, limited until that administrator obtains letters of administration himself and in the meantime to any purpose to which the attorney's authority is limited.

Attorney of person entitled to administration

18. Pending the determination of any proceedings for obtaining or revoking any grant of letters of administration, the court may appoint an administrator of the estate of the deceased person, who shall have all the rights and powers of a general administrator other than the right of distributing the estate, and an administrator so appointed shall be subject to the immediate control of the court and shall act under its direction.

Appointment of administrator pending litigation

19. (1) The duties and powers of an administrator shall be-

Duties and powers of administrator

(a) to pay the debts and funeral expenses of the deceased and pay estate duty if estate duty is payable;

(b) to effect distribution of the estate in accordance with the rights of the persons interested in the estate under this Act;

(c) when required to do so by the court, either on the application of an interested party or on its own motion-

(i) to produce on oath in court the full inventory of the estate of the deceased; and

(ii) to render to the court an account of the administration of the estate.

(2) Where an administrator considers that a sale of any of the property forming part of the estate of a deceased person is necessary or desirable in order to carry out his duties, the administrator may, with the authority of the Court, sell the property in such manner as appears to him likely to secure receipt of the best price available for the property.

20. Where there are several administrators, their powers may, in the absence of any direction to the contrary contained in the letters of administration, be exercised by the majority of them.

How powers of several administrators to be exercised

21. Where a person dies leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account and leaves no administrator or leaves one who is unable or unwilling to act as such, letters of administration, limited to that property, may be granted to the beneficiary, or to some other person on his behalf.

Trust property

22. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to that exception.

Grants with exception

23. Whenever a grant with exception of letters of administration has been made, a further grant may be made of the part of the estate so excepted.

Grants of excepted part

24. (1) Subject to any limitations and exceptions contained in a grant of letters of administration the grant entitles the administrator to all rights belonging to the deceased as if the administration had been granted at the moment after his death except that letters of administration shall not render valid any intermediate acts of the administrator tending to the diminution or damage of an intestate's estate.

Effect of grant of letters of administration

(2) Subject to subsection (1), letters of administration shall have effect over the whole of the estate of the deceased throughout Zambia and shall-

(a) be conclusive against all debtors of the deceased and all persons holding any property of the deceased;

(b) afford full indemnity to all debtors paying their debts, and all persons delivering up that property to the administrator.

25. Where letters of administration have been granted to more than one administrator and one of them dies, the representation of the estate to be administered shall, in the absence of any direction in the grant, accrue to the surviving administrator. Death of one of several administrators

26. On the death of a sole or surviving administrator, letters of administration may be granted in respect of that part of the estate not fully administered, and in granting the letters of administration the court shall have regard to the original grants. Death of sole or surviving administrator

27. Where a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited and there is still some part of the deceased's estate unadministered, letters of administration may be granted to those persons to whom original grants might have been made. Expiry of limited grant when estate not fully administered

28. (1) As a condition of granting letters of administration to any person, a court may, subject to this section, require one or more sureties to guarantee, within any limit imposed by the court, any loss which any person interested in the administration of an estate may incur in consequence of a breach by the administrator. Guarantees on granting letters of administration

(2) A guarantee given under subsection (1) shall have the effect, in relation to any person interested in the administration of an estate of a deceased, of a contract by the surety or sureties with that person.

(3) No action shall be brought against a guarantor to whom this section relates without the leave of the court.

(4) This section shall not apply where administration is granted to the Administrator-General.

29. (1) Letters of administration may be revoked or annulled for any of the following reasons- Revocation of grants and removal

- (a) that the proceedings to obtain them were defective in substance;
- (b) that the grant was obtained fraudulently;
- (c) that the grant was obtained by means of an untrue statement of a fact essential in point of law to justify the grant, though that statement was made in ignorance or inadvertently;
- (d) that the grant has become of no use and inoperative;
- (e) that the person to whom the grant was made has, without reasonable cause failed, to furnish an account of his administration after having been lawfully called upon to do so, or has prepared an account which is untrue in a material particular.

(2) Where the court is satisfied that proper administration of the estate and the interests of the persons beneficially entitled to them so require, it may-

- (a) suspend or remove an administrator;
- (b) provide for the succession of another person to the office of that administrator who shall cease to hold office; and
- (c) provide for the vesting in the successor of any property belonging to the estate.

30. (1) Where letters of administration are revoked, all payments made in good faith to any administrator under the letters of administration before the revocation of those letters shall, notwithstanding the revocation, be a legal discharge to the person making the payment.

Payment of or to administrators whose grants are revoked

(2) An administrator who has acted under any revoked letters of administration may retain and reimburse himself out of the assets of the deceased in respect of any expenses incurred by him or fees paid out by him which any person to whom letters of administration are afterwards granted could have lawfully incurred or paid.

31. (1) Where letters of administration are revoked under this Act, the Court shall order the person to whom the grant was made to deliver up the letters to the court immediately. Surrender of revoked grants

(2) A person who wilfully and without sufficient cause fails to deliver up the letters of administration, in accordance with subsection (1), shall be guilty of an offence and liable upon conviction to a fine not exceeding one hundred and twenty-five penalty units or to imprisonment not exceeding three months, or both.

(As amended by Act No. 13 of 1994)

PART IV

GENERAL

32. (1) A court may appoint any person to be the guardian of a minor. Guardians

(2) A court may direct the transfer to, or vesting in the guardian of a minor of any property of the minor and may authorise or direct the sale of the property or any part of the property of the minor.

(3) A guardian appointed under this Act shall be entitled to represent the interests of the minor in any proceedings in court relating to the administration of the estate in which the minor has a share.

33. An administrator or guardian may incur expenditure on acts necessary for the proper care and management of any property belonging to the estate of a deceased person or to a minor. Expenditure on care and management

34. (1) An administrator or guardian shall not derive any pecuniary benefit from his office. Administrator or guardian not to derive benefit

(2) If an administrator or guardian purchases, either directly or indirectly, any part of the property of the deceased or of a minor for whom he is responsible, the sale may be set aside by the court on the

application, made within a reasonable time, of any other person interested in the property sold or in the proceeds of sale.

35. (1) An administrator or guardian who wrongfully deprives a minor of property or a share in property to which the minor is entitled intending to benefit the administrator or guardian or any person other than the minor shall be guilty of an offence and liable upon conviction to a fine not exceeding five hundred penalty units or to imprisonment not exceeding one year, or both.

Offences by administrators and guardians

(2) When any person is convicted of an offence under subsection (1), the court may, in addition to any penalty which may be imposed-

(a) order the restitution to the minor of the property which has passed in connection with the commission of the offence;

(b) if the property cannot be restituted or cannot be found, order the convicted person to make compensation to the minor of such sum as the court may assess as the value of the property.

(3) A court shall have jurisdiction to try an offence under this section although it has previously dealt with an application relating to the property in question.

(As amended by Act No. 13 of 1994)

36. Any beneficiary who intentionally causes the death of the deceased shall forfeit the right to inherit any part of the property of the deceased.

Beneficiary causing death of deceased

37. A court may appoint any person it considers fit to be a receiver of the property of an intestate pending a grant of letters of administration if it appears on the application of any person-

Receiver pending grant

(a) claiming to be interested in the property; or

(b) having the custody or control of it at the time of the death of the deceased;

that there is danger that the property may be wasted.

38. A court may, on application by a receiver of property appointed

Sale by order of

under section *thirty-seven* or any person interested in the estate, order the sale of the whole or any part of the property, if it appears to the court that the sale will be beneficial to the estate. court

39. No suit shall be brought against a receiver appointed under section *thirty-seven* in relation to anything done or intended to be done by him in respect of the property of the deceased in the intended, purported or actual exercise of the powers vested in him; but a person aggrieved by anything so done or intended to be done may apply to the court which appointed the receiver, for directions in the matter, and the court may make such order as is just. No suit against receiver

40. For the purpose of this Act where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, the deaths shall, for all purposes affecting rights in, to or over property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder. Uncertainty regarding survivorship

41. Errors in the names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the letters of administration may be altered and amended accordingly. Rectification of errors

42. On application in the prescribed manner, by an interested person, a court shall have jurisdiction in relation to a deceased person's estate- Disputes

- (a) to decide whether or not the deceased person died intestate;
- (b) to decide what is the property to which the deceased person was entitled at the date of his death;
- (c) to decide how the distribution of the property forming part of a deceased person's estate should be carried out;
- (d) to order the sale or other disposition of property belonging to a deceased person's estate for the purpose of paying the debts of the deceased or for the purpose of distribution;
- (e) to appoint a guardian in place of a guardian who has acted improperly, or who has died.

43. (1) The High Court shall have jurisdiction in matters relating to succession. Jurisdiction of courts

(2) A local court shall have and may exercise jurisdiction in matters relating to succession if the value of the estate does not exceed fifty thousand kwacha.

(3) In matters relating to succession, a subordinate court of the first, second or third class shall, within the territorial limits of its jurisdiction, have jurisdiction to entertain any application if the value of the estate does not exceed one hundred thousand kwacha.

44. (1) A subordinate court or a local court to which application is made under this Act shall transfer the application to the High Court if-

Transfer of applications for orders relating to succession to High Court

(a) the subordinate court or the local court is satisfied that an interested party has made application to the High Court for an order relating to the administration or distribution of the estate of the deceased to which the application relates; and

(b) the subordinate court or the local court is satisfied that it is in the interests of justice to transfer the application to the High Court or that it is otherwise necessary to seek directions from the High Court as to the correctness or legality of the application or order to be made thereunder; or

(c) the subordinate court or the local court is so ordered or directed by the High Court.

(2) Where an application is transferred to the High Court under subsection (1) the High Court shall make such order or give such directions in relation to it as it considers fit.

45. An appeal shall lie to the High Court in respect of any order or decree made by a subordinate court or a local court and the decision of the High Court on it shall be final.

Appeals to High Court

46. The Minister may make regulations for the better carrying out of the provisions of this Act.

Regulations

47. The Chief Justice may, by statutory instrument, make rules regulating the practice and procedure of the court under this Act.

Practice and
procedure

48. Except as is expressly provided, nothing in this Act shall affect-

(a) any rights, duties or obligations of an administrator under any law relating to the administration of estates existing immediately before the commencement of this Act; or

(b) the rights, duties or obligations of beneficiaries in respect of any person who died before the commencement of this Act.

CHAPTER 60

THE WILLS AND ADMINISTRATION OF TESTATE ESTATES ACT.

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CHAPTER 60

WILLS AND ADMINISTRATION OF TESTATE ESTATES ACT

Act No.

6 of 1989

An Act to simplify the law governing the making of wills; to provide for adequate financial and other provisions to be made for dependants in a will; to provide for the administration of estates of persons dying having made a valid will; and to provide for matters connected with or incidental to the foregoing.

13 of 1994

[19th May, 1989]

PART I

PRELIMINARY

<p>1. This Act may be cited as the Wills and Administration of Testate Estates Act.</p>	Short title
<p>2. This Act shall not apply to-</p> <p>(a) land which at the death of the testator had been acquired and was held under customary law and which under that law could not be disposed of by will;</p> <p>(b) property which at the death of the testator was institutionalised property of a chieftainship and had been acquired and was being held as part of chieftainship property.</p>	Application
<p>3. In this Act, unless the context otherwise requires-</p>	Interpretation
<p>"active service" has the meaning assigned to it in the Defence Act;</p>	Cap. 106
<p>"administrator" means a person to whom a grant of letters of administration has been made and includes the Administrator-General;</p>	
<p>"Administrator-General" has the meaning assigned to it by section <i>two</i> of the Administrator-General's Act;</p>	Cap. 58
<p>"brother or sister" includes a half-brother or half-sister and brother or sister by adoption;</p>	
<p>"child" means a child born in or out of marriage, an adopted child, a child who is conceived but not yet born;</p>	
<p>"codicil" means any document which supplements a will and contains anything which the testator wishes to add to the will or any explanation or revocation of what the will contains;</p>	
<p>"court of probate" means a court or authority by whatever name designated, having jurisdiction in matters of probate;</p>	
<p>"dependant" means a wife, husband, child or parent;</p>	
<p>"estate" means all the assets and liabilities of a deceased, including those accruing to him by virtue of death or after his death;</p>	

"executor" means a person to whom the administration of the estate of a testator or part of it is entrusted by express or implied appointment under a will;

"internal law" in relation to any territory or state means the law which would apply in a case where no question of law in force in any other territory or state arises;

"issue" in relation to any person means the children, grandchildren and other remoter descendants of that person;

"letters of administration" means letters of administration with the will annexed;

"marriage" includes a polygamous marriage and "husband" "wife", "widow" and "widower" shall be construed accordingly;

"minor" means a person who has not attained the age of eighteen years;

"personal representative" includes an executor and administrator;

"security forces" includes the Defence force, Police Force, Prison Service, Zambia National Service, Zambia Security Intelligence Service and any other body or organisation which engages in operations of a security nature;

"security operation" means war operations or security manoeuvres which endanger life;

"signature" includes a thumbprint;

"testator" means a person who has made a valid will;

"will" includes a codicil.

PART II

WILLS GENERALLY

4. Subject to subsection (3) of section *six*, any person who is not a minor and is of sound mind may make a will. Capacity to make will
5. Without prejudice to any power which may be exercised by a testator in his will, a testator may- Powers exercisable by will
Cap. 63
- (a) dispose of any property which is his or to which he will be entitled at the time of his death or to which he may be entitled thereafter;
- (b) appoint one or more persons to be his executor or executors;
- (c) subject to the Trust Restrictions Act attach any terms and conditions in relation to the disposition of any part of his estate; or
- (d) appoint a guardian for his minor child where the surviving parent of the minor child is incapable, by physical or mental infirmity, to take guardianship of the minor child.
6. (1) A will shall be valid if it is in writing and- Execution of will
- (a) is signed at the foot or end, by the testator or by some other person in the testator's presence and by his direction; and
- (b) the signature referred to in paragraph (a) is made or acknowledged by the testator in the presence of two witnesses present at the same time who have also signed at the foot or end of the will.
- (2) Any person who is not blind and is of sound mind, may be a witness to a will.
- (3) Where the testator is blind or illiterate, any person competent to make a will and who has not participated in the making of the will, shall carefully read over and explain to him the contents of the will before it is executed and shall declare in writing upon the will that he had so read over and explained its contents to the testator and that the testator appeared perfectly to understand it before it was executed.
- (4) Notwithstanding any other provisions of this Act-
- (a) a member of the defence forces who is on active service;

(b) a member of the security forces who is engaged on security operations;

(c) any person who is ill or is physically injured and who has a settled or hopeless expectation of death and who has abandoned all hope of recovery and who eventually dies due to that illness or physical injury.

may make a will in any of the following forms:

(a) written and unattested, if the material provisions and signature are in the handwriting of the testator;

(b) written (whether or not in the handwriting of the testator) and attested by one witness;

(c) orally before two witnesses.

(5) Any beneficial disposition of, or affecting, any property other than charges or directions for the payment of any debt, given by will made under this section to a witness to that will, shall be void unless the will is duly executed (if written) or witnessed (if oral) if the attestation of that witness and that of every other witness who is a beneficiary under the will are excluded.

7. (1) A will shall be treated as properly executed if its execution conformed to the internal law in force in the state where it was executed, or in the state where, at the time of its execution or of the testator's death, he was domiciled or had his habitual residence, or in a state of which, at either of these times, he was a national.

Rules relating
to foreign wills

(2) Without prejudice to subsection (1), the following will shall be treated as properly executed:

(a) a will executed on board a vessel or aircraft of any description, if the execution of the will conformed to the internal law in force in the state with which having regard to its registration, if any, and other relevant circumstances, the vessel or aircraft may be considered as having been most closely connected;

(b) a will which disposes of immovable property, if its execution conformed to the internal law in force in the state where the property was situated;

(c) a will, so far as it revokes a previous will which under this Act would be treated as a properly executed will if the execution of that will conformed to any law by reference to which the revoked will or provision would be so treated; or

(d) a will, so far as it exercises a power of appointment, if the execution of the will conformed to the law governing the essential validity of the power.

(3) A will so far as it exercises a power of appointment shall not be treated as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

(4) Where a law in force outside Zambia falls to be applied in relation to a will, any requirement of that law whereby-

(a) special formalities are to be observed by testators answering a particular description; or

(b) witnesses to the execution of a will are to possess certain qualifications;

shall be deemed to be a formal requirement only, notwithstanding any rule of that law to the contrary.

(5) Where under this Act the internal law in force in any state is to be applied in the case of a will, but there are in force in that state two or more systems of internal law relating to the formal validity of wills, the system to be applied shall be ascertained as follows:

(a) if there is in force throughout the state a rule indicating which of those systems can properly be applied in the case in question, that rule shall be followed; or

(b) if there is no such rule, the system to be applied shall be that with which the testator was most closely connected at the relevant time, and

for this purpose the relevant time is the time of the testator's death where the matter is to be determined by reference to circumstances prevailing at his death, and the time of execution of the will in any other case.

(6) In determining, for the purposes of this Act, whether or not the execution of a will conformed to a particular law, regard shall be had to the formal requirements of that law at the time of execution, but this shall not prevent account being taken of an alteration of law affecting wills executed at that time if the alteration enables the will to be treated as properly executed.

8. A beneficiary who witnessed the execution of a will shall lose his gift under the will other than any charges or debts directed by the will to be paid: Gifts to beneficiary who witnessed will

Provided that-

(a) that beneficiary shall be competent to be admitted as a witness to prove the execution of that will or to prove its validity;

(b) a beneficiary shall not lose his gift under a will by reason that he witnessed a codicil confirming the will; and

(c) a witness shall not lose his gift under this section if at least two other witnesses attested the will who are not beneficiaries under the will and the will is otherwise duly executed.

9. A will shall not be invalid only for the reason that at any time after execution any person witnessing the execution is incompetent to be admitted as a witness to prove its execution. Incompetency of witness

10. Any creditor under a will who witnessed the execution of a will shall be competent to be admitted as a witness to prove the execution or the validity of a will notwithstanding that the property of the testator is charged by the will with the payment of debts. Creditor witnessing will

11. An executor of a will shall be competent to be a witness to prove the execution or validity of that will. Executor competent witness

12. No erasure, interlineation or other alteration made in a will after its Erasure,

execution shall have any effect unless that erasure, interlineation or other alteration is-

interlineation
and alteration

(a) signed in accordance with the provisions of section *six* by the testator and the witness in the margin or on some other part of the will opposite or near the alteration; or

(b) referred to in a memorandum written at the end or some other part of the will and the memorandum is signed by the testator and the witnesses in accordance with the provisions of section *six*.

13. (1) A will or any part of it may be revoked by-

Revocation of
will

(a) a later will or codicil duly executed and expressed to revoke the earlier will;

(b) a written declaration of intention to revoke, executed in the same manner as a will;

(c) burning, tearing or otherwise destroying the will by the testator or someone in his presence and by his direction with the intention of revoking it.

(2) Where a testator dies having made more than one will the latest in time shall prevail over the earlier to the extent of any revocation, variation or inconsistency.

(3) A will made in accordance with subsection (4) of section *six* may be revoked by another will made in accordance with that subsection or by any of the means of revocation provided under this section.

(4) A will made in accordance with subsection (4) of section *six* may revoke an earlier will made by the testator in accordance with section *six*.

(5) Where a testator destroys a will-

(a) as a result of fraud or undue influence:

(b) by accident;

(c) under a mistake of fact or law intending to make some other disposition of his property which is not validly made;

the destruction shall not be deemed to have revoked the will.

(6) Any delegation by the testator of his power to revoke his will shall cease to have effect upon his death.

14. (1) A will may not incorporate another document unless that document is in existence at the time the will is executed and is sufficiently identified in the will.

Incorporation of other documents.

(2) Oral evidence shall be admissible for the purpose of identification.

15. (1) A will which has been revoked shall not be revived by the revocation of a subsequent will.

Revival of revoked will

(2) A will which has been revoked may be revived by-

(a) re-executing it; or

(b) executing a codicil in accordance with the provisions of section *six*, which shows an intention to revive that will.

(3) A will which has been revived in accordance with subsection (2) shall be deemed to have been made at the time when it was revived.

16. (1) The intention of a testator by his will, shall not be set aside because it cannot take effect to the full extent, but effect shall be given to it as far as possible.

Construction of will

(2) Where any clause is capable of having two meanings, one of which has some effect and the other can have none, the former shall be preferred.

(3) Every will shall be construed, with reference to the estate comprised in it, to speak and take effect as if it has been executed immediately before the death of the testator, unless a contrary intention appears in the will.

(4) A disposition of immovable property without any words of limitation shall pass the whole of the interest in it which the testator has power to dispose of by will.

(5) A general disposition of the land of a testator or of his land at any place, or in the occupation of any person or otherwise described in a general manner, shall include lands of whatsoever tenure or interest, unless a contrary intention appears from the will.

(6) Unless a contrary intention appears in a will, a bequest of property described in a general manner shall be construed so as to include the property with respect to which the testator has a power of appointment only and operate as an exercise of that power of appointment.

(7) A general or residuary disposition shall operate to confer a power to exercise a power of appointment, unless a contrary intention appears from the will.

(8) A residuary disposition shall include property comprised in lapsed and void dispositions, unless a contrary intention appears from the will.

(9) Any disposition by will or transfer under this Act of land within the meaning of the Lands Act shall be subject to the provisions of that Act. Cap. 184

(10) Subject to subsection (11) a gift to a person who dies before the testator shall lapse and have no effect.

(11) Notwithstanding subsection (10) a gift to a beneficiary who dies before the testator (other than for an estate determinable at or before the death of that beneficiary) leaving issue shall take effect as if the death of the beneficiary had occurred immediately after the death of the testator and shall devolve upon his issue.

(12) Where a testator and a beneficiary under his will die in circumstances-

(a) in which it appears that their deaths were simultaneous; or

(b) rendering it uncertain which of them survived the other;

the beneficiary shall be deemed to have survived the testator for all purposes affecting the entitlement to property under the will of that testator; but for the purposes of the entitlement of that testator to that property under any will of the afore-mentioned beneficiary, that beneficiary shall be deemed to have survived the aforementioned testator, unless a contrary intention appears from the will.

17. Except as provided in section *sixteen*, every will shall be construed in accordance with the doctrines of equity. Doctrines of equity

18. Unless a contrary intention appears in the will, any bequest which cannot take effect due to the death, fulfilment or non-fulfilment of the conditions upon which it was bequeathed shall lapse and shall be part of the residuary estate of the testator. Residuary estate

19. A will may be kept in any place but any person may, in his lifetime, deposit for safe custody in the High Court his own will, sealed up and sealed with the seal of the court. Custody of wills

PART III

FAMILY PROVISIONS IN WILL

20. (1) If, upon application made by or on behalf of a dependant of the testator, the court is of the opinion that a testator has not made reasonable provision whether during his life time or by his will, for the maintenance of the dependant, and that hardship will thereby be caused, the court may, taking account of all relevant circumstances and subject to such conditions and restrictions as the court may impose, notwithstanding the provisions of the will, order that such reasonable provision as the court thinks fit shall be made out of the testator's estate for the maintenance of that dependant. Unreasonable provisions in will

(2) The provision for maintenance to be made by an order may include-

(a) payment of a lump sum, whether immediate or deferred or grant of an annuity or a series of payments;

(b) grant of an interest in immovable property for life or any lesser period;

and where the order provides for periodical payments, it shall provide for their termination not later than-

(i) in the case of a husband or wife, his or her remarriage;

(ii) in the case of a child, his attaining the age of eighteen years or upon leaving secondary school or under graduate university, whichever is the later;

(iii) in the case of a child under disability, the cesser of the disability;
or

(iv) the death of the dependant.

(3) In determining whether, and in what manner, and as from what date, provision for maintenance ought to be made by an order, the court shall have regard to the nature of the property representing the testator's estate and shall not order any such provision to be made as would necessitate a realisation that would be unwise having regard to the interests of the testator's dependants and of any person who, apart from the order, would be entitled to that property.

21. (1) The court shall, on any application made under this Part, have regard to the testator's reasons for making the dispositions made by his will or for not making any provision or any further provision, as the case may be, for a dependant, and the court may accept such evidence as it considers sufficient, including any statement in writing signed by the testator and dated; so however that in estimating the weight, if any, to be attached to any such statement, the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

Matters to be considered by court when varying will

(2) The court shall also, upon any application made under this Part, have regard to any past, present or future capital or income from any source of the dependant to whom the application relates, to the conduct of that dependant in relation to the testator and to any other matter or thing which in the circumstances of the case the court may consider relevant or material in relation to that dependant and to the beneficiaries under the will.

22. (1) Except as provided by section *twenty-four*, an order under this Part shall not be made except on an application made within six months from the date on which representation in regard to the testator's estate for general purposes is first taken out.

Time within which application must be made

(2) For the purpose of the exercise by the court of its discretion as to the persons to whom letters of administration are to be granted, a dependant of the testator by whom or on whose behalf an application under this Part is proposed to be made shall be deemed to be a person interested in the estate.

23. (1) Where an order is made under this Part, the will shall for all purposes, including the purposes of the enactments relating to death duties, be deemed to have had effect, as from the testator's death, as if it had been executed with such variation as specified in the order for the purposes of giving effect to the provision for maintenance made by it.

Effect and form of order

(2) The court may give such consequential directions as it thinks fit for the purposes of giving effect to an order made under this Part, but no larger part of the estate shall be set aside or appropriated to answer by its income the provision for maintenance made by the order than such part as, at the date of the order, is sufficient to produce by its income the amount of that provision.

(3) An office copy of every order made under this Part shall be sent to the principal probate registry for entry and filing, and a memorandum of the order shall be endorsed on, or permanently annexed to, the probate of the will of the testator or the letters of administration, as the case may be.

24. (1) On an application made on a date after the expiration of the

Variation of

period specified in section *twenty-two*, the court may make, only as respects property the income of which is at that date applicable for the maintenance of a dependant of the testator: orders

(a) an order for varying a previous order on the ground that any material fact was not disclosed to the court when the order was made, or that any substantial change has taken place in the circumstances of the dependant or a person beneficially interested under the will in the property; or

(b) an order for making provision for the maintenance of another dependant of the testator.

(2) An application to the court for an order under subsection (1) may be made by or on behalf of a dependant of the testator by the trustee of the property or by or on behalf of a person beneficially interested in it under the will.

PART IV

EXECUTORS

25. Any person of, or above, the age of twenty-one years and having capacity to enter into a contract may be appointed an executor of a will. Executors

26. An executor may expressly renounce the right to probate orally on the hearing of any application to the court or in writing signed by the executor and attested by a person before whom an affidavit may be sworn. Express renunciation of right to probate

27. (1) A person claiming an interest in the estate of a deceased person or a creditor of a deceased person may cause to be issued by the court a citation directed to an executor appointed by the will of the deceased calling upon the executor to accept or renounce the executorship. Citation and presumed renunciation

(2) An executor shall be deemed to have renounced his executorship if he is served with a citation but does not enter an appearance.

(3) Where an executor does enter an appearance but does not proceed to apply for probate, the court may specify a time within which the application is to be made and if the application for probate is not made within that time the executor in default shall be deemed to have renounced his right to probate.

28. Renunciation under section *twenty-six* or *twenty-seven* shall preclude the person so renouncing from probate but the court may, at any time, grant probate to that person if it is shown that the grant is likely to benefit the estate of persons interested in it.

Effect of
re-nunciation

PART V

GRANT OF PROBATE AND LETTERS OF ADMINISTRATION BY COURT

29. (1) Except as provided by the Administrator-General's Act, probate may be granted by a court only to an executor appointed by a will, and shall not be granted to a minor or person of unsound mind.

Grant of
probate.
Cap. 58

(2) The appointment referred to in subsection (1) may be express or by necessary implication.

(3) Where several executors are appointed, probate may be granted to them simultaneously or at different times.

(4) If an executor is appointed by a will for a limited purpose only, probate granted to him shall be limited to that purpose.

30. (1) Probate or letters of administration shall not be granted to more than four persons in respect of the same estate and letters of administration shall, if there is a minority or a life interest under the will, be granted either to a trust corporation solely or jointly with an individual or to not less than two individuals.

Number of
executors and
administrators

(2) If there is only one personal representative (not being a trust

corporation), then, during the minority of a beneficiary or the subsistence of a life interest the court may appoint one or more administrators in addition to the existing personal representative.

31. (1) A corporation or company which is not a trust corporation may be granted probate but may not be granted letters of administration. Corporations

(2) A trust corporation may be granted probate or letters of administration either solely or jointly with another person.

(3) Probate or letters of administration shall not be granted to a syndic or nominee on behalf of a corporation or company.

32. (1) Where a will has been lost or mislaid or has been destroyed by any wrongful act or accident and not by any act of the testator- Probate of copy, draft or contents of will

(a) if a copy or draft of the will has been preserved, probate may be granted of that copy or draft, limited until the original or a properly authenticated copy of it is admitted to probate;

(b) if no copy or draft has been preserved, probate, limited as described in paragraph (a), may be granted to the contents of the will if the contents can be established by evidence.

(2) Where a will is in the possession of a person outside Zambia who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, probate may, if the interests of the estate so require, be granted of the copy transmitted, limited according to subsection (1).

33. (1) Where, after probate has been granted, a codicil of a will is propounded, probate may be granted of the codicil: Codicil propounded after probate

Provided that where the codicil expressly or impliedly revokes the appointment of any executor to whom probate has been granted, the probate shall be revoked and a new probate granted of the will and codicil together.

34. Where a will has been proved and deposited in a court of competent jurisdiction outside Zambia, and a properly authenticated copy of the will is produced, probate may be granted of that copy or letter of administration granted with a copy of the will annexed. Authenticated copy of will proved abroad

35. Probate of a will when granted shall establish the will and evidence the title of the executor from the death of the testator. Effect of probate

36. (1) Where- Failure of executors

(a) no executor is appointed by a will;

(b) the executor or all the executors appointed by a will have renounced, or are persons to whom probate may not be granted;

(c) no executor survives the testator;

(d) all the executors die before obtaining probate or before having administered all the estate of the deceased; or

(e) the executors appointed by a will do not appear and take out probate;

letters of administration may be granted of the whole estate or so much of it as may be unadministered to such person or persons as the court considers the most suitable to administer the estate:

Provided that a prior right to such grant shall belong to the following persons in the following order:

(i) a universal or residuary legatee;

(ii) a personal representative of a deceased universal or residuary legatee;

(iii) such person, being beneficiary under the will, as would have been entitled to a grant of letters of administration if the deceased had died intestate;

(iv) a legatee having a beneficial interest;

(v) a creditor of the deceased.

(2) Subject to section *forty-eight* a court shall not grant letters of administration in respect of a will by which an executor is appointed, if the executor-

(a) is living and his whereabouts are known;

(b) is a person to whom probate may be granted; and

(c) has not renounced his office;

unless and until a citation has been issued calling upon the executor to accept or renounce his office and the executor has renounced or has been deemed to have renounced his office in accordance with section *twenty-six* or *twenty-seven*.

37. Where any executor is absent from Zambia, and there is no other executor within Zambia willing to act, letters of administration may be granted to a lawfully constituted attorney of the executor, ordinarily resident within Zambia, limited until the absent executor obtains probate for himself, and in the meantime to any purpose to which the attorney's authority is limited.

Attorney of
absent executor

38. Where any person, to whom letters of administration might be granted under section *thirty-six*, is absent from Zambia, letters of administration may be granted to his lawfully constituted attorney ordinarily resident in Zambia, limited in the manner provided in section *thirty-seven*.

Attorney of
person entitled
to letters of
administration

39. Section *thirty-three* shall apply in the case of a grant of letters of administration in like manner as it applies in the case of a grant of probate.

Codicil
propounded
after letters of
administration

40. Pending the determination of any proceedings touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the court may appoint an

Appointment of
administrator
pending

<p>administrator of the estate of that deceased person, who shall have all the rights and powers of a general administrator other than the right of distributing the estate, and every such administrator shall be subject to immediate control of the court and shall act under its direction.</p>	litigation
<p>41. Where a person dies leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account and leaves no executor, or one who is unable or unwilling to act as such, letters of administration limited to that property may be granted to the beneficiary, or to some other person on his behalf.</p>	Trust property
<p>42. Whenever the nature of the case requires that an exception be made, probate or letters of administration shall be granted subject to such exception.</p>	Grants with exception
<p>43. Whenever a grant with exception of probate or letters of administration has been made, further grant may be made of the part of the estate so excepted.</p>	Grants of excepted part
<p>44. (1) Subject to all such limitations and exceptions contained in a grant of probate or letters of administration, probate and letters of administration entitle the personal representative to all rights belonging to the deceased as if the administration had been granted at the moment after his death.</p>	Effect of grant of letters of administration or probate
<p>(2) Probate and letters of administration have effect over all the property of the deceased throughout Zambia and shall-</p>	
<p>(a) be conclusive against all debtors of the deceased and all persons holding inheritable property of the deceased;</p>	
<p>(b) afford full indemnity to all debtors paying their debts, and all persons delivering up that property to the persons to whom probate or letters of administration have been granted.</p>	
<p>45. (1) The duties and powers of a personal representative shall include-</p>	Duties and powers of personal representative

(a) the payment of the debts and funeral expenses of the deceased;

(b) if the deceased left a valid will, the distribution of the property disposed of by the will in accordance with its provisions or an order of court made under section *twenty*.

(c) when required to do so by the court, either on the application of an interested party or on its own motion-

(i) the production on oath in court of the full inventory of the estate of the deceased; and

(ii) the rendering to the court of an account of the administration of the estate.

(2) Where a personal representative considers that a sale of any of the property forming part of the estate of a deceased person is necessary or desirable in order to carry out his duties, the administrator may sell the property in such manner as appears to him likely to secure receipt of the best price available for that property.

46. Where there are several personal representatives, their powers may, in the absence of any direction to the contrary in the will, be exercised by the majority of them.

How powers of several personal representatives exercised

47. Where probate or letters of administration have been granted to more than one executor or administrator and one of them dies, the representation of the estate to be administered shall, in the absence of any direction in the will or grant, accrue to the surviving executor, or administrator.

Death of one of several personal representatives

48. On the death of a sole or surviving executor who has proved the will or of a sole surviving administrator, letters of administration may be granted in respect of that part of the estate not fully administered, and in granting the letters of administration the court shall have regard to the original grants:

Death of sole or surviving personal representative

Provided that where one or more executors have proved the will or letters of administration have been issued, the court may grant letters of

administration under this section without citing an executor who has not proved the will.

49. Where a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited and there is still some part of the deceased's estate unadministered, letters of administration may be granted to those persons to whom original grants might have been made.

Expiry of limited grant when estate not fully administered

50. (1) As a condition of granting letters of administration to any person, a court may, subject to subsection (4), require one or more sureties to guarantee, within any limit imposed by a court, any loss which any person interested in the administration of an estate may incur in consequence of a breach by the administrator of his duties as such.

Guarantees on granting letters of administration

(2) A guarantee given under subsection (1) shall have the effect, in relation to any person interested in the administration of an estate of a deceased, of a contract by the surety or sureties with any such person.

(3) No action shall be brought against a guarantor without the leave of the court.

(4) This section shall not apply where administration is granted to the Administrator-General.

PART VI

REVOCAION AND ALTERATION OF GRANTS AND REMOVAL OF EXECUTORS AND ADMINISTRATORS

51. (1) A grant of probate or letters of administration may be revoked or annulled for any of the following reasons:

Revocation of grants and removal

(a) that the proceedings to obtain them were defective in substance;

(b) that the grant was obtained fraudulently by making a false statement, or by concealing from the court something material to the

case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though the allegation was made in ignorance or inadvertently;

(d) that the grant has become useless and inoperative; or

(e) that the person to whom the grant was made has, without reasonable cause, omitted to furnish an account of his administration after having been lawfully called upon to do so or has prepared an account which is untrue in a material respect.

(2) Where it is satisfied that the due and proper administration of the estate and the interests of the persons beneficially entitled to it so require, the court may suspend or remove an executor or administrator and provide for the succession of another person to the office of that executor or administrator who may cease to hold office, and for the vesting in that person of any property belonging to the estate.

52. (1) Where any probate or letters of administration are revoked, all payments made in good faith to any executor or administrator under that probate or letters of administration before the revocation shall, notwithstanding the revocation, be a legal discharge to the person making the payment.

Payments to personal representatives whose grants are revoked

(2) The executor or administrator who has acted under any revoked probate or letters of administration may retain and reimburse himself out of the assets of the deceased in respect of any expenses incurred or fees paid out by him which any person, to whom probate or letters of administration are afterwards granted, could have lawfully incurred or paid.

53. (1) Where a grant of probate or letters of administration are revoked under this Act, the person to whom the grant was made shall immediately deliver up the probate or letters of administration to the court which made the grant.

Surrender of revoked grants

(2) If a person referred to in subsection (1) wilfully and without sufficient cause fails to deliver up the probate or letters of

administration, he shall be guilty of an offence and liable, on conviction, to a fine not exceeding one hundred and twenty-five penalty units or to imprisonment not exceeding three months, or both.

(As amended by Act No. 13 of 1994)

PART VII

GENERAL

54. (1) Where a court of probate outside Zambia has, after the commencement of this Act, granted probate or letters of administration to the estate of a deceased person, the High Court-

Sealing of
certain grants
made outside
Zambia

(a) upon production of-

(i) the grant;

(ii) a duplicate sealed with the seal of the court granting it; or

(iii) a copy of the grant certified by or under the authority of the court of probate which made the grant; and

(b) upon the deposit of any of the foregoing documents with the court;

may seal with the seal of the High Court the document produced and deposited and thereupon the grant so made outside Zambia shall be of the same force and effect and have the same operation in Zambia as if granted by the High Court.

(2) Rules made under section *sixty-eight* may prescribe the security to be given and evidence of domicile to be furnished in relation to any application for sealing under subsection (1).

55. (1) Where it is known to a court that a guardian of a minor has been appointed by will, the court shall not appoint any other person to be guardian of that minor except in exercise of its powers under section *sixty-four*.

Guardians

(2) A court may direct the transfer to, or vesting in, the guardian of a

minor of any property of the minor and may authorise or direct the sale of the property or any part of the property belonging to the minor.

(3) A guardian appointed by will or under this Act shall be entitled to represent the interests of the minor in any proceedings in court relating to the administration of the estate in which the minor has a share.

56. A personal representative or guardian may incur expenditure on such acts as may be necessary for the proper care and management of any property belonging to the estate of a deceased person or to a minor. Expenditure on care and management

57. (1) Unless there is express provision to that effect in the will, a personal representative or guardian shall not derive any pecuniary benefit from his office. Personal representative or guardian not to derive benefit

(2) If a personal representative or guardian purchases, either directly or indirectly, any part of the property of the deceased or of a minor for whom he is responsible, the sale may be set aside by the court on the application, made within a reasonable time, of any other person interested in the property sold or in the proceeds of sale.

58. (1) A personal representative or guardian who wrongfully deprives a minor of property or a share in property to which the minor is entitled intending to benefit himself or any person, other than the minor, shall be guilty of an offence and liable upon conviction to a fine not exceeding five hundred penalty units or to imprisonment not exceeding one year, or both. Offences by personal representative or guardian

(2) When any person is convicted of an offence under subsection (1), the court may, in addition to any penalty which may be imposed-

(a) order the restitution to the minor of the property which has passed in connection with the commission of the offence; or

(b) if such property cannot be restituted or cannot be found, order the convicted person to make compensation to the minor of such sum as the court may assess as the value of the property-

(3) A court shall have jurisdiction to try an offence under this section although it has previously dealt with an application relating to the property in question.

(As amended by Act No. 13 of 1994)

59. Any beneficiary who intentionally causes the death of the testator shall forfeit the right to inherit any part of the estate of the deceased. Beneficiary causing death of deceased

60. Where any person dies leaving property, a court may appoint such person as the court thinks fit to be a receiver of the property pending a grant of probate or letters of administration if it appears on the application of any person- Receiver pending grant

(a) claiming to be interested in that property; or

(b) having the custody or control of it at the time of the death of the testator;

that there is danger that the property may be wasted.

61. A court may, on application by a receiver of property appointed under section *sixty* or any person interested in the estate, order the sale of the whole or any part of the property, if it appears that the sale will be beneficial to the estate. Sale by order of court

62. No suit shall be brought against a receiver appointed under section *sixty* in relation to anything done or intended to be done by him in respect of the property of the deceased in the intended, purported or actual exercise of the powers vested in him; but a person aggrieved by anything so done or intended to be done may apply to the court which appointed the receiver for directions in the matter, and the court may make such order as it thinks just. No suit against receiver

63. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of probate or letters of administration may be altered and amended accordingly. Rectification of errors

64. On application in the prescribed manner, by an interested person, a court shall have jurisdiction in relation to a deceased person's estate- Disputes

- (a) to decide whether a document purporting to be a will is a valid will and whether or not the deceased person died testate;
- (b) to decide what is the property to which a deceased person was entitled at the date of his death;
- (c) to order the sale or other disposition of property belonging to a deceased person's estate for the purpose of paying the debts of the deceased or for the purposes of distribution;
- (d) to appoint a guardian in place of a guardian who has acted improperly.

65. (1) When a person dies, within or outside Zambia leaving property within Zambia, any person who without being duly authorised by law, takes possession of, causes to be moved or otherwise intermeddles with any such property, except in so far as may be urgently necessary for its preservation, shall be guilty of an offence; and any person taking any action in regard to any such property for its preservation shall forthwith report particulars of the property and of the steps taken to the Administrator-General; and if he fails to do so, he shall be guilty of an offence.

Intermeddling
with property of
deceased
prohibited

(2) Any person who-

(a) unlawfully deprives any person of the use of any part of the property of the deceased to which that person is entitled under this Act;
or

(b) otherwise unlawfully interferes with the use by any person of any property referred to in paragraph (a);

shall be guilty of an offence and liable on conviction to a fine not exceeding seven hundred and fifty penalty units or imprisonment not exceeding two years or both.

(As amended by Act No. 13 of 1994)

66. The High Court shall have original and unlimited jurisdiction in all matters relating to wills.

Jurisdiction of
court

67. The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

Regulations

68. The Chief Justice may, by statutory instrument, make rules regulating the practice and procedure of the court under this Act.	Practice and Procedure
69. Except as is expressly provided, nothing in this Act shall affect-	Savings
(a) any rights, duties or obligation of an administrator or executor existing under any law relating to the administration of estates immediately before the commencement of this Act;	
(b) the rights, or duties or obligations of beneficiaries in respect of any person who died before the commencement of this Act.	
70. From the commencement of this Act, the Wills Act, 1837, of the United Kingdom shall cease to apply to Zambia.	Non-application of 1837 Wills Act of United Kingdom

CHAPTER 61

THE PROBATES (RESEALING) ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Sealing of probates and letters of administration granted outside Zambia
4. Conditions to be fulfilled before sealing
5. Security for payment of debts
6. Duplicate or copy admissible
7. Rules of court
8. Repeal and saving

CHAPTER 61

An Act to provide for the recognition in Zambia of probate and letters of administration granted in Her Britannic Majesty's dominions or by British courts in foreign countries; and to provide for matters incidental thereto.

*Government
Notice
497 of 1964
Statutory
Instrument
152 of 1965*

[13th November, 1936]

1. This Act may be cited as the Probates (Resealing) Act.

Short title

2. In this Act, unless the context otherwise requires-

Interpretation

"British court in a foreign country" means any British court having jurisdiction out of Her Britannic Majesty's dominions in pursuance of an Order in Council, whether made under any British Act or otherwise;

"court of probate" means any court or authority, by whatever name designated, having jurisdiction in matters of probate;

"Her Britannic Majesty's dominions" includes any British protectorate or protected state and any territory in respect of which a mandate on behalf of the League of Nations has been accepted by Her Britannic Majesty;

"probate" and "letters of administration" include confirmation in Scotland, and any instrument having in any other part of Her Britannic Majesty's dominions the same effect which under English law is given to probate and letters of administration respectively;

"probate duty" includes any duty payable on the value of the estate and effects for which probate or letters of administration is or are granted.

(As amended by S.I. No. 152 of 1965)

3. Where a court of probate in any part of Her Britannic Majesty's dominions, or a British court in a foreign country, has, either before or after the commencement of this Act, granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy thereof deposited with, the High Court, be sealed with the seal of that Court, and thereupon shall be of the like force and effect, and have the same operation in Zambia as if granted by that Court.

Sealing of
probates and
letters of
administration
granted outside
Zambia

(As amended by S.I. No. 152 of 1965)

- 4.** The High Court shall, before sealing a probate or letters of administration under this Act, be satisfied-
- Conditions to be fulfilled before sealing
- (a) that probate duty has been paid in respect of so much, if any, of the estate as is liable to probate duty in Zambia; and
- (b) in the case of letters of administration, that security has been given in a sum sufficient in amount to cover the property, if any, in the territory to which the letters of administration relate;
- and may require such evidence, if any, as it thinks fit, as to the domicile of the deceased person:

Provided that the security need not be given when application for the sealing of a probate or of letters of administration is made to the High Court by or on behalf of the Administrator-General.

- 5.** The High Court may also, if it thinks fit, on the application of any creditor, require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in Zambia:
- Security for payment of debts

Provided that the security need not be given when application for the sealing of a probate or of letters of administration is made to the High Court by or on behalf of the Administrator-General.

- 6.** For the purposes of this Act, a duplicate of any probate or letters of administration sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, shall have the same effect as the original.
- Duplicate or copy admissible

- 7.** The High Court may, by statutory instrument, make rules of court for regulating the procedure and practice, including fees and costs, in the High Court, on and incidental to an application for sealing a probate or letters of administration under this Act.
- Rules of court

(As amended by No. 41 of 1960)

- 8.** The British and Colonial Probates Act, Chapter 17 of the 1930 Edition of the Laws, is hereby repealed:
- Repeal and saving

Provided that all rules made by the High Court under the Act hereby repealed and in force at the commencement of this Act shall be deemed to have been made under this Act and shall continue in force until other rules shall be made by virtue of this Act.

SUBSIDIARY LEGISLATION

PROBATES (RESEALING)

CAP. 61

SECTIONS 7 AND 8-THE PROBATES (RESEALING) RULES OF COURT

Government Notices
12 of 1920
180 of 1933
Statutory Instrument
152 of 1965

Rules by the High Court

- | | |
|--|---------------------------------|
| <p>1. These Rules may be cited as the Probates (Resealing) Rules of Court.</p> | <p>Title</p> |
| <p>2. Application to seal a grant of probate or letters of administration under the Act shall be made to the Registrar by the executor or administrator or the attorney (lawfully authorised for the purpose) of such executor or administrator, either in person or through a solicitor.</p> | <p>Application for sealing</p> |
| <p>3. Such application must be accompanied by an oath of the executor, administrator or attorney in the form in the First Schedule, or as nearly thereto as the circumstances of the case will allow.</p> | <p>Oath</p> |
| <p>4. Notice of the sealing of the grant of probate or letters of administration shall be advertised by the Registrar at the expense of the applicant in the form set out in the Second Schedule.</p> | <p>Advertisement of sealing</p> |
| <p>5. Application by a creditor under section <i>five</i> of the Act shall be made by motion before the Registrar, supported by an affidavit setting out particulars of his claim.</p> | <p>Application by creditor</p> |
| <p>6. In every case, and especially when the domicile of the deceased at</p> | <p>Evidence of</p> |

the time of death as sworn to in the affidavit differs from that suggested by the description in the grant, the Registrar may require further evidence as to domicile.

domicile

7. If it should appear that the deceased was not at the time of death domiciled within the jurisdiction of the court from which the grant issued, the seal shall not be affixed unless the grant is such as would have been granted by the High Court.

Domicile
outside
jurisdiction

8. Where application is made to reseal a grant of "Letters of Administration Executor Testamentary", the Registrar shall require that a copy of the will deposited with the court from which the grant issues, duly certified as a true copy by such court, shall be filed in the Registry.

Letters of
Administration
Executor
Testamentary

9. When application to seal a grant of probate or letters of administration is made after the lapse of three years from the death of deceased, the reason of delay must be certified to the Registrar. Should the certificate be unsatisfactory, the Registrar shall require such proof of the alleged cause of delay as he may think fit.

Delay in
application to
seal

10. Notice of the sealing of a grant by the High Court shall be sent by the Registrar to the court from which the grant issued.

Notice of
sealing

11. When intimation has been received of the resealing of a grant issued from the High Court, notice of any revocation of, or any alteration in, such grant shall be sent by the Registrar to the court by whose authority such grant was resealed.

Notice of
alteration in
grant

12. The fees set forth in the High Court Rules shall be paid before any grant of probate or administration is resealed, unless the High Court otherwise directs.

Fees.
Cap. 27

(As amended by No. 180 of 1933)

FIRST SCHEDULE

(Rule 3)

FORM OF OATH OF EXECUTOR,

ADMINISTRATOR OR ATTORNEY IN THE HIGH COURT FOR ZAMBIA

In the estate of _____, deceased.

I, C.D. (or E. F.), of _____, make oath and say:

1. That a grant of probate of the will (or letters of administration of the estate) of A. B., late of _____, deceased, was granted to me (or C. D.) by the _____ court at _____ on the day of _____, 19 ____.

Adapt to suit circumstances. This paragraph to be struck out if inapplicable

2. That the said deceased was at the time of his death domiciled at _____.

3. That I am the attorney lawfully appointed of C. D. under his hand and seal, and am duly authorised to apply to this court for the sealing of the said grant.

4. That the value of the estate within the jurisdiction of this court amounts to the sum of K _____ and no more, to the best of my knowledge, information and belief.

Sworn at _____.
(As amended by No. 152 of 1965)

SECOND SCHEDULE

(Rule 4)

FORM OF ADVERTISEMENT OF SEALING

A. B., deceased.

NOTICE IS HEREBY GIVEN that probate of the will (or letters of administration) of A. B., deceased, late of , granted by the court at on the day of , 19 , has been resealed in the High Court for Zambia.
Registrar of the High Court
(As amended by No. 152 of 1965)

CHAPTER 62

THE ADMINISTRATION OF ESTATES (TRUST CORPORATIONS) ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Special cases
4. Power to grant representation to a trust corporation
5. Affidavits
6. Sealing of grant of probate
7. Vesting in the corporation
8. Effect
9. Penalties

CHAPTER 62

ADMINISTRATION OF ESTATES (TRUST CORPORATIONS)	27 of 1956
	13 of 1994
An Act to enable bodies corporate to act as executors and administrators; and to provide for matters incidental to or connected therewith.	Statutory Instrument 72 of 1964

[17th August, 1956]

1. This Act may be cited as the Administration of Estates (Trust Short title

Corporations) Act.

2. In this Act, unless the context otherwise requires-

Interpretation

"trust corporation" means-

(a) any incorporated banking or insurance or guarantee or trust company which has a capital (in stock or shares) for the time being issued of not less than five hundred thousand kwacha, of which not less than two hundred thousand kwacha shall have been paid up in cash; or

(b) any body corporate which has a capital (in stock or shares) for the time being issued of not less than five hundred thousand kwacha, of which not less than two hundred thousand kwacha shall have been paid up in cash, and which is for the time being empowered (by the British Act, Act, charter, memorandum of association, deed of settlement or other instrument constituting it or defining its powers) to undertake trust business, but for so long a time only as such body corporate shall not, by any prospectus, circular, advertisement or other document issued by it or on its behalf, state or hold out that any liability attaches to the general revenues of the Republic in respect of any act or omission of such body corporate when acting as an executor or administrator.

(As amended by S.I. No. 72 of 1964)

3. Notwithstanding anything contained in the definition of "trust corporation" in section *two*, a company or body corporate which would be a trust corporation but for the fact that it does not for the time being fulfil the requirements as to capital in paragraph (a) or (b) of the said definition may act as executor or administrator in any particular case with the leave of the High Court and on giving such security as the High Court may determine and, thereupon, for the purpose of so acting as executor or administrator, such company or body corporate shall be deemed to be and to have the rights, powers and duties of a trust corporation under this Act.

Special cases

4. (1) The High Court may-

Power to grant representation to a trust corporation

(a) where a trust corporation is named in a will as executor, whether

alone or jointly with another person, grant probate to the corporation either solely or jointly with another person, as the case may require;

(b) grant administration to a trust corporation, either solely or jointly with another person;

and the corporation may act accordingly as executor or administrator, as the case may be.

(2) Probate or administration shall not be granted to a syndic, nominee or attorney on behalf of a trust corporation.

5. Any officer authorised for the purpose by a trust corporation, or the directors or governing body thereof, may, on behalf of the corporation, swear affidavits, give security and do any other act or thing which the court may require with a view to the grant to the corporation of probate or administration, and the acts of an officer so authorised shall be binding on the corporation. Affidavits

6. Where a trust corporation is appointed attorney for sealing a grant of probate or administration under the Probates (Resealing) Act, any officer authorised for the purpose by the trust corporation, or the directors or governing body thereof, may, on behalf of the trust corporation, swear affidavits, give security and do any other act or thing which the court may require with a view to the sealing of the grant, and the acts of an officer so authorised shall be binding on the corporation. Sealing of grant of probate. Cap. 61

7. (1) Where, at the commencement of this Act, any interest in any estate is vested in a syndic, nominee or attorney on behalf of a trust corporation acting as the personal representative of a deceased person, the said interest shall, by virtue of this Act, vest in the corporation, and the syndic, nominee or attorney shall be kept indemnified by the corporation in respect of the said interest. Vesting in the corporation

(2) This section shall not apply to securities registered or inscribed in the name of a syndic, nominee or attorney or to land or a charge affected or created by an instrument registered under the Lands and Deeds Registry Act, in the name of the syndic, nominee or attorney but any such securities, land or charge shall be transferred by the syndic, nominee or attorney to the corporation, or as the corporation may direct. Cap. 185

8. This Act shall have effect whether the testator or intestate died before or after the commencement of this Act, and no such vesting or transfer shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture. Effect

9. Where any corporation, in the exercise of any power conferred by this Act, commits any such act, or is in such default, as would render an individual liable to attachment and imprisonment, such corporation may be ordered by the court to pay a fine not exceeding fifteen thousand penalty units. Penalties

(As amended by Act No. 13 of 1994)

CHAPTER 63

THE TRUSTS RESTRICTION ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Restriction on creation of settlements, trust or future interests
4. Exceptions
5. Effect of dispositions in contravention of this Act
6. Existing settlements, etc.
7. Reduction of age
8. Notices of proposed registration, and registration
9. Regulations

SCHEDULE-Prescribed forms

CHAPTER 63

TRUSTS RESTRICTION

64 of 1970

An Act to restrict the creation of settlements, trusts and future interests.

[24th December, 1970]

1. This Act may be cited as the Trusts Restriction Act.

Short title

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

"Court" means the High Court;

Interpretation

"disposition" includes the conferring of a power of appointment;

"in being" means living or *en ventre sa mere*;

"minor" means a person in being under the age of twenty-one years;

"power of appointment" includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration;

"property" includes real and personal property and any estate or interest therein;

"settlement" means any disposition whereunder any property stands for the time being limited to or in trust for any persons by way of succession, and "settle" and other cognate expressions shall be construed accordingly;

"tenant for life" has the meaning assigned thereto in the Settled Land Act, 1882, of the United Kingdom, and has the corresponding meaning in relation to personal property;

"will" includes a codicil.

(2) A disposition made pursuant to a power of appointment shall be deemed to have been made at the time when the power was conferred.

(3) A disposition contained in a will shall be deemed to have been made at the death of the testator.

3. Save as hereinafter provided, after the commencement of this Act person shall not-

Restriction on creation of settlements, trusts or future interests

(a) settle any property; or

(b) limit any property in trust for another; or

(c) make any disposition whereunder property vests in possession at a future date.

4. Nothing in this Act shall apply to-

Exceptions

(a) a disposition whereunder property is limited to, or in trust for, a minor on his attaining a specified age not exceeding twenty-one years;

(b) a disposition whereunder property is limited to, or in trust for, a widow, either for her life or for some other period, with a gift over in favour of children, if such disposition contains a provision that on the re-marriage of the widow the property shall forthwith vest beneficially in such children.

For the purposes of this paragraph, "child" means-

(i) a child of the marriage; or

(ii) a child of either of the parties to the marriage; or

(iii) an adopted child, a step-child or an illegitimate child of the parties to the marriage or either of them;

(c) a disposition in favour of a charity;

(d) a trust in favour of or for the benefit of a person of unsound mind or a minor;

(e) a trust for the purpose of the administration of the estate of a deceased person, to the extent that any will of such deceased person does not offend against the provisions of this Act;

(f) a trust for the purpose of the administration of the property of a person adjudged bankrupt or a body corporate in liquidation or a person who has entered into a deed of arrangement for the benefit of his creditors;

(g) a trust for the purpose of the administration of enemy property;

(h) a trust for the purpose of the operation of a pension, superannuation or similar scheme;

(i) a trust terminable at the will of the beneficiary.

5. (1) Subject to the provisions of section *four*, and notwithstanding anything to the contrary contained in any other law, after the commencement of this Act-

Effect of
dispositions in
contravention
of this Act

(a) a settlement shall have effect as a disposition in fee simple or absolutely, as the case may be, to the tenant for life;

(b) a trust shall have effect as a disposition in fee simple or absolutely, as the case may be, to the beneficiary;

(c) a disposition whereunder property vests in possession at a future date shall be ineffective to create or vest any such interest.

(2) Where the provisions of subsection (1) apply, the property shall vest in the person or persons in question either solely or as tenants in common, as the case may be, freed from and to the exclusion of any right, title, interest or estate, whether vested or contingent, previously held, or expressed to be held thereafter, in such property by any person who would, apart from this section, have been entitled under such settlement, trust or other disposition in succession or in future.

6. (1) Where at the commencement of this Act property is held under an existing settlement or trust, or a disposition is in existence whereunder property vests in possession at a future date, such settlement, trust or disposition shall be deemed to have been made after the commencement of this Act and accordingly the provisions of section *five* shall apply: Existing settlements, etc.

Provided that in any such case the persons, if any, whose future interests, whether vested or contingent, have been extinguished by virtue of this section shall be entitled to compensation as hereinafter provided.

(2) Any person claiming compensation under subsection (1) may, in default of agreement between the interested parties, make application to the Court:

Provided that any such application shall be made within one year after the commencement of this Act.

(3) Any compensation agreed upon or ordered by the Court to be paid shall be by way of periodic payments or a lump sum payment or a combination of such payments, and shall be made by the person in

whom the property has been vested by virtue of the provisions of section *five*.

(4) In determining the amount of compensation, the Court shall take into account all relevant circumstances including, but without derogating from the generality of the foregoing-

- (a) the annual value of the interest extinguished;
- (b) the probability of any contingency;
- (c) the life expectancy of any interested person;
- (d) the cost of purchasing an annuity for any relevant period.

7. Where a settlement, trust or other disposition is limited by reference to the attainment by any person of a specified age exceeding twenty-one years and the disposition would, apart from this section, offend against this Act but would not so offend if the specified age were twenty-one years, the disposition shall be treated for all purposes as if it had been limited by reference to the age of twenty-one years. Reduction of age

8. (1) The provisions of this section shall apply in any case where, in respect of the transfer of any property, any written law provides for registration, and, for the purposes of this section, "registrar" means the proper officer of the relevant registration authority. Notices of proposed registration, and registration

(2) Any person who claims that any property vests in him in fee simple or absolutely, as the case may be, by virtue of section *five* shall, as soon as may be practicable after the making of the instrument in question, cause to be published in the *Gazette* a notice in Form 1 in the Schedule.

(3) Any person who claims that any property vests in him in fee simple or absolutely, as the case may be, by virtue of section *six* shall, as soon as may be practicable after the commencement of this Act, cause to be published in the *Gazette* a notice in Form 2 in the Schedule.

(4) If, within two months after the publication of a notice under subsection (1) or (2), no objection to the proposed registration is

received from any person claiming to be interested, the person claiming to be so entitled may apply to the registrar for registration of the property in question in his name.

(5) If objection to the proposed registration is duly served on the person claiming to be entitled thereto, he may apply to the Court for an order declaring that the property in question is vested in him in fee simple or absolutely, as the case may be.

(6) It shall be the duty of the registrar-

(a) after satisfying himself by affidavit or other evidence that a notice under subsection (1) or (2) was duly published and that no objection to the proposed registration was received within two months after the publication of such notice from any person claiming to be interested; or

(b) on production to him of an order of the Court under subsection (5);

to make such entries in the relevant register as shall give effect to such transfer and, where appropriate, to issue to the said person a Certificate of Title or a Provisional Certificate in respect of the said property or to make the necessary amendments to the register, as the case may be, and, if presented therefor, to make the appropriate endorsement on the deed or other document relating to the property in question.

9. The Minister may, by statutory instrument, make regulations prescribing anything which is required or authorised by this Act to be prescribed.

Regulations

SCHEDULE **(Section 8)**

PRESCRIBED FORMS

FORM 1

THE TRUSTS RESTRICTION ACT

NOTICE OF INTENTION TO APPLY FOR REGISTRATION OF PROPERTY

NOTICE IS HEREBY GIVEN, pursuant to section 8 of the Trusts Restriction Act that by virtue of section 5 of the said Act the property described in the Schedule has vested *in fee simple/absolutely in of

the •tenant for life/beneficiary under a •settlement/trust dated the day of and made between

and that on the expiration of a period of two months after the date of publication of this notice application will be made for the registration of the said property in the name of the *tenant for life/beneficiary.

Any person claiming to be interested in the said property who objects to the proposed registration is required, within two months after the date of publication hereof, to serve written notice of such objection by registered post on the *tenant for life/beneficiary at the undermentioned address for service.

**Tenant
for
Life/Ben
eficiary*

Address for Service

*Delete as applicable

FORM 2

THE TRUSTS RESTRICTION ACT

NOTICE OF INTENTION TO APPLY FOR REGISTRATION OF PROPERTY, AND TO CLAIM COMPENSATION

NOTICE IS HEREBY GIVEN, pursuant to section 8 of the Trusts Restriction Act, that by virtue of section 6 of the said Act the property described in the Schedule has vested •in fee simple/absolutely in of

the •tenant for life/beneficiary under a •settlement/trust dated the day of and made between

and that on the expiration of a period of two months after the day of publication of this notice application will be made for the registration of the said property in the name of the •tenant for life/beneficiary.

Any person claiming to be interested in the said property who objects to the proposed registration is required, within two months after the date of publication hereof, to serve written notice of such objection by registered post on the ¥tenant for life/beneficiary at the undermentioned address for service.

AND FURTHER TAKE NOTICE that any person claiming to be entitled to compensation by virtue of section 6 of the said Act is required to attempt to agree the amount of such compensation with the *tenant for life/beneficiary, or, if in default of agreement he wishes to make application to the Court, to make such application within one year from the commencement of the said Act.

**Tenant
for
Life/Benef
iciary*

Address for Service

*Delete as applicable

CHAPTER 64

THE AFFILIATION AND MAINTENANCE OF CHILDREN ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title
2. Interpretation

PART II

AFFILIATION ORDERS

3. Application by single woman
4. Application by party to void marriage
5. Application by child
6. Evidence to be given and corroborated

PART III

MAINTENANCE ORDERS

7. Maintenance of affiliated child
8. Maintenance of neglected child
9. Maintenance of child on divorce, nullity or separation
10. Types of maintenance orders
11. Matters for consideration when making maintenance order
12. Duration of maintenance order
13. Variation or discharge of maintenance order
14. Persons to whom payments to be made

PART IV

CUSTODY OF CHILDREN

15. Custody and access
16. Declaration of unfitness for custody

PART V

REGISTRATION AND MAINTENANCE ORDERS

Section

17. Interpretation of Part V
18. Registration of High Court orders
19. Registration of subordinate court orders
20. Effect of registration
21. Registration not to be duplicated
22. Enforcement of registered order
23. Variation of orders registered in subordinate courts
24. Cancellation of registration

PART VI

ATTACHMENT OF EARNINGS ORDERS

25. Attachment of earnings orders
26. Orders in proceedings under other Acts
27. Restriction of issue of other process
28. Variation of order on application of party
29. Variation of order to correct excess of payments
30. Notice to be given of variation
31. Discharge of order on cancellation of registration of related maintenance order
32. Order discharged in certain circumstances
33. Liability under orders
34. Powers of court to obtain statements of earnings etc.
35. Powers of courts to determine whether payments are earnings
36. Miscellaneous provisions as to payments
37. Earnings paid by the Government

38. Offences

PART VII

MISCELLANEOUS

39. Special provisions for subordinate courts

40. Regulations and Rules

41. English Law to cease to apply

42. Transitional provision

Section

43. Certain laws of Zambia to cease to apply to maintenance of children

CHAPTER 64

AFFILIATION AND MAINTENANCE OF CHILDREN

*Act No.55 of
1995
13 of 1994*

An Act to provide for court orders as to paternity; to consolidate the law relating to the maintenance of children; to bring the law of Zambia into conformity with the United Nations Convention on the Rights of the Child dated 20th November, 1989, to which Zambia is a State Party; to abrogate the application of so much of the Maintenance Orders Act, and of the laws of the United Kingdom, as provides for the maintenance of children; and to provide for matters connected with or incidental to the foregoing.

[28th April, 1995

PART I

PRELIMINARY

1. This Act may be cited as the Affiliation and Maintenance of Children Act.

Short title

2. In this Act, unless the context otherwise requires-

Interpretation

"affiliation order" means an order declaring a man to be the father of a child identified in the order;

"attachment of earnings order" means an order under section *twenty-five*;

"child" means a person below the age of eighteen years, whether a marital or non-marital child;

"court" means a subordinate court or the High Court;

"custodian" means a person appointed under this Act or any other law to be the guardian of a child;

"defendant", in relation to a maintenance order or a related attachment of earnings order, means the person liable to make payments under that order;

"earnings" in relation to a dependant means any sums (other than expected sums) payable to the dependant-

(a) by way of wages or salary, including a fee, bonus, commission, overtime pay or other emolument payable in addition to wages or salary; or

(b) by way of pension;

"employer" means a person by whom, as a principal and not as a servant or agent, any earnings are to be paid;

"maintenance order" means an order made under Part III;

"marital child" includes-

(a) a legitimated person within the meaning of the Legitimacy Act; Cap. 52

(b) an adopted child within the meaning of the Adoption Act; and Cap. 54

(c) a child of either party to a marriage who has been accepted by the other party as a child of the family;

"non-marital child" means a child who is not a marital child;

"periodic payments order" means a maintenance order made in accordance with paragraph (a) of subsection (1) of section *ten*;

"proper officer of the court" means-

(a) in the case of the High Court, such officer as the Registrar may designate for the purposes of the provision in which the expression occurs; and

(b) in the case of a subordinate court, the clerk of that court;

"putative father" means the man alleged to be the father of a non-marital child;

"registered", in relation to a maintenance order, means registered under Part V;

"secured periodic payments order" means a maintenance order made in accordance with paragraph (b) of subsection (1) of section *ten*;

"single woman" includes a widow, a married woman who is divorced and a woman living apart from her husband.

PART II

AFFILIATION ORDERS

3. The court may make an affiliation order on the application of a single woman-

Application by
single woman

(a) at any time within twelve months after giving birth to a non-marital child;

(b) at any time, upon proof that the putative father of the non-marital child has within the period of twelve months next after the birth of the non-marital child paid money for its maintenance; or

(c) at any time within the period of twelve months next after the return to Zambia of the putative father of the non-marital child, upon proof that he ceased to reside in Zambia within the period of twelve months after the birth of the non-marital child.

4. The court may, on the application of a single woman who has been delivered of a marital child, make an affiliation order upon proof that before the birth she was a party to a marriage which would have been valid but for the fact that she or the other party were under the age at which either might have legally contracted a marriage. Application by party to void marriage

5. The court may, on the application of a non-marital child made through the child's next friend, make an affiliation order, subject to the limitations contained in section *three*. Application by child

6. (1) On the hearing of an application for an affiliation order, the court shall hear- Evidence to be given and corroborated

(a) the evidence of the mother;

(b) such other evidence as she may produce; and

(c) any evidence tendered by or on behalf of the putative father.

(2) The court shall not make an affiliation order unless the evidence of the mother is corroborated in some material particular by other evidence.

PART III

MAINTENANCE ORDERS

7. The court may, either at the time of making an affiliation order or Maintenance of

upon subsequent application for a maintenance order, make a maintenance order in respect of the child concerned.

affiliated child

8. (1) The court may on the application of either party to a marriage make a maintenance order on the ground that the other party to the marriage has failed to provide, or to make a proper contribution towards, reasonable maintenance for a marital child.

Maintenance of neglected child

(3) In deciding what constitutes reasonable maintenance for the purposes of this section, the court shall have regard to the matters mentioned in section *eleven*.

9. (1) The court may make a maintenance order in respect of a marital child on granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation, or at any time thereafter.

Maintenance of child on divorce, nullity or separation

(2) In the case of a decree of divorce or of nullity of marriage, the order may be made whether or not the decree has been made absolute.

10. (1) A maintenance order may take any of the following forms, that is to say:

Types of maintenance orders

(a) an order that the defendant shall, for the benefit of a specified child, pay to a specified person or to the child itself, specified periodic payments for a specified term;

(b) an order that the defendant shall, for the benefit of a specified child, secure to the satisfaction of the court the making, to a specified person or to the child itself, of specified periodic payments for a specified term.

(2) In addition, a maintenance order may specify that the defendant shall, for the benefit of a specified child, pay to a specified person or to the child itself, a specified lump sum.

(3) Where the court-

(a) makes an order under this section for the payment of a lump sum; and

(b) directs that-

(i) payment of that sum or any part of it shall be deferred; or

(ii) that sum or any part of it shall be paid by instalments;

the court may order that the amount deferred, or the instalments, shall carry interest at a rate specified by the order, from a specified date (not being a date earlier than the date of the order) until the date when payment thereof is effected.

11. (1) It shall be the duty of the court before making any maintenance order to have regard to all the circumstances of the child concerned.

Matters for consideration when making maintenance order

(2) Without limiting the generality of subsection (1), the court shall have regard to the following matters:

(a) the welfare of the child while an infant, including any preliminary expenses;

(b) the income, earning capacity, property and other financial resources which each interested person has, or is likely to have, in the foreseeable future, including, in the case of earning capacity, any increase in that capacity which it would, in the opinion of the court, be reasonable to expect a person to take steps to acquire;

(c) the financial needs, obligations and responsibilities which each interested person has or is likely to have in the foreseeable future;

(d) the standard of living enjoyed by the family before the breakdown of the marriage, in the case of persons who are divorcing;

(e) the age of the child and of each interested person;

(f) any physical or mental disability of the child;

(g) the contributions which each person has made, or is likely in the foreseeable future to make, to the welfare of the child, including any contribution made or to be made by looking after the home or caring for the child;

(h) the financial needs of the child;

(i) the income, earning capacity, property and other financial resources, if any, of the child; and

(j) the manner in which the child was being, and in which its parents expected it to be, educated or trained.

12. (1) A maintenance order shall not be made in favour of a child who has attained the age of eighteen years.

Duration of
maintenance
order

(2) The term to be specified in a periodic payments or secured periodic payments order in favour of a child may begin with the date of the making of an application for the order in question or any later date but shall not extend beyond the date of the child's eighteenth birthday.

(3) Subsections (1) and (2) shall not apply if it appears to the court that-

(a) the child is or will be receiving instructions in some profession or vocation (or would be, if an order were made without complying with either or both of those subsections), whether or not he is or will be in gainful employment as well; or

(b) there are special circumstances which justify the making of an order notwithstanding either or both of those provisions.

(4) Any periodic payments order in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the child in respect of whom the order is made, except in relation to any arrears due under the order on the date of the death.

13. (1) The court shall have power to vary or discharge a maintenance order or to suspend any provision thereof temporarily and to revive the

Variation or
discharge of

operation of any provision so suspended.

maintenance
order

(2) In exercising its power under this section, the court shall take into account the same matters as it is required to take into account when it makes a maintenance order.

14. (1) Subject to the other provisions of this Act, the person entitled to any payment to be made under a maintenance order shall be the child's mother, father or custodian.

Persons to
whom
payments to be
made

(2) When making or varying a maintenance order, the court may order that the money shall be paid into court and then paid to the mother, father or custodian in such manner and subject to such conditions as it may direct.

(3) A custodian who is entitled to receive moneys under a maintenance order shall have the same power to recover them as the mother or father would have had.

PART IV

CUSTODY OF CHILDREN

15. (1) Where the court makes a maintenance order in respect of a child, the court shall also have power to make whatever order it thinks fit with respect to the custody of the child, and the right of access thereto of either parent, but the power conferred by this subsection and any order made in exercise of that power shall have effect only during any period while the maintenance order is in force.

Custody and
access

(2) In making any order as to custody or access, the court shall regard the welfare of the child as the paramount consideration, and shall not take into account whether from any other point of view the claim of the father in respect of custody is superior to that of the mother, or vice versa.

(3) If the court is satisfied that-

(a) the mother or father of a child is not a fit and proper person to have custody of the child;

(b) the mother or father of a child has died or become of unsound mind or is serving a term of imprisonment of more than six months; or

(c) there are exceptional circumstances making it impracticable for the child to be entrusted to the custody of either of its parents;

the court may, at the time of making a maintenance order or at any time thereafter, appoint any other person as custodian of the child.

(4) The appointment of a custodian under this section may be made on the application of-

(a) The Minister responsible for community development and social welfare, or of any person authorised in that behalf by the Minister in writing either generally or specially; or

(b) the father or mother;

and such an appointment may be revoked and another person appointed as custodian.

16. (1) Where the court makes an affiliation order, or grants or makes absolute a decree of divorce, or grants a decree of judicial separation, it may include in the order or decree a declaration that either party to the proceedings is unfit to have the custody of a child.

Declarations of
unfitness for
custody

(2) Where such a declaration is made, then, if the party to whom the declaration relates is a parent of any child, that party shall not, on the death of the other parent, be entitled as of right to the custody or the guardianship of that child.

(3) Where an order in respect of a marital child is made under this section, the order shall not affect the rights over or with respect to the child of any person, other than a party to the marriage in question, unless the child is the child of one or both of the parties to that marriage and

that person was a party to the proceedings on the application for an order under this section.

(4) The court shall have power to vary or discharge an order made under this section or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

PART V

REGISTRATION OF MAINTENANCE ORDERS

17. (1) In this Part, unless the context otherwise requires-

Interpretation of
Part V

"certified copy", in relation to an order of the court, means a copy certified by the proper officer of the court to be a true copy of the order or of the official record thereof;

"court of registration", in relation to a maintenance order, means the court in which the order is, or is to be, registered;

"High Court order" means a maintenance order made by the High Court;

"original court", in relation to a maintenance order, means the court by which the order was made;

"subordinate court order" means a maintenance order made by a subordinate court;

"registered" means registered in accordance with the provisions of this Part, and "registration" shall be construed accordingly.

(2) For the purposes of this Part, an order for the payment by the defendant of any costs incurred in proceedings relating to a maintenance order, being an order for the payment of costs made while the maintenance order is not registered, shall be deemed to form a part of that maintenance order.

18. (1) A person entitled to receive payments under a High Court order may apply to the original court for the registration of the order in a subordinate court, and the court may, if it thinks fit, grant the application.

Registration of
High Court
orders

(2) Where an application for the registration of such an order is granted-

(a) no proceedings shall begin, and no writ, warrant or other process shall be issued, for the enforcement of the order before registration of the order or before the expiry of the prescribed period (in this Part referred to as the "registration period") from the grant of the application, whichever first occurs; and

(b) the original court shall, on being satisfied within the registration period by the person who made the application that no such proceedings or process begun or issued before the grant of the application remain pending or in force, cause a certified copy of the order to be sent to the clerk of a subordinate court within whose area of jurisdiction the defendant appears to be.

(3) If at the expiration of the registration period the original court has not been satisfied as referred to in paragraph (b) of subsection (1), the grant of the application shall become void.

(4) The proper officer of the court of registration shall, upon receipt of a certified copy of an order sent to him under this section, cause the order to be registered in that court.

19. (1) A person entitled to receive payments under a subordinate court order, who considers the order could be more effectively enforced if it were registered in the High Court or another subordinate court, may apply to the original court for the registration of the order, and the court shall grant the application being satisfied in the prescribed that, at the time when the application was made, the amount due under the first mentioned order was unpaid.

Registration of
subordinate
court orders

(2) Where an application for the registration of a subordinate court order is granted-

(a) no proceedings for the enforcement of the order shall be begun before the registration takes place and no warrant or other process for the enforcement thereof shall be issued in consequence of any such proceedings begun before the grant of the application;

(b) any warrant of commitment issued for the enforcement of the order shall cease to have effect when the person in possession of the warrant is informed of the grant of the application, unless the defendant

has already been detained in pursuance of the warrant; and

(c) the original court shall, on being satisfied in the prescribed manner that no process for the enforcement of the order issued before the grant of the application remains in force, cause a certified copy of the order to be sent to the proper officer of the court of registration.

(3) The proper officer of the court of registration shall, upon receipt of a certified copy of an order sent to him under this section, cause the order to be registered in that court.

20. (1) Where a maintenance order is registered in any court under this part- Effect of registration

(a) any provisions of the order by virtue of which sums payable thereunder are required to be paid through or to any officer or person on behalf of the person entitled to them shall be of no effect so long as the order is registered in that court; and

(b) the court shall, unless it is satisfied that it is undesirable to do so, order that all payments to be made under the maintenance order (including any arrears accrued before the date of the registration) shall be made through the proper officer of the court of registration.

(2) An order made under paragraph (b) of subsection (1) may be varied or revoked by a subsequent order.

(3) Where, by virtue of the provisions of this section or any order made under this section, payments under a maintenance order cease or become payable through or to any officer or person, the person liable to make the payments shall, until he is given the prescribed notice to that effect, be deemed to comply with the maintenance order if he makes payments in accordance with the maintenance order and any order under this section of which he has received such notice.

21. An order which is for the time being registered in any court shall not be registered in any other court. Registration not to be duplicated

22. (1) Subject to the provisions of this section, a registered order shall Enforcement of

be enforceable in all respects as if it had been made by the court of registration and as if that court had jurisdiction to make it; and proceedings for or with respect to the enforcement of a registered order may be taken accordingly.

registered order

(2) Where an order remains or becomes registered after the discharge of the order, no proceedings shall be taken by virtue of that registration except in respect of arrears which were due under the order at the time of the discharge and have not been remitted.

23. (1) The provisions of this section shall have effect with respect to the variation of orders registered in subordinate courts, and references in this section to registered orders shall be construed accordingly.

Variation of
orders
registered in
subordinate
courts

(2) The court of registration may exercise the same jurisdiction to vary any rate of payments specified by a registered order (other than jurisdiction in a case where a party to the order is not present in Zambia when the application for variation is made) as the original court.

(3) A rate of payments specified by a registered order shall not be varied except by the court of registration.

(4) A rate of payments specified by a registered order shall not be varied by virtue of subsection (2) so as to exceed the rate of payments specified by the order as made or last varied by the original court.

(5) If it appears to the court to which an application is made by virtue of subsection (2) or (3) for the variation of a rate of payments specified by a registered order that, by reason of limitations imposed on the court's jurisdiction by subsection (4) or for any other reason, it is appropriate to remit the application to the original court, the firstmentioned court shall so remit the application, and the original court shall thereupon deal with the application as if the order were not registered.

(6) Nothing in this section shall affect the jurisdiction of the original court to vary a rate of payments specified by a registered order if an application for the variation of that rate is made to that court-

(a) in proceedings for a variation of provisions of the order which do not specify a rate of payments; or

(b) at a time when a party to the order is not present in Zambia.

(7) No application for any variation of a registered order shall be made to any court while proceedings for any variation of the order are pending in any other court.

(8) Where a subordinate court, in exercise of the jurisdiction conferred by this section, varies or refuses to vary a registered order, an appeal from the variation or refusal shall lie to the High Court.

24. (1) If a person entitled to receive payments under a registered order desires the registration to be cancelled, he may give notice under this section. Cancellation of registration

(2) Where the original court varies or discharges an order registered in a subordinate court, the original court may, if it thinks fit, give notice under this section.

(3) Where a subordinate court discharges an order registered in the High Court and it appears to the subordinate court, whether by reason of the remission of arrears by that court or otherwise, that no arrears under the order remain to be recovered, the subordinate court shall give notice under this section.

(4) Notice under this section shall be given to the court of registration, and where such notice is given-

(a) no proceedings for the enforcement of the registered order shall be begun before the cancellation of the registration and no writ, warrant or other process for the enforcement thereof shall be issued in consequence of any such proceedings begun before the giving of the notice;

(b) Where the order is registered in a subordinate court, any warrant of commitment issued for the enforcement of the order shall cease to

have effect when the person in possession of the warrant is informed of the giving of the notice, unless the defendant has then already been detained in pursuance of the warrant; and

(c) the court of registration shall cancel the registration on being satisfied in the prescribed manner-

(i) that no process for the enforcement of the registered order issued before the giving of the notice remains in force; and

(ii) in the case of an order registered in a subordinate court, that no proceedings for the variation of the order are pending in a subordinate court.

(5) On the cancellation of the registration of an order, any order made in relation to it under paragraph (b) of subsection (1) of section *twenty* shall cease to have effect, but until the defendant receives the prescribed notice of the cancellation he shall be deemed to comply with the order if he makes payments in accordance with any order under that paragraph which was in force immediately before the cancellation of which he has notice.

PART VI

ATTACHMENT OF EARNINGS ORDERS

25. (1) If, on the application of a person entitled to receive payments under a maintenance order, it appears to a court by which payment of any arrears under the order is enforceable-

Attachment of earnings orders

(a) that, when the application was made, there were payments due under the order that were unpaid; and

(b) that the defendant is a person to whom earnings fall to be paid; then the court may, if it thinks fit, by order (to be known as an attachment of earnings order) require a person appearing to the court to be the defendant's employer in respect of those earnings or a part thereof, to make out of those earnings or part thereof such payments as may be specified in the order.

(2) The order shall-

(a) specify the normal deduction rate, which shall not exceed the rate appearing to the court to be necessary for the purpose of securing-

(i) payment of the sums falling due from time to time under the maintenance order; and

(ii) payment within a reasonable period of any sums already due and unpaid under the maintenance order and of any costs incurred in proceedings relating to the maintenance order which are payable by the defendant;

(b) specify the protected earnings rate, having regard to the resources and needs of the defendant and the needs of persons for whom he must or reasonably may provide;

(c) designate the proper officer to whom any payment is to be made; and

(d) contain, so far as they are known to the court making the order, such particulars as may be prescribed for the purpose of enabling the defendant to be identified by the person to whom the order is directed.

(3) An attachment of earnings order shall not come into force until the expiration of fourteen days from the date when a copy of the order is served on the person to whom the order is directed.

(4) In this section-

"normal deduction rate" means the rate at which attached earnings should be applied from time to time in satisfying the requirements of the maintenance order;

"protected earnings rate" means the rate below which earnings should not be reduced by a payment made in pursuance of an attachment of earnings order.

26. Without prejudice to the powers to make attachment of earnings orders conferred by section *twenty-five*, where proceedings are brought in a court under section *four* of the Debtors Act (which authorises the committal to prison of persons refusing or neglecting to pay certain debts which they have had the means to pay) in respect of a default in making payments under a maintenance order, and it appears to the court that-

Orders in
proceedings
under other
Acts
Cap. 87

(a) at the date when the proceedings were begun, any payment was due under the maintenance order and unpaid; and

(b) the defendant is a person to whom earnings fall to be paid;

the court may, if it thinks fit, make an attachment of earnings order instead of making any other order to enforce the making of payments under the maintenance order.

27. Where an attachment of earnings order is made, no order or warrant of commitment shall be issued in consequence of any proceedings for the enforcement of the related maintenance order begun before the making of the attachment of earnings order.

Restriction of issue of other process

28. The court by which an attachment of earnings order has been made may, if it thinks fit, on the application of the defendant or a person entitled to receive payments under the related maintenance order, make an order discharging or varying the attachment of earnings order.

Variation of order on application of party

29. (1) Where at any time it appears to the proper officer to whom payments under an attachment of earnings order made by the High Court are to be paid that-

Variation of order to correct excess of payments

(a) the aggregate of the payments made for the purpose of the related maintenance order by the defendant (whether under the attachment of earnings order or otherwise) exceeds the aggregate of the payments required up to that time by the maintenance order;

(b) the normal deduction rate specified by the attachment of earnings order (or where two or more such orders are in force in relation to the maintenance order, the aggregate of the normal deduction rates specified by those orders) exceeds the rate of payments required by the maintenance order; and

(c) no proceedings for the variation or discharge of the attachment of earnings order are pending;

the officer shall give the prescribed notice to the person to whom he is required to pay sums received under the attachment of earnings order and to the defendant.

(2) The court which made the order shall-

(a) make the appropriate variation order; or

(b) if it thinks fit, at the request of the defendant made to the court in the prescribed manner and before the expiration of the prescribed period, make an order either discharging the attachment of earnings order or varying that order in such manner as the court thinks just.

(3) Where at any time it appears to the proper officer to whom payments under an attachment of earnings order made by a subordinate court are to be paid that the conditions specified in paragraphs (a) to (c) of subsection (1) are satisfied, that officer shall make an application to that court for the appropriate variation order, and the court shall-

(a) grant the application; or

(b) if it thinks fit, where the defendant appears at the hearing of the application and requests the court to do so, make an order either discharging the attachment of earnings order or varying that order in such manner as the court thinks just.

(4) In this section "the appropriate variation order" means an order varying the attachment of earnings order in question by reducing the normal deduction rate specified thereby so as to ensure that the rate (or, in the case mentioned in paragraph (b) of subsection (1), the aggregate of the rates therein mentioned) is the same as the rate of payments required by the maintenance order or is such lower rate as the court thinks just, having regard to the amount of the excess mentioned in paragraph (a) of subsection (1).

30. An order varying an attachment of earnings order shall not come into force until the expiration of seven days from the date when a copy thereof is served on the person to whom the attachment of earnings order is directed.

Notice to be given of variation

31. Where notice is given to a court under section *twenty-four*, the court shall discharge the attachment of earnings order to which the notice relates.

Discharge of order on cancellation of registration of

related
maintenance
order

32. (1) An attachment of earnings order shall cease to have effect-

Order
discharged in
certain
circumstances

(a) upon the grant of an application for the registration of the related maintenance order;

(b) where the related maintenance order is registered, upon the giving of notice with respect to it under section *twenty-four*;

(c) upon the making of an order of commitment or the issue of a warrant of commitment for the enforcement of the related maintenance order or upon the exercise for that purpose of any power conferred on a subordinate court to postpone the issue of such a warrant; or

(d) upon the discharge of the related maintenance order while it is not registered:

Provided that where the related maintenance order is discharged as mentioned in paragraph (d) and it appears to the court discharging the order that arrears thereunder will remain to be recovered after the discharge, that court may direct that this subsection shall not apply.

(2) Where an attachment of earnings order ceases to have effect as provided by subsection (1), the proper officer of the prescribed court shall give notice of the cessation to the person to whom the order was directed.

(3) Where notice is given to a court in pursuance of subsection (4) of section *thirty-three*, the court shall discharge the attachment of earnings order to which the notice relates.

(4) Where an attachment of earnings order ceases to have effect as provided by subsection (1), or is discharged otherwise than under subsection (3), the person to whom the order is directed shall not incur

any liability in consequence of his treating the order as still in force at any time before the expiration of seven days from the date when the notice required by subsection (2) or, as the case may be, a copy of the discharging order, is served on him.

33. (1) A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other law but subject to the other provisions of this Act, comply with the order or, if the order is subsequently varied, with the order as so varied. Liability under orders

(2) Where, on any occasion on which earnings fall to be paid to a defendant, there are in force two or more attachment of earnings orders relating to those earnings, then, for the purpose of complying with the order, the employer shall-

(a) deal with those orders according to the respective dates on which they came into force, disregarding any later order until any earlier order has been dealt with; and

(b) deal with any later order as if the earnings to which it relates were the residue of the defendant's earnings after the making of any payment under the order in pursuance of any earlier order.

(3) An employer who, in pursuance of an attachment of earnings order, makes a payment under that order shall give to the defendant a statement in writing specifying the amount of that payment.

(4) A person to whom an attachment of earnings order is directed who, at the time when a copy of the order is served on him or at any time thereafter, has on no occasion during the period of four weeks immediately preceding that time been the defendant's employer shall forthwith give notice in writing in the prescribed form to the court which made the order.

(5) A person to whom an attachment of earnings order is directed shall, where the defendant ceases thereafter to be employed by him, within fourteen days of such cessation give notice thereof to the court that make the order.

34. (1) Where proceedings relating to an attachment of earnings order Powers of court

are brought in any court, the court may, either before or at the hearing- to obtain statements of earnings, etc.

(a) obtain-

(i) the name and address of his employer, or of each of his employers if he has more than one;

(ii) such particulars as to the defendant's earnings as may be so specified; and

(iii) such prescribed particulars as may be so specified for the purpose of enabling the defendant to be identified by his employer; and

(b) order any person appearing to the court to be an employer of the defendant to give to the court, within a period specified by the order, a statement signed by him or on his behalf of such particulars as may be specified by the order of all earnings of the defendant which fell to be paid by that person during such period as may be so specified.

(2) A document purporting to be a statement of the kind mentioned in subsection (1) shall, in any proceedings mentioned in that subsection, be received in evidence and be deemed to be such a statement without further proof, unless the contrary is shown.

35. (1) The court by which an attachment of earnings order has been made shall, on the application of the person to whom the order is directed, or of the defendant, or of the person in whose favour the order was made, determine whether payments to the defendant, or a particular class or description of such payments, specified by the application are earnings for the purposes of that order; and the person to whom the order is directed shall be entitled to give effect to any determination for the time being in force under this subsection. Powers of court to determine whether payments are earnings

(2) A person to whom an attachment of earnings order is directed who makes an application under subsection (1) shall not incur any liability for failing to comply with the order in relation to any payments of the class or description specified by the application which are made by him to the defendant while the application, or any appeal in consequence thereof, is still on foot and undetermined.

36. (1) The officer to whom an employer pays any sum in pursuance of Miscellaneous

an attachment of earnings order shall pay that sum, in accordance with provisions as to rules of court, to the person specified by the attachment of earnings payments order as being the person entitled to receive payments under the related maintenance order.

(2) Any sums received, by virtue of an attachment of earnings order, by the person entitled to them shall be deemed to be payments made by the defendant so as to discharge-

(a) first, any sums for the time being due and unpaid under the related maintenance order (a sum due at an earlier date being discharged before a sum due at a later date); and

(b) secondly, any costs incurred in proceedings relating to the maintenance order which were payable by the defendant when the attachment of earnings order was made or last varied.

(3) Notwithstanding anything in any other law, an employer may retain the prescribed amount for his own use out of any balance of the defendant's earnings, to defray his reasonable costs of compliance with an attachment of earnings order.

37. (1) In relation to earnings falling to be paid by the Government, this Act shall have effect subject to the following modification, that is to say: Earnings paid by the government

(a) the earnings shall be treated as falling to be paid by the chief officer for the time being of the department, office or other body concerned; and

(b) section *thirty-eight* shall not apply except in relation to a failure by the defendant to comply with an order under section *thirty-four*.

(2) If any question arises, in connection with any proceedings relating to an attachment of earnings order, as to what department, office or other body is concerned for the purposes of this section, or as to whom for those purposes is the chief officer thereof, that question shall be referred to and determined by the Minister responsible for finance.

(3) A document purporting to set out a determination of the Minister

responsible for finance under subsection (2) and to be signed by an official of the Ministry responsible for community development and social welfare shall, in any proceedings mentioned in that subsection, be admissible in evidence and shall be deemed to contain an accurate statement of such a determination unless the contrary is shown.

(4) The provisions of this Act shall extend to apply to a pension or other allowance granted under any law in Zambia.

38. (1) A person who-

Offences

(a) fails to comply with an attachment of earnings order or any order of the court given under this Part; or

(b) gives a notice or statement in pursuance of such an order, knowing the same to be false in a material particular;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand penalty units or to imprisonment for a term not exceeding six months or to both.

(2) It shall be a defence for a person charged with an offence by virtue of paragraph (a) of subsection (1) to prove that he took all reasonable steps to comply with the order in question.

(As amended by Act No. 13 of 1994)

PART VII

MISCELLANEOUS

39. (1) Notwithstanding anything in this Act, the clerk of a subordinate court who is entitled to receive payments under a maintenance order for transmission to another person shall not apply for an attachment of earnings order, or (except as required under section *twenty-nine*) an order discharging or varying an attachment of earnings order, in respect of those payments unless he is requested in writing to do so by a person entitled to receive the payments through him; but where such a request is made-

Special provisions for subordinate courts

(a) he shall comply with the request; and

(b) the person by whom the request was made shall have the same liabilities for all the costs properly incurred in or about any proceedings taken in pursuance of the request as if the proceedings had been taken by that person;

and, for the purpose of paragraph (b), any application made by the clerk as required by section *twenty-nine* shall be deemed to be made on the request of the person in whose favour the attachment of earnings order in question was made.

(2) A subordinate court by which payment of any arrears under a maintenance order is enforceable shall have jurisdiction to issue and entertain complaints under this Act against any person resident in Zambia, whether within or outside the territorial jurisdiction of the subordinate court.

40. (1) The Minister may, by statutory instrument, make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations and rules

(2) The Chief Justice may, by statutory instrument, make rules, not inconsistent with the regulations, for the better carrying into effect of this Act.

41. Except for any claim for affiliation or maintenance or other cause which was instituted before the commencement of this Act, the Bastardy Laws Amendment Act, 1872, of the United Kingdom and any provision of the England law providing for the maintenance or custody of children, shall cease to apply in Zambia. English law to cease to apply

42. An order made under any law referred to in section *forty-one*, to the extent that it could have been made under this Act if this Act had been in force at the time it was made, shall be deemed to have been made under this Act, and may be varied or discharged accordingly. Transitional provision

43. The Maintenance Orders Act and the Maintenance Orders (Enforcement) Act shall cease to apply to the maintenance of children or orders made in respect thereof. Certain laws of Zambia to cease to apply to maintenance of children

CHAPTER 65

THE PERSONS WITH DISABILITIES ACT

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CHAPTER 65

PERSONS WITH DISABILITIES

*Act No. 33 of
1996*

An Act to establish the Zambia Agency for Persons with Disabilities; to define the functions of the Agency; to establish Management Boards; to

establish the National Trust Fund; and to provide for matters connected with or incidental to the foregoing.

[12th December, 1996

PART I

PRELIMINARY

1. This Act may be cited as the Persons with Disabilities Act, and shall come into force on such date as the Minister may, by statutory order, appoint. Short title and commencement

2. In this Act, unless the context otherwise requires- Interpretation

"Agency" means the Zambia Agency for persons with Disabilities established under section *three*;

"appointed date" means the date appointed by the Minister under section *one*;

"association" means an association registered under section *fourteen*;

"Board" means a management Board established under section *eight*;

"Council" means the Zambia Council for the Handicapped established under the repealed Act; Cap. 551 of the old edition

"Director" means the Director of the Board appointed under section *twelve*;

"Director-General" means the person appointed Director General of the Agency under section *seven*;

"disability" means any restriction resulting from an impairment or inability to perform any activity in the manner or within the range considered normal for a human being, and would or would not entail the use of supportive or therapeutic devices and auxiliary aids, interpreters, white cane, reading assistants, hearing aids, guide dogs or any other trained animals trained for that purpose;

"Fund" means the National Trust Fund established under paragraph 9 of the Schedule;

"institution" means an institution registered under section *fifteen*;

"person with disability" means a person with a physical, mental or sensory disability, including a visual, hearing or speech functional disability;

"rehabilitation" means the process through which disabled persons can partially or fully restore their physical, mental sensory, or social functional abilities;

"secretary" means a person appointed secretary under section *seven* and *twelve*;

"white cane" means a special walking stick used as a guide by a visually impaired person;

"repealed Act" means the Handicapped Persons Act.

PART II

THE ZAMBIA AGENCY FOR PERSONS WITH DISABILITIES

3. (1) There is hereby established the Zambia Agency for Persons with Disabilities which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and shall, subject to the provisions of this Act, have power to do all such acts and things as a body corporate may by law do or perform. Establishment of Agency

(2) The provisions of the Schedule shall apply to the Agency.

4. Notwithstanding anything contrary contained in any written law, where any judgement or order has been obtained against the Agency, no execution or attachment or process of any nature, shall be issued against Restriction on execution against property

the Agency or against any property of the Agency, but the Director-General shall cause to be paid out of the revenue of the Agency such amounts against the Agency to the person entitled thereto.

of Agency

5. (1) The Agency shall consist of the following members:

Composition of Agency

- (a) eight representatives of associations of, or for persons with disabilities;
- (b) a representative of the ministry responsible for science and technology;
- (c) a representative of the ministry responsible for community development and social welfare;
- (d) a representative of the Zambia Chambers of Commerce and Industry;
- (e) a representative of the ministry responsible for finance;
- (f) a representative of the ministry responsible for education;
- (g) a representative of the ministry responsible for health;
- (h) a representative of the Attorney-General; and
- (i) two members appointed by the Minister.

(2) The members referred to in subsection (1) shall be appointed by the Minister.

6. The functions of the Agency shall be to-

Functions of Agency

- (a) plan, promote and administer services for all categories of persons with disabilities;
- (b) keep statistical records relating to incidences and causes of

disabilities, which may be used for the planning, promotion, administration and evaluation of services for persons with disabilities;

(c) keep a register of persons with disabilities;

(d) provide rehabilitation, training, and welfare services to persons with disabilities;

(e) promote research into general rehabilitation programmes for persons with disabilities;

(f) promote public awareness relating to the prevention of disabilities and the care of persons with disabilities;

(g) co-operate with ministries and other organisations in the provision of preventive, educational, training, employment and rehabilitation and other welfare services for persons with disabilities;

(h) co-ordinate rehabilitation and welfare services provided to persons with disabilities by ministries, and voluntary associations;

(i) monitor and supervise the provision of services to persons with disabilities;

(j) promote, directly and indirectly, the development of human resources in the prevention of disabilities and in the provision of rehabilitative, education, training and the general welfare of persons with disabilities;

(k) advise the Minister on matters relating to the social and economic development and the general well-being of persons with disabilities; and

(l) do all such things as are incidental to or conducive to the attainment of the functions of the Agency.

7. (1) There shall be a Director-General who shall be the Chief Executive officer of the Agency and who shall subject to the control of the Agency, be responsible for the day to day administration of the Agency. Director-General and other staff

(2) The Director-General shall be appointed by the Minister for a three year term of office and shall be eligible for re-appointment.

(3) The Director-General shall, attend meetings of the Agency and may address such meetings, but shall have no vote.

(4) The Director-General shall be the secretary of the Board.

(5) The Agency may appoint on such terms and conditions as it may determine such other staff as it considers necessary for the performance of its functions under this Act.

PART III

MANAGEMENT BOARDS

8. (1) The Minister may, by statutory instrument, establish a Board for any institution. Establishment of Boards

(2) Any Board established under the repealed Act shall continue in existence as if established under this Act.

(3) A Board established under subsection (1) shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform.

(4) The Minister shall, by statutory instrument, provide for the composition of each Board.

(5) The provisions of the Schedule shall apply to the Boards with the necessary modifications.

9. Notwithstanding anything contrary contained in any written law, Restriction on

where any judgement or order has been obtained against any Board, no execution against property of management Boards
execution against property of management Boards
no execution or attachment or process of any nature thereof, shall be issued against the Board or against any property of the Board, but the Director shall cause to be paid out of the revenue of the Board such amounts as may, by the judgement or order, be awarded against the Board to the person entitled thereto.

10. The Minister shall appoint members of each Board, by statutory instrument. Composition of Board

11. (1) The functions of a Board shall be to- Functions of Boards

(a) administer the affairs of any institution established under this Act;

(b) provide rehabilitation, training and welfare services to persons with disabilities; and

(c) do all such things as are necessary to promote the well-being of persons with disabilities.

(2) The Board may, by directions in writing and subject to such conditions as it thinks fit, delegate to any member, committee or the Director any of its functions under this Act.

(3) The Minister may, by statutory instrument, require a Board to carry out such other functions as he may specify.

(4) The Minister may give to the Board such general or specific directions with respect to the discharge of its functions as he may consider necessary and the Board shall give effect to such directions.

(5) The Board may after approval from the Minister, collaborate, or enter into agreement. with any organisation or institution on any matter relevant to the carrying out of the Board's functions under this Act.

12. (1) There shall be a Director appointed by the Board who shall be Director and

the Chief Executive officer of the Board and who shall subject to the control of the Board, be responsible for the day to day administration of the Board. other staff

(2) The Director shall be appointed for a three year renewable term of office.

(3) The Director shall attend meetings of the Board and may address such meetings, but shall have no vote.

(4) The Director shall be the secretary to the Board.

(5) The Board may appoint on such terms and conditions as it may determine such other staff as it considers necessary for the performance of its functions under this Act.

PART IV

REGISTRATION

13. (1) Every person with a disability shall apply for registration in the prescribed form to the Agency through the principal officer of a local authority, social welfare officer, central statistics officer, school headmaster or an officer in charge of a health centre. Registration of persons with disabilities

(2) The Agency shall register persons with disabilities.

(3) The Agency shall keep a register of persons with disabilities registered under subsection (2).

14. (1) An Association shall apply to the Director-General in the prescribed form. Registration of associations

(2) The Agency shall register any association of, or for persons with disabilities approved by the Zambia Federation for the Disabled.

(3) An Association referred to in subsection (2) shall have not less than fifty persons with a disability as members to qualify for registration.

(4) The Agency shall keep a register of associations referred to in subsection (2).

(5) An application by an association shall state-

(a) the name and address of the association; and

(b) the designation and address of its officers and the members of the Executive Committee or other body in control of its affairs.

(6) An association shall submit, together with its application, a copy of the Constitution or Rules that govern that association.

15. (1) An institution shall apply to the Agency for registration in the prescribed form. Registration of institution

(2) The Agency shall register institutions that provide services to persons with disabilities.

(3) The Agency shall keep a register of institutions referred to in subsection (1).

(3) The Agency shall-

(a) set standards of technical services and accommodation for institutions;

(b) regulate the number of persons with disabilities to be admitted to that institution and the age group;

(c) regulate the kind of equipment to be acquired and maintained by the institution;

- (d) set the qualifications and experience of persons employed by institutions;
- (e) set the code of conduct of institutions and associations registered under this Act;
- (f) keep records of persons with disabilities admitted as boarders at any institution; and
- (g) regulate the conditions under which persons with disabilities may be admitted to any institution.

PART V

INSPECTION

16. (1) The Director-General shall appoint inspectors to inspect institutions. Inspection of institutions

(2) The Director-General shall issue an identity card to each inspector.

17. (1) An inspector shall have power, on production of the identity card issued to him under section *sixteen* to inspect the institution to ensure that the provisions under this Act are being complied with. Powers of inspector

(2) In inspecting the facilities referred to in subsection (1) the inspectors shall ensure that adequate arrangements for the general welfare, education, training, rehabilitation, health, employment and records kept are in accordance with the provisions of this Act.

(3) Any person who obstructs an inspector appointed under section *sixteen* in the exercise of his duty under this Part shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding five thousand penalty units or to imprisonment for a term not exceeding three months or to both.

18. (1) Each inspector shall furnish the Director-General with such Duty of

reports and other information relating to matters referred to in section *nineteen* as the Director-General may direct.

inspector to
report to
Director-General

(2) The Director-General shall forward the reports and other information referred to in subsection (1) to the Minister.

PART VI

DISCRIMINATION ON GROUNDS OF DISABILITY

19. (1) for the purposes of this Part,

Discrimination
on grounds of
disability

"discrimination" means-

(a) treating a person with a disability less favourably from a person without a disability;

(b) treating a person with a disability less favourably from another person with a disability;

(c) requiring a person with a disability to comply with a requirement or condition which persons without a disability may have an advantage over; or

(d) not providing different services or conditions required for that disability.

20. An employer shall not treat a person with a disability differently from a person without a disability when-

Discrimination
in employment

(a) advertising for employment;

(b) recruiting persons for employment;

(c) offering terms or conditions of employment;

- (d) considering promotion, transferring or training such persons; or
- (e) providing any other benefits related to employment.

21. A learning institution shall be guilty of discriminating against person with a disability if that institution-

Discrimination
in learning
institutions

- (a) refuses or fails to accept, to admit such person on the grounds of his disability;
- (b) gives terms or conditions on which it is prepared to admit such a person because of his disability;
- (c) denies or limits any person with a disability access to any benefit provided by that learning institution;
- (d) expels that student or pupil on the grounds of his disability; or
- (e) discriminates against the person in any other way on grounds of that person's disability.

22. Any person who establishes a special school for persons with disabilities shall provide adequate facilities for them.

Facilities for
special schools

23. (1) An institution of learning admitting persons with disabilities shall establish and maintain a special fund for the repair, servicing and purchase of technical aids and appliances for persons with disabilities.

Special fund for
repair of aids
and appliances

(2) Parliament shall make provision for and provide the funds referred to in subsection (1).

(3) The Minister may make regulations for the administration of the funds provided under subsection (2).

24. (1) Any person registered under this Act, who employs at least

Tax rebate

three persons with a disability shall be entitled to a tax rebate at a rate to be determined by statutory instrument by the Minister responsible for finance.

(2) A person who provides services under section *twenty-two* and *twenty-six* shall be entitled to the tax rebate determined under subsection (1).

25. (1) This section shall apply to any-

Adjustment
orders

(a) premises constructed before the commencement of this Act to which members of the public are ordinarily admitted, whether on payment of a fee or otherwise; and

(b) services or amenities ordinarily provided to members of the public before the commencement of this Act.

Cap. 475 of the
1972 edition

(2) The Agency may issue an adjustment order to any person it considers that his premises, amenities or services referred to in subsection (1) are not accessible to persons with a disability.

(3) An adjustment order referred to in subsection (2) shall set out-

(a) a full description of the premises, service or amenity concerned;

(b) the grounds upon which the Agency considers that the premises, service or amenity is inaccessible to disabled persons;

(c) the requirement that the owner shall at his own expense take action as may be specified to make it accessible to disabled persons; and

(d) the period within which the action referred to in paragraph (c) shall be commenced and completed.

(4) Before serving an order the Agency shall serve notice upon the person referred to in subsection (2) specifying-

(a) the grounds upon which the adjustment order is to be issued and the nature of the action which the Agency considers necessary to rectify the situation which has given rise to the proposed order;

(b) the maximum period that the Agency considers reasonable for the implementation of the action it proposes to order; and

(c) that the owner may make representations to the Agency if he so wishes within thirty days from the date of the service of the notice.

(5) A person who provides the amenities or services under this section shall be entitled to a tax rebate as provided for under section *twenty-four*.

26. On the commencement of this Act, any plans for any premises or amenities approved, after the commencement of this Act, under the Town and Country Planning Act, shall provide facilities that are accessible to persons with a disability.

Premises and amenities to be accessible to persons with a disability
Cap. 283

PART VII

MISCELLANEOUS

27. On the appointed date, there shall vest in, and be owned by the Agency without further assurance, all property, rights, liabilities and obligations which immediately before the appointed date, were the property, rights, liabilities and obligations of the Council.

Vesting of assets and transfer of liabilities

28. (1) Whenever under this Act any property, right, liabilities or obligations of the Council are transferred to the Agency in respect of which transfer a written law provides for registration, the Agency shall make an application in writing to the proper officer or the appropriate registration authority for the registration of the transfer.

Registration of property to be transferred

(2) The proper officer referred to in subsection (1) shall make such entries in the appropriate register as shall give effect to the transfer and,

where appropriate, issue the transferee concerned with a certificate of title in respect of the property or make necessary amendments to the register, as the case may be, and shall make endorsements on the deeds relating to the title, right or obligation concerned.

(3) Registration fees or duty shall not be paid in respect of any transfer effected under this Part.

29. Any legal proceedings or application pending before any authority before the commencement of this Act by or against the Council in relation to the assets transferred to the Agency, may be continued by or against the Agency. Legal proceedings

30. (1) The Minister may, by statutory instrument, approve arrangements under which all or some of the public officers in any institution shall be transferred to the Agency. Transfer of staff

(2) Where a person is transferred in accordance with the arrangements made under subsection (1), his terms and conditions with the Agency shall be no less favourable than those enjoyed while, in the public service or any institution and for the purposes of determining his rights to or eligibility for any pension, gratuity, leave or other benefits, his previous service with the public service or the Council shall be treated as service with the Agency.

31. (1) A Board may, upon receiving a request from another Board to second an officer to that Board for such period and on such terms and conditions as may be agreed between the Board and the Board requesting the secondment. Secondment to another Board

(2) A Board may, in accordance with the regulations issued by the Minister, make arrangements with the Ministry responsible for community development and social welfare for the secondment to the Board of any officer.

32. Any person who contravenes any provision of this Act for which no specific penalty is provided shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding five thousand penalty units or to imprisonment for a term not exceeding three years or to both. General Penalty

33. The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act. Regulations

34. The Handicapped Persons Act is hereby repealed. Repeal of Cap. 551 of the old edition

SCHEDULE *(Sections 3 and 8)*

ADMINISTRATION

PART I

1. (1) The Seal of the Agency shall be such device as may be determined by the Agency and shall be kept by the Secretary. Seal of Agency

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Secretary or one other person authorised in that behalf by a resolution of the Agency.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Agency by the Secretary or any other person generally or specifically authorised by the Agency in that behalf.

(4) Any document purporting to be a document under the seal of the Agency or issued on behalf of the Agency shall be received in evidence and shall be executed or issued, as the case may be, without further proof, unless the contrary is proved.

2. (1) Subject to the other provisions of this Act, a member shall hold office for a period of three years from the date of appointment and may be re-appointed for a like period. Tenure of office of member

(2) A member may resign by giving one month's notice in writing to the Secretary.

3. Notwithstanding paragraph 3, the Agency may, at any time, with the Removal of

approval of the Minister remove a person from the office of member- member

(a) if that person has been absent from three consecutive meetings of the Agency and that absence was in the opinion of the Agency without reasonable excuse; or

(b) if the Agency is satisfied that the continuance of that person in the office of member will be prejudicial to the interest of disabled persons.

4. (1) Whenever the office of a member becomes vacant before the expiry of the term of office, the Minister may appoint another member in place of the member who vacates the office. Filling of casual vacancy

5. (1) Subject to the other provisions of this Act, the Agency may regulate its own procedure. Proceedings of Agency

(2) The Agency shall meet for the transaction of business, at least once in every three months at such places and at such times as the Chairperson may decide.

(3) Upon giving notice of not less than fourteen days, a meeting of the Agency may be called by the Chairperson and shall be called if not less than one third of the members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) The quorum at any meeting of the Agency shall be the Chairperson or the Vice-Chairperson and three other members.

(5) There shall preside at any meeting of the Council-

(a) the Chairperson; or

(b) in the absence of the Chairperson and the Vice-Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(6) A decision of the Agency on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(7) Where a member is for any reasonable cause unable to attend any meeting of the Agency, he may, in writing, nominate another person from the same organisation to attend such meeting in his stead and such person shall be deemed to be a member for the purpose of such meeting.

(8) The Agency may invite any person, whose presence in its opinion is desirable, to attend and to participate in the deliberations of a meeting of the Agency but such person shall have no vote.

(9) The validity of any proceedings, act or decision of the Agency shall not be affected by any vacancy in the membership of the Agency or by any defect in the appointment of any member or by reason that any person not entitled so to do, took part in the proceedings.

(10) The Agency shall cause minutes to be kept of the proceedings of every meeting of the Agency and every meeting of any committee established by the Agency.

6. (1) The Agency may, for the purpose of performing its functions under this Act, establish committees and delegate to any such committee such of its functions as it thinks fit. Committees of Agency

(2) The Agency may appoint as members of a committee established under subsection (1), persons who are or are not members of the Agency and such person shall hold office for such period as the Agency may determine.

(3) Subject to any specific or general direction of the Agency any committee established under subsection (1), may regulate its own procedure.

7. (1) If a member is present at a meeting of the Agency or any committee of the Agency at which any matter is the subject of consideration and in which matter the member's spouse is directly or indirectly interested in a private capacity, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Agency otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter. Disclosure of interest

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

8. (1) A person shall not, without the consent in writing given by or on behalf of the Agency, publish or disclose to any unauthorised person, otherwise than in the course of his duties, the contents of any documents, communication or information whatsoever, which relates to, and which has come to his knowledge in the course of his duties under this Act. Prohibition of publication of or disclosure of information to unauthorised persons

(2) Any person who contravenes the provisions of subparagraph (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five hundred penalty units or to imprisonment for a term not exceeding three years, or to both.

(3) If any person having any information which to his knowledge has been published or disclosed in contravention of sub-paragraph (1) unlawfully publishes or communicates any such information to any other person, he shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five hundred penalty units or to imprisonment for a term not exceeding three months or to both.

FINANCIAL PROVISIONS

PART II

9. (1) The funds of the Agency shall consist of such moneys as may-

Funds of
Agency

- (a) be appropriated by Parliament for the purposes of the Agency;
- (b) be paid to the Agency by way of fees, levy, grants or donations;
- or
- (c) vest in or accrue to the Agency.

(2) The Agency may-

- (a) accept moneys by way of grants or donations from any source in Zambia and, subject to the approval of the Minister, from any source outside Zambia;
- (b) subject to the approval of the Minister, raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions;
- (c) in accordance with the regulations made under this Act, charge and collect fees for services provided by the Agency.

(3) There shall be paid from the funds of the Agency-

- (a) the salaries, allowances and loans of the staff of the Agency;
- (b) such reasonable travelling, transport and subsistence allowances for members or members of any committee of the Agency when engaged on the business of the Agency, at such rates as the Minister may determine; and

(c) any other expenses incurred by the Agency in the performance of its functions.

(4) The Agency may invest in such manner as it thinks fit such of its funds it does not immediately require for the performance of its functions.

(5) The Agency may use the funds referred to in subsection (4) to establish a Fund to-

(a) provide loans to persons with disabilities for commercial ventures;

(b) train persons with disabilities to uplift their skills;

(c) support research into disabilities and welfare of persons with disabilities: and

(d) do any other things necessary to carry out the objects of the Fund.

(6) The provisions of paragraph 11 and 12 shall apply to the Fund.

10. The financial year of the Agency shall be the period of twelve months ending on the 31st of December, in each year. Financial year

11. The Agency shall cause to be kept proper books of account and other records relating to its accounts.

12. (1) As soon as practicable, but not later than six months after the expiry of each financial year, the Agency shall submit to the Minister a report concerning its activities during such financial year.

(2) The report referred to in paragraph (1) shall include information on the financial affairs of the Agency and there shall be appended thereto-

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Minister may require.

(3) The Minister shall, not later than thirty days after the first sitting of the National Assembly next after the receipt of the report referred to in sub-paragraph (1), lay it before the National Assembly.