

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

CHILDREN AMENDMENT ACT 2018

TABLE OF CONTENTS

1	Citation
2	Amends section 2
3	Amends section 11
4	Amends section 12
5	Inserts sections 12A, 12B and 12C
6	Amends section 35
7	Inserts section 35A
8	Amends section 86
9	Inserts Fifth Schedule
10	Consequential amendment to Legal Aid Act 1980

WHEREAS it is expedient to amend the Children Act 1998 so as to provide for the regulatory oversight of litigation guardians under the Child Care Placement Board; to provide a regulatory framework for the licensing, regulation, and appointment of litigation guardians; and to make additional provision for purposes of litigation guardians;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Children Act 1998 (the "principal Act"), may be cited as the Children Amendment Act 2018.

Amends section 2

2 The principal Act is amended in section 2(1) by inserting in the proper alphabetical order the following definition—

“litigation guardian” means a person licensed as a litigation guardian as required under section 12B;”.

CHILDREN AMENDMENT ACT 2018

Amends section 11

3 Section 11(1) of the principal Act is amended by inserting after “children’s officer” the words “, litigation guardian”.

Amends section 12

4 The principal Act is amended in section 12—

(a) in subsection (1), by inserting after paragraph (c) the following new paragraphs—

“(d) regulating litigation guardians;

(e) determining the qualifications and experience required for a person to qualify as a litigation guardian;

(f) reviewing and making determinations on applications to license litigation guardians on a quarterly basis.”;

(b) by repealing subsections (2), (3), (4) and (7) and substituting the following—

“(2) The Fifth Schedule shall have effect as to the membership, terms of appointment, meetings and procedures of the Child Care Placement Board.”.

Inserts sections 12A, 12B and 12C

5 The principal Act is amended by inserting after section 12 the following new sections—

“Prohibition on acting as a litigation guardian without a licence

12A (1) No person shall practise under any name, style or title containing the words “litigation guardian” or “licensed litigation guardian” unless he is licensed as a litigation guardian as provided under section 12B.

(2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$3,000 or to imprisonment for 12 months, or to both such fine and imprisonment.

Licensing of litigation guardians and register of litigation guardians

12B (1) An application by any person for a litigation guardian licence may be made to the Child Care Placement Board.

(2) An application under subsection (1) shall be made in writing and accompanied by such documents as may be prescribed in the regulations.

(3) The Board may determine whether to grant or refuse to grant a licence to an applicant under subsection (1).

(4) Where the Board refuses to grant an applicant a litigation guardian licence, it shall by notice in writing inform the applicant of its refusal.

CHILDREN AMENDMENT ACT 2018

(5) Any person who is aggrieved by a refusal of the Board under subsection (4) may, within 30 days of the notice given under that subsection, appeal to the Supreme Court.

(6) The Minister shall establish and maintain a register of litigation guardians and cause the register to be published annually in the Gazette.

(7) Any person who is granted a licence under subsection (3) shall be added to the register of licensed litigation guardians established under subsection (6).

Rules

12C (1) The Chief Justice may make rules in relation to court procedure that shall apply to a litigation guardian and counsel appointed under section 35.

(2) Without prejudice to the generality of subsection (1), rules made under this section may provide for—

- (a) the procedure for the appointment of a litigation guardian and termination of appointment;
- (b) duties of a litigation guardian;
- (c) the handling of costs ordered by the court against, or for, a party in a matter in which a child is represented by a licensed litigation guardian;
- (d) the procedure for the appointment of counsel for the child and termination of appointment;
- (e) duties of counsel for the child;
- (f) the court procedures for carrying out all such acts, matters and things as are necessary to be carried out in relation to a litigation guardian and counsel for the child.

(3) Section 6 of the Statutory Instruments Act 1977 shall not apply to rules made under this section.”.

Amends section 35

6 Section 35 of the principal Act is amended—

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

“(1) The court may determine as to whether a litigation guardian should be appointed for a child for the purpose of any specified proceedings under subsection (6), and in making its determination the court shall seek to safeguard the interests of the child concerned.

(1A) Where the court determines to appoint a litigation guardian under subsection (1), it shall appoint a litigation guardian from the register of litigation guardians established and maintained by the Minister under section 12B(6).”;

CHILDREN AMENDMENT ACT 2018

(b) in subsection (3)—

(i) by inserting after “Where” the words “the court determines that—”;

(ii) by inserting before paragraph (a) the following—

“(aa) a litigation guardian is not necessary to be appointed for the child.”;

(c) in subsection (4)—

(i) by deleting paragraph (a);

(ii) by inserting after subsection (4) the following—

“(4A) In the case where a litigation guardian is appointed under subsection (1), and the court determines—

(a) at its own discretion; or

(b) on application by the litigation guardian,

that it is in the best interests of the child for the child to be represented by counsel, the court may determine to appoint counsel to represent the child.”;

(d) by repealing subsection (7).

Inserts section 35A

7 The principal Act is amended by inserting after section 35 the following—

“Litigation guardian fees

35A (1) A litigation guardian appointed under section 35(1) shall be entitled to a fee not exceeding \$75 per hour, as the Minister may determine, for services rendered to a child under this Act, paid out of the Consolidated Fund.

(2) Any amounts paid out of the Consolidated Fund under this section shall be paid out of monies provided by the Legislature.

Appointment of legal aid counsel

35B The court may appoint counsel under section 35(4A) who is remunerated under the Legal Aid Act 1980.”.

Amends section 86

8 Section 86 of the principal Act is amended—

(a) in subsection (1), by deleting “and, in particular, prescribing, forms, procedure and records”;

(b) by inserting after subsection (1) the following new subsection—

CHILDREN AMENDMENT ACT 2018

“(1A) Without prejudice to the generality of subsection (1), regulations may be made in particular to provide for—

- (a) forms;
- (b) a code of practice;
- (c) records of litigation guardians;
- (d) matters relating to sections 12(1), 12A, 12B, 12C, 35 and 35A, which include—
 - (i) requirements for licensing litigation guardians, including providing for eligibility, professional and other qualifications;
 - (ii) applications for a licence as a litigation guardian, and the renewal of a licence;
 - (iii) publication of the list of licensed litigation guardians;
 - (iv) disciplinary procedure for licensed litigation guardians.”.

Inserts Fifth Schedule

9 The principal Act is amended by inserting after the Fourth Schedule the following—

“FIFTH SCHEDULE

(Section 12(2))

CHILD CARE PLACEMENT BOARD

1 The Child Care Placement Board shall comprise five members and be appointed by the Minister as follows—

- (a) two persons who are qualified and experienced in matters relating to the care of children;
- (b) one person who is a member of the legal profession;
- (c) one person who is a member of the medical profession; and
- (d) one person who is qualified as a social worker.

2 A representative of the Department of Child and Family Services appointed by the Minister, shall be an additional, ex officio, member of the Council but shall not be entitled to vote.

3 Members of the Board shall hold office for such term as may be specified in their instruments of appointment, and on the initial appointment, the term of office shall be varied to ensure continuity in the management of the Board.

CHILDREN AMENDMENT ACT 2018

4 The Minister shall appoint a Chairman and a Deputy Chairman from among the members of the Board who shall serve at the Minister's pleasure.

5 Members are eligible for reappointment.

6 The Minister may declare the office of a member of the Board vacant if he is satisfied that the member—

- (a) is unable through mental or physical incapacity to perform the functions of his office;
- (b) has failed, without adequate cause, to attend three successive meetings of the Board; or
- (c) has otherwise become unable or unfit to perform his duties as a member.

7 A person appointed to fill a vacancy left by a member who did not complete his term of office may be appointed for the unexpired portion of that member's term and no longer, but an appointment to such a vacancy need not be made where the unexpired portion of the term is less than three months.

8 The Board may act notwithstanding any vacancy in its membership, and no act of the Board shall be deemed to be invalid only by reason of a defect in the appointment of a member thereof.

9 Three members of the Board shall form a quorum at any meeting.

10 Any question for decision by the Board shall be decided by a majority of the members present and voting; and each member shall have one vote, except that the Chairman or person acting as Chairman shall have a second vote if there is a tie.

11 The Board shall meet as often as may be necessary for it to carry out its functions under this Act, and in any event not less than once every quarter.

12 Where any matter is before the Board, a member of the Board may, with the leave of the Chairman, withdraw on the ground that he is personally acquainted with the facts of the case or for any other reason which the Chairman deems sufficient, and the Chairman may himself withdraw on any such ground.”.

Consequential amendment to Legal Aid Act 1980

10 The Legal Aid Act 1980 is amended by inserting after section 11 the following new section—

CHILDREN AMENDMENT ACT 2018

“Means test not to apply to child for counsel appointed by the court

11A Where counsel for a child is appointed by the court under section 35 of the Children Act 1998, the child concerned (or the parents or guardian of such child) shall not be required to pay any contribution into the Consolidated Fund towards the sums payable out of the Fund on his account under the authority of a certificate that may be issued under section 10.”.

CHILDREN AMENDMENT BILL 2018

EXPLANATORY MEMORANDUM

This Bill amends the Children Act 1998 (the “principal Act”) to provide for the regulatory oversight of litigation guardians under the Child Care Placement Board; to provide a regulatory framework for the licensing, regulation, and appointment of litigation guardians; and to make additional provision for purposes of litigation guardians.

Clause 1 provides a citation for the Bill.

Clause 2 amends section 2 of the principal Act to insert definition of “litigation guardian”. A “litigation guardian” is a person licensed as a litigation guardian under section 12B of the Act.

Clause 3 amends section 11 of the principal Act to add litigation guardian to the list of persons who are prohibited from disclosing information obtained in the performance of their duties except when giving evidence in court or where authorized by the Director or Minister.

Clause 4 amends section 12 of the principal Act in subsections (1) and (2). Subsection (1) is amended to insert new functions for the Child Care Placement Board, which will now include the regulation of litigation guardians, determining the required qualifications and experience to qualify as a litigation guardian, and will review applications to license and authorize litigation guardians. The new subsection (2) replaces the existing subsection and provides that the membership, terms of appointment, meetings and procedures of the Child Care Placement Board are set out in the Fifth Schedule.

Clause 5 inserts new sections 12A to 12C. Section 12A provides a prohibition on litigation guardians practising without a licence. Section 12B provides for the licensing of litigation guardians. Section 12C provides for the Chief Justice to make rules that give effect to the court procedure concerned with the appointment and removal of litigation guardians and legal counsel.

Clause 6 amends section 35 of the principal Act by repealing subsection (1) and replacing it with subsections (1) and (1A). The new subsection (1) provides greater clarity in establishing that it is the Court’s responsibility to determine whether in specified proceedings, and in the interest of the child, a litigation guardian should be appointed for that particular child. The new subsection (1A) provides that if the Court decides that a litigation guardian should be appointed, it shall appoint a litigation guardian from the register of litigation guardians established and maintained under section 12B(6). Section 35 is further amended by inserting a new subsection (4A), which provides that the court shall appoint counsel for the child at its own discretion, or on application by the litigation guardian, if it is determined to be in the best interests of the child for the child to be represented by counsel.

Clause 7 inserts new sections 35A and 35B. The new section 35A provides for the payment of fees for services rendered by the litigation guardian under the Bill. The fees of the litigation guardian are to be paid out of the Consolidated Fund. The new section 35B

CHILDREN AMENDMENT BILL 2018

provides that the court may appoint a counsel under section 35(4A) who shall be remunerated under the Legal Aid Act 1980.

Clause 8 amends section 86 of the principal Act to empower the Minister to make regulations for the licensing of litigation guardians.

Clause 9 amends the principal Act to insert a Fifth Schedule, which provides terms of appointment, meetings and procedures of the Child Care Placement Board.

Clause 10 makes a consequential amendment to the Legal Aid Act 1980 to insert a new section 11A. The new section 11A removes the requirement for a child, for whom the court has appointed counsel under section 35 of the Children Act 1998, to be assessed for the purposes of contributions to the costs of legal aid.