ANTIGUA AND BARBUDA

THE OLDER PERSONS (CARE AND PROTECTION) BILL, 2026

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ANTIGUA AND BARBUDA

THE OLDER PERSONS (CARE AND PROTECTION) ACT, 2026

No. of 2026

AN ACT to make provision for the rights, care and protection of older persons; to protect older persons from abuse, neglect, abandonment and financial exploitation; to provide safeguards for dispositions of land and other property by older persons; to provide for the registration, regulation and inspection of care establishments and care agencies, including the Fiennes Institute, and for a register of home caregivers; to provide for protection, intervention and financial administration orders; to amend the Medical and Holberton Institution Act, the Registered Land Act, the Registration and Records Act, the Title by Registration Act, the Social Protection Act, 2020 and the Childcare and Protection Act, 2003; and for connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I
PRELIMINARY

1. Short title and commencement

(1) This Act may be cited as the Older Persons (Care and Protection) Act, 2026.

(2) This Act comes into operation on a date to be appointed by the Minister by Notice published in the Gazette, and different dates may be appointed for different provisions or for different purposes.

(3) A Notice under subsection (2) may contain such transitional or saving provisions as appear to the Minister to be necessary for the orderly commencement of the provision concerned.

2. Interpretation

In this Act, unless the context otherwise requires:

"abandonment" has the meaning assigned by section 63;

"abuse" has the meaning assigned by section 62;

"activities of daily living" means bathing, dressing, eating, toileting, moving about, taking medication and other ordinary personal activities of a like nature;

"administrator", in relation to a hospital, means the person in charge of the hospital, and includes a person authorised by that person for the purposes of section 67 or 68;

"attorney-at-law" means a person entitled to practise as an attorney-at-law in Antigua and Barbuda;

"authorised officer" means a protection officer or an inspector;

"care" means personal care, nursing care, supervision, assistance with activities of daily living, or any other prescribed form of physical, emotional or social support provided to a person by reason of that person's age, illness, infirmity or disability;

"care agency" means a business or undertaking that, for reward, provides, arranges or supplies persons to provide care to older persons in their own homes, but does not include an individual who personally provides care to not more than 2 older persons and is not employed or engaged by a care agency;

"care establishment" means any premises, whether operated by the Crown, a statutory body, a charitable or religious body or any other person, at which accommodation together with care is provided to 3 or more older persons who are not members of the family of the person carrying on the establishment, and includes

the Fiennes Institute and any premises declared by the Minister by Order to be a care establishment, but does not include:

(a) a hospital;

(b) a mental hospital or licensed house within the meaning of the Mental Treatment Act; or

(c) premises of a prescribed class;

"caregiver" means a person, other than a provider, who provides care to an older person, whether or not for reward;

"cohabitant" means a person who lives with another person in a relationship of some permanence as if they were married;

"connected person", in relation to an older person, means:

(a) the spouse or cohabitant of the older person;

(b) a child, step-child, grandchild, great-grandchild, parent, sibling, nephew, niece, uncle, aunt or cousin of the older person, or the spouse or cohabitant of any of those persons;

(c) a caregiver of the older person;

(d) a person who resides in the same household as the older person;

(e) the donee of a power of attorney granted by the older person, a financial administrator of the older person, or a person who receives a pension, benefit or other payment on behalf of the older person;

(f) a provider, manager, employee or volunteer of a care establishment at which the older person resides or of a care agency that provides care to the older person, or a member of the household of any such person;

(g) a body corporate of which a person mentioned in paragraphs (a) to (f) is a director or has a controlling interest; or

(h) a person acting on behalf of, or in concert with, a person mentioned in paragraphs (a) to (g);

"decision-making capacity" has the meaning assigned by section 10;

"Department" means the department within the Ministry responsible for social protection;

"Director" means the Director of Older Persons Care and Protection referred to in section 17;

"Director of the Department" means the Director within the meaning of the Social Protection Act, 2020;

"disposition" includes a transfer, conveyance, gift, lease, charge, mortgage, surrender or grant of any interest in land or other property, and the creation of a joint proprietorship or tenancy in common;

"Fiennes Institute" means the institution of that name maintained under the Medical and Holberton Institution Act;

"financial administrator" means a person appointed by the High Court under section 90;

"financial exploitation" has the meaning assigned by section 77;

"financial institution" means a person licensed, registered or otherwise authorised under any written law to carry on banking business, credit union business, insurance business, money services business or the business of receiving deposits or administering pensions;

"home caregiver" means an individual who, for reward, personally provides care to an older person in the older person's home, other than a provider of a care agency or an individual employed or engaged by a care agency;

"hospital" means the Mount St. John's Medical Centre established under the Mount St. John's Medical Centre Act, 2009, a hospital under the control of the Antigua and Barbuda Hospitals Board, a mental hospital within the meaning of the Mental Treatment Act, and any other public or private hospital, clinic or health facility at which persons are admitted as in-patients;

"inspector" means a public officer appointed to the office of inspector in the Unit, or authorised under section 20(2)(a) to exercise the powers of an inspector;

"land" includes any interest in land and land held under the Registered Land Act, the Title by Registration Act or the Registration and Records Act, and land in Barbuda;

"manager", in relation to a care establishment or care agency, means the person registered as manager under section 36, and includes an acting manager under section 42(2) and any person who in fact manages the establishment or agency;

"mandatory reporter" means a person specified in section 65;

"medical practitioner" means a person registered as a medical practitioner under the Medical Practitioners Act, 2009;

"Minister" means the Minister responsible for social protection;

"neglect" has the meaning assigned by section 63;

"older person" has the meaning assigned by section 3;

"person receiving care" means a person to whom care is provided by a care agency or a home caregiver;

"place of safety" means a care establishment, hospital or other premises designated as a place of safety under section 101;

"power of attorney" includes any written instrument by which a person authorises another to act on his or her behalf in relation to his or her property or financial affairs;

"prescribed" means prescribed by Regulations made under this Act;

"protected property transaction" has the meaning assigned by section 82;

"protection officer" means a public officer appointed to the office of protection officer in the Unit, or authorised under section 20(2)(a) to exercise the powers of a protection officer;

"provider" means a person who carries on a care establishment or care agency, whether or not registered under Part V;

"public authority" includes a Ministry, a department of Government, a statutory body and the Barbuda Council;

"Registrar" means, as the case requires, the Registrar of Lands under the Registered Land Act, the Registrar of Titles under the Title by Registration Act, or the Registrar responsible for the recording of deeds under the Registration and Records Act, and includes a person acting under the authority of any of them;

"relative", in relation to a person, means a person who would be mentioned in paragraph (a) or (b) of the definition of "connected person" if that person were an older person;

"resident" means a person who resides at a care establishment, whatever that person's age;

"responsible person" has the meaning assigned by section 4;

"restrictive practice" means any practice or intervention that has the effect of restricting the rights or freedom of movement of a person, including physical, mechanical, environmental or chemical restraint and seclusion;

"self-neglect" has the meaning assigned by section 63;

"trusted supporter" means a person chosen by an older person under section 12(2);

"Unit" means the Older Persons Care and Protection Unit established by section 16;

"working day" means a day other than a Saturday, a Sunday or a public holiday.

3. Meaning of "older person"

(1) In this Act, "older person" means a person who has attained the age of 65 years.

(2) For the purposes of Parts II, VII, VIII, IX and XII, "older person" also includes a person who has attained the age of 60 years and who, by reason of physical or mental impairment or infirmity, requires assistance with one or more activities of daily living.

(3) Where the age of a person is material and is not known, a person exercising a function under this Act may act on the apparent age of the individual concerned until the contrary is shown.

4. Meaning of "responsible person"

(1) In this Act, "responsible person", in relation to an older person, means a person who:

(a) is under a duty imposed by any written law, by an order of a court or by contract to provide care, accommodation or maintenance to the older person;

(b) has voluntarily assumed responsibility for the care of the older person in circumstances in which the older person depends on that person for care and has no other reasonable source of care;

(c) is a provider or manager in relation to an older person who is a resident or who receives care from a care agency; or

(d) has received from the older person, by way of gift or for consideration materially less than its market value, land or other property of substantial value on an agreement, condition or understanding, whether express or implied, that the person will provide care, accommodation or maintenance to the older person.

(2) A donee of a power of attorney granted by an older person and a financial administrator are responsible persons in relation to the property and financial affairs that they are authorised to manage.

(3) A person is not a responsible person merely because he or she is related to the older person.

(4) A person ceases to be a responsible person under subsection (1)(b) if, having given reasonable notice to the Director and to the older person, he or she has made, or co-operated in making, reasonable alternative arrangements for the care of the older person.

(5) For the purposes of subsection (1)(b) and section 63(3), no account shall be taken of care, accommodation or maintenance provided or arranged by a hospital, a care establishment, the Director or another public authority as a result of, or pending the remedying of, the desertion or failure in question.

5. Objects of Act

The objects of this Act are:

(a) to promote the dignity, autonomy, independence, safety and well-being of older persons;

(b) to enable older persons to remain in their homes and communities for as long as they wish and it is reasonably safe to do so;

(c) to protect older persons from abuse, neglect, abandonment and financial exploitation;

(d) to protect the land, money and other property of older persons from exploitation, without treating age as incapacity;

(e) to provide for the registration, regulation and inspection of care establishments and care agencies, whether public or private;

(f) to provide effective, proportionate and judicially supervised measures for the protection of older persons; and

(g) to co-ordinate the functions of public authorities and other persons in relation to older persons.

6. Guiding principles

A person exercising a power or performing a function under this Act shall have regard to the following principles:

(a) an older person is to be treated with dignity and respect;

(b) an older person is presumed to have decision-making capacity until the contrary is established;

(c) an older person who has decision-making capacity is entitled to make his or her own decisions, including decisions that others consider unwise and decisions that involve reasonable personal risk;

(d) an older person is to be given all practicable support to make his or her own decisions before any decision is made on his or her behalf;

(e) where a decision is made on behalf of an older person who lacks decision-making capacity, the decision is to give effect, so far as practicable, to the older person's known wishes, values and beliefs;

(f) any intervention is to be the least restrictive of the older person's rights and freedom of action that is consistent with his or her protection;

(g) the privacy and family life of an older person are to be respected; and

(h) action to protect an older person from serious harm is to be taken promptly.

7. Application

(1) This Act applies to Antigua and to Barbuda.

(2) Parts II, VII, VIII and IX apply to an older person wherever he or she resides, whether at home, with relatives, in a hospital, in a care establishment or elsewhere.

(3) In the exercise of functions under this Act in relation to Barbuda, the Director shall consult the Barbuda Council on the provision of services to older persons in Barbuda.

(4) Nothing in this Act authorises the detention of an older person, or the restriction of his or her liberty, by reason only that he or she is old, frail, homeless or in need of care.

8. Act binds the Crown

(1) This Act binds the Crown.

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence, but the Director shall report any contravention of this Act in relation to a care establishment carried on by or on behalf of the Crown to the Minister and shall include particulars of the contravention in the annual report under section 23.

(3) Subsection (2) does not exempt from prosecution a public officer or other individual employed or engaged at a care establishment carried on by or on behalf of the Crown in respect of an offence committed by him or her.

(4) Sections 113 and 114 do not apply to a care establishment carried on by or on behalf of the Crown.

(5) Where the Director serves a compliance notice or prohibition notice in respect of such an establishment, the Minister responsible for it shall, within 14 days, inform the Director in writing of the action taken.

PART II
RIGHTS AND DECISION-MAKING

9. Statement of rights

(1) An older person has the rights set out in Schedule 1.

(2) A public authority, provider, manager, caregiver and authorised officer shall, in performing any function in relation to an older person, act compatibly with those rights so far as reasonably practicable.

(3) A failure to act compatibly with Schedule 1 does not of itself give rise to a cause of action for damages, but may be taken into account:

(a) in a complaint under Part XI;

(b) in a decision on registration or enforcement under Part V or X; and

(c) by a court in proceedings under this Act.

10. Decision-making capacity

(1) A person lacks decision-making capacity in relation to a matter if, at the material time, he or she is unable to make a decision for himself or herself in relation to that matter because of an impairment of, or a disturbance in the functioning of, the mind or brain, whether permanent or temporary.

(2) For the purposes of subsection (1), a person is unable to make a decision if he or she is unable:

(a) to understand the information relevant to the decision, including the reasonably foreseeable consequences of deciding one way or another or of failing to decide;

(b) to retain that information for long enough to make the decision;

(c) to use or weigh that information as part of the process of making the decision; or

(d) to communicate the decision by any means.

(3) A person shall not be regarded as unable to understand information if he or she is able to understand an explanation of it given in a manner appropriate to his or her circumstances, including by simple language, visual aids or any other means.

(4) Decision-making capacity is to be assessed in relation to the particular decision at the time the decision is to be made.

11. Presumption of capacity

(1) An older person is presumed to have decision-making capacity unless it is established, on the balance of probabilities, that he or she lacks it in relation to the particular matter.

(2) A person shall not be treated as lacking decision-making capacity merely because of:

(a) his or her age or appearance;

(b) a physical disability, a medical condition or a diagnosis;

(c) the fact that he or she makes, or proposes to make, an unwise decision; or

(d) the fact that he or she communicates in a manner that is different from that of other persons.

(3) The fact that an older person has decision-making capacity does not prevent a finding that a transaction or decision was procured by coercion, deception, undue influence or financial exploitation.

(4) In criminal proceedings, subsection (1) does not affect the burden or standard of proof borne by the prosecution.

12. Supported decision-making

(1) Before it is concluded that an older person lacks decision-making capacity in relation to a matter, all practicable steps shall be taken to help the older person to make the decision.

(2) An older person may choose a trusted supporter to help him or her obtain and understand information, consider options and communicate decisions.

(3) A trusted supporter:

(a) shall act in good faith and respect the will and preferences of the older person;

(b) shall not make a decision on behalf of the older person; and

(c) shall not, where the decision concerns a disposition of land or other property, be a person who stands to benefit from the disposition.

13. Consent to care and admission

(1) An older person who has decision-making capacity shall not be admitted to a care establishment, or provided with care, without his or her consent, except where another written law or an order of a court authorises it.

(2) Where an older person lacks decision-making capacity in relation to admission to a care establishment, he or she may be admitted only:

(a) with the consent of a person authorised by law or by an order of a court to consent on his or her behalf, or in accordance with an intervention order under section 99;

(b) as a temporary emergency measure under section 100; or

(c) where no person mentioned in paragraph (a) exists, with the written approval of the Director, given on the certificate of a medical practitioner who is not employed or engaged by the provider that the older person lacks decision-making capacity in relation to the admission, and that admission is necessary for his or her care and is the least restrictive arrangement reasonably available.

(3) An approval under subsection (2)(c) lapses at the end of 6 months unless renewed by the Director on a further certificate, and nothing in subsection (2)(c) authorises a deprivation of liberty otherwise than in accordance with section 56.

(4) A provider shall inform an older person of a proposed admission under subsection (2), in a manner he or she can understand.

(5) An older person may withdraw consent to care at any time.

(6) A provider shall record the basis on which each resident was admitted.

(7) A provider who knowingly or recklessly admits an older person to a care establishment in contravention of subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars ($25,000) or to imprisonment for a term not exceeding twelve months, or to both.

14. Property and finances not to be a condition of care

(1) A provider, a manager, a person employed or engaged by a provider, or a home caregiver, shall not require or induce an older person, as a condition of admission, of continued residence or of the provision of care, to:

(a) make a disposition of land or other property;

(b) grant a power of attorney;

(c) make, alter or revoke a will or a beneficiary designation; or

(d) surrender control of his or her pension, benefits, bank account or other financial resources,

otherwise than by way of the payment of fees under a written admission or service agreement complying with section 43.

(2) A term of an agreement that contravenes subsection (1) is void as against the older person, but may be enforced by him or her.

(3) A person who contravenes subsection (1) commits an offence.

15. Prohibition of retaliation

A person shall not evict, discharge, threaten, intimidate, isolate, penalise, reduce the care of, or otherwise act to the detriment of, an older person or any other person because that person has, in good faith:

(a) made a complaint or report under this Act;

(b) given information to an authorised officer, a police officer or a court; or

(c) exercised a right under this Act.

PART III
ADMINISTRATION

16. Older Persons Care and Protection Unit

(1) There is established within the Department a Unit to be known as the Older Persons Care and Protection Unit.

(2) The Unit is responsible, under the Director, for the administration of this Act.

(3) The Unit shall consist of the Director, protection officers, inspectors and such other public officers as may be necessary for the performance of its functions.

17. Director of Older Persons Care and Protection

(1) There shall be a Director of Older Persons Care and Protection, whose office shall be a public office.

(2) The Director shall be a person with qualifications and experience in social work, nursing, medicine, law, public administration or another field relevant to the care and protection of older persons.

(3) Until a person is appointed to the office of Director, the functions of the Director may be performed by the Director of the Department.

18. Functions of the Director

The functions of the Director are:

(a) to receive, screen and respond to reports concerning older persons in need of care and protection;

(b) to arrange safeguarding inquiries and safeguarding plans;

(c) to register care establishments and care agencies and to maintain the register under section 40;

(d) to inspect and monitor care establishments and care agencies;

(e) to take enforcement action under Part X;

(f) to receive and resolve complaints under Part XI;

(g) to bring and conduct proceedings under this Act;

(h) to co-operate with the police, health services, the Registrar, financial institutions and other bodies for the protection of older persons;

(i) to promote public awareness of the rights of older persons and of the means of reporting abuse;

(j) to collect and publish anonymized data on matters relating to the care and protection of older persons; and

(k) to perform any other function conferred by this Act or any other written law.

19. Delegation by Director

(1) The Director may, in writing, delegate to a public officer in the Unit any function of the Director, other than this power of delegation and the power to cancel a registration under section 113.

(2) A delegation does not prevent the Director from performing the function delegated.

20. Protection officers and inspectors

(1) Protection officers and inspectors shall be public officers.

(2) The Director may, in writing, authorize:

(a) a public officer who is a social worker, nurse, public health inspector or other suitably qualified person to exercise the powers of a protection officer or an inspector under this Act; and

(b) a fire officer, building inspector or other suitably qualified public officer to accompany and assist an inspector.

(3) The Director shall issue to every protection officer and inspector an identity card, which the officer shall produce on request when exercising a power under this Act.

(4) A police officer may exercise the powers of a protection officer under sections 73 and 100 and shall, when requested by an authorised officer, assist the authorised officer in the exercise of his or her powers.

21. Duty of co-operation

(1) The Commissioner of Police, the Chief Medical Officer, the Antigua and Barbuda Hospitals Board, the body responsible for the management of the Mount St. John's Medical Centre, the Registrar, the Director of the Department, the Social Security Board and every other public authority shall, so far as is consistent with its functions, co-operate with the Director in the performance of the Director's functions under this Act.

(2) The Minister may, after consultation with the bodies concerned, issue written protocols for co-operation and information-sharing between the Unit and any public authority, and shall cause every protocol to be published.

22. National policy on ageing

(1) The Minister shall, within 2 years after the commencement of this section and after public consultation, prepare a national policy on ageing and the care and protection of older persons.

(2) The national policy shall be reviewed at least once in every 5 years.

(3) The national policy shall address, among other matters, community and home-based care, dementia, caregiver support, workforce training and disaster preparedness for older persons.

23. Annual report

(1) The Director shall, within 4 months after the end of each calendar year, submit to the Minister a report on the administration of this Act during that year.

(2) The report shall include:

(a) the number and nature of reports received under Part VII and the action taken;

(b) the number of care establishments and care agencies registered, inspected and subjected to enforcement action;

(c) the number of protected property transactions notified to the Director and the outcome;

(d) the number and nature of applications made to the courts under this Act; and

(e) recommendations for the improvement of the care and protection of older persons.

(3) The report shall not identify an older person or, except where a finding has been made by a court, any other individual.

(4) The Minister shall cause the report to be laid before both Houses of Parliament within 3 months after receiving it.

PART IV
COMMUNITY AND HOME-BASED CARE AND SUPPORT

24. Ageing in place

The Minister and every public authority responsible for social protection, health or housing shall, within the resources available to it, promote and support services that enable older persons to live safely in their own homes and communities for as long as they wish to do so.

25. Assessment of needs

(1) The Director may, on the application of an older person or of any person acting with his or her consent, or on a referral from a public authority, cause an assessment to be made of the older person's needs for care and support.

(2) An assessment shall take into account the older person's wishes, health, functional ability, accommodation, nutrition, social and family support, the circumstances of any caregiver, and any risk of abuse, neglect or financial exploitation.

(3) The older person shall be involved in the assessment so far as practicable and shall be given a copy of its outcome.

26. Care and support plan

Where, following an assessment, the Department arranges or provides continuing care or support for an older person, the Director shall cause a care and support plan to be prepared with the older person, identifying his or her needs, the services to be provided, the persons responsible for providing them, emergency arrangements and the date of review.

27. Community and home-based services

The Minister may establish, fund or approve home care, day care, meals, transport, home adaptation, outreach, befriending and other community services for older persons.

28. Support for caregivers

The Director may provide or arrange information, training, respite, counselling and other reasonable support for caregivers who are not paid for the care they provide.

29. Respite and emergency accommodation

(1) The Director may arrange temporary accommodation and care for an older person who faces an immediate breakdown of care arrangements, a crisis of a caregiver, the effects of a disaster, abuse, neglect, abandonment or homelessness.

(2) Accommodation under subsection (1) may be arranged only with the consent of the older person or, where he or she lacks decision-making capacity, in accordance with section 13(2) or an order of a court.

30. Co-ordination with social protection

(1) Nothing in this Part limits any assistance available under the Social Protection Act, 2020 or any other written law.

(2) The Director and the Director of the Department shall co-ordinate assessments and programmes under this Act and the Social Protection Act, 2020 so as to avoid unnecessary duplication.

PART V
REGISTRATION OF CARE ESTABLISHMENTS, CARE AGENCIES AND HOME CAREGIVERS

31. Registration required

(1) A person shall not carry on a care establishment or a care agency unless that person is registered under this Part in respect of that establishment or agency.

(2) Subsection (1) applies to the Crown and to every statutory body.

(3) A person who contravenes subsection (1) commits an offence.

32. Exemptions

(1) Registration is not required in respect of:

(a) care provided to an older person by a relative or friend in a private household, otherwise than in the course of a business;

(b) a hospital; or

(c) a service of a class exempted by Regulations on the ground that it is adequately regulated under another written law.

(2) An exemption under subsection (1) does not affect the application of Parts II, VII, VIII and IX.

33. Classes of registration

Regulations may prescribe classes of registration, including residential care, nursing care, dementia care, day care, respite care and home care, and may prescribe different standards for different classes in proportion to the needs of the persons served and the risks involved.

34. Application for registration

(1) An application for registration shall be made to the Director in the prescribed form and shall be accompanied by the prescribed fee and by such information as is prescribed concerning:

(a) the ownership, control and governance of the applicant;

(b) the premises, where the application relates to a care establishment;

(c) the proposed manager;

(d) staffing, training and screening of staff;

(e) the services to be provided and the maximum number of persons to be served;

(f) insurance;

(g) emergency and disaster plans; and

(h) the financial viability of the applicant.

(2) The Director may require an applicant to provide further information, and may cause the premises to be inspected, before determining the application.

35. Fit and proper person

(1) In determining whether an applicant, a director or controller of an applicant, or a proposed manager is a fit and proper person, the Director shall have regard to:

(a) his or her integrity, competence and experience;

(b) any conviction for an offence involving violence, dishonesty, sexual misconduct or the abuse or neglect of a vulnerable person;

(c) any entry relating to him or her in the register under section 76;

(d) any bankruptcy, insolvency or compromise with creditors;

(e) any previous refusal, suspension or cancellation of a registration or licence in Antigua and Barbuda or elsewhere; and

(f) any finding of professional misconduct.

(2) The Director may, with the written consent of the person concerned, obtain a police record certificate in respect of that person.

36. Registered manager

(1) Every care establishment and care agency shall have a manager registered by the Director as a fit and proper person with the prescribed qualifications and experience.

(2) The manager is responsible for the day-to-day management of the establishment or agency.

(3) A person who is subject to a disqualification order under section 133 shall not be registered or act as a manager.

37. Grant or refusal of registration

(1) The Director shall grant registration where satisfied that:

(a) the applicant, every director or controller of the applicant, and the proposed manager are fit and proper persons;

(b) the premises, staffing, services and arrangements meet the requirements of this Act and the prescribed standards; and

(c) the prescribed fee has been paid.

(2) Before refusing an application, the Director shall give the applicant written notice of the proposed refusal and the reasons for it, and shall allow the applicant at least 14 days to make written representations.

(3) A decision to refuse an application shall be in writing, shall state the reasons, and shall inform the applicant of the right of appeal under section 116.

(4) On granting registration the Director shall issue a certificate of registration stating the name of the provider, the address of the premises or agency, the name of the manager, the class of registration, the maximum number of persons who may be served and any conditions.

38. Conditions of registration

The Director may grant registration subject to conditions relating to the number or category of persons who may be served, staffing, services, premises, records, reporting, corrective action or any other matter reasonably necessary to protect the persons served.

39. Duration and renewal

(1) Registration remains in force for 3 years from the date of grant, unless sooner suspended or cancelled.

(2) A provider may apply for renewal not later than 3 months before the registration expires, and the Director shall determine the application after reviewing compliance and causing an inspection to be made.

(3) Where an application for renewal is made in time, the registration continues in force until the application is determined.

40. Register

(1) The Director shall keep a register of providers, care establishments and care agencies.

(2) The register shall state, in respect of each registration, the particulars mentioned in section 37(4), the date of grant and expiry, and any current suspension, prohibition notice or compliance notice.

(3) The register shall be open to inspection by the public free of charge during normal working hours and may be published electronically.

41. Display of certificate and information to residents

A provider shall:

(a) display the certificate of registration in a conspicuous place at the care establishment or at the principal office of the care agency; and

(b) give every resident or person receiving care, and his or her chosen representative, written information in plain language on the fees payable, the services provided, the rights set out in Schedule 1, the complaints procedure, and the means of contacting the Director and the police.

42. Changes requiring approval

(1) A provider shall not, without the prior written approval of the Director:

(a) transfer the establishment or agency, or a controlling interest in the provider, to another person;

(b) change the manager;

(c) change the premises or materially alter them; or

(d) increase the maximum number of persons served or change the class of registration.

(2) Where the manager ceases to act without notice, the provider shall notify the Director within 7 days and shall appoint an acting manager approved by the Director.

(3) A provider who contravenes subsection (1) or (2) commits an offence.

43. Admission and service agreements

(1) A provider shall, before or within 7 days after admitting a resident or beginning to provide care to a person, enter into a written agreement with the resident or person receiving care, or the person lawfully acting for him or her, setting out the services to be provided, the fees and the manner of their review, the arrangements for the resident’s money and property, and the grounds and notice for discharge.

(2) A provider shall give the resident or person receiving care a copy of the agreement and, where he or she so requests, a copy to a person chosen by him or her.

(3) A provider shall not discharge a resident or person receiving care except on a ground stated in the agreement, after giving the notice stated in the agreement, which shall not be less than 30 days unless the safety of the resident or person receiving care, or of others, requires a shorter period, and after making reasonable arrangements for the onward care of the resident or person.

44. Closure of care establishment

(1) A provider who intends to cease to carry on a care establishment shall give the Director and every resident not less than 90 days' written notice, or such shorter period as the Director may approve.

(2) A provider who intends to cease, or is required to cease, to carry on a care establishment shall prepare, submit to the Director and implement a plan for the transfer of residents that secures the continuity of their care and medication, the transfer of their records and possessions, and their contact with their families.

(3) A provider who contravenes subsection (1) or (2) commits an offence.

45. Register of home caregivers

(1) An individual shall not act as a home caregiver unless he or she is entered in the register of home caregivers kept by the Director under this section.

(2) Subsection (1) does not apply to:

(a) a relative of the older person;

(b) a health care professional registered under any written law, when acting within the scope of that registration; or

(c) an individual who provides care of a prescribed occasional or limited kind.

(3) The Director shall enter an individual in the register on an application in the prescribed form if the individual:

(a) produces satisfactory evidence of identity;

(b) produces a police record certificate in respect of himself or herself;

(c) has completed such training as is prescribed; and

(d) is not entered in the register under section 76 and is not subject to a disqualification order under section 133.

(4) A registered home caregiver shall comply with the code of practice for home caregivers issued under section 140.

(5) The Director may remove an individual from the register where he or she ceases to satisfy subsection (3), contravenes the code of practice for home caregivers, or is convicted of an offence under this Act, but shall first give the individual written notice of the proposed removal and the reasons for it, and at least 14 days to make written representations.

(6) The register is not open to public inspection, but the Director shall, on the request of an older person or a person acting on his or her behalf, state whether a named individual is entered in it.

(7) An individual who contravenes subsection (1) commits an offence, but an older person, or a person who engages a home caregiver on his or her behalf, does not commit an offence by reason only of engaging an individual who is not registered.

46. Annual return by provider

(1) A provider shall, within 60 days after the end of each calendar year, submit to the Director a return in the prescribed form on the provider's compliance with this Act and the Regulations during that year, including the number of residents or persons served, staffing, reportable incidents, complaints and the outcome of any compliance notice.

(2) A provider who, without reasonable excuse, fails to submit a return within the time required by subsection (1) commits an offence.

PART VI
STANDARDS OF CARE

47. General duty of provider

A provider shall ensure that care is provided safely, competently and with respect for the dignity, privacy, culture and religious beliefs of each person served, and in a manner responsive to his or her needs and preferences.

48. Individual care plan

(1) A provider shall ensure that every resident and every person receiving care from a care agency has an individual care plan prepared with that person and, where he or she wishes, with a person of his or her choice.

(2) The plan shall be reviewed at the prescribed intervals and whenever there is a material change in the person's condition or needs.

49. Staffing, screening and training

(1) A provider shall employ sufficient staff with the competence, skills and supervision required for the class of registration, including access to nursing or medical expertise where the class so requires.

(2) A provider shall not employ or engage a person to provide care unless the provider has:

(a) checked whether that person is entered in the register under section 76; and

(b) obtained such references and, with the person's written consent, such police record certificate as is prescribed.

(3) A provider shall ensure that every member of staff receives training in the rights of older persons, the recognition and reporting of abuse, neglect and financial exploitation, and the prescribed standards.

50. Nutrition, hydration and medication

A provider shall ensure that each resident receives adequate and suitable food and drink, that medication is stored, administered and recorded safely and in accordance with the directions of a medical practitioner, and that prompt medical advice is sought where a resident's condition materially changes.

51. Access to health care

A provider shall facilitate timely access by each resident to medical, nursing, dental, rehabilitative, mental health and palliative care in accordance with the resident's consent and care plan.

52. Dignity, privacy and possessions

A provider shall ensure that each resident:

(a) receives personal care in private and in a manner that respects his or her dignity;

(b) has secure storage for personal possessions; and

(c) is addressed and treated with courtesy.

53. Visiting and communication

(1) A provider shall permit a resident to receive visitors, to communicate privately by post, telephone and electronic means, and to take part in community, cultural and religious activities.

(2) A provider may impose only such restrictions on visits as are necessary and proportionate for the health or safety of residents or staff, or are requested by the resident, and shall record the reasons for any restriction.

(3) A provider shall not prevent a resident from communicating privately with an attorney-at-law, an authorised officer, a police officer, a medical practitioner, a minister of religion or an advocate.

54. Records

(1) A provider shall keep accurate and up-to-date records of the prescribed matters, including admissions, care plans, medication, incidents, complaints, restrictive practices, and money and property held for residents.

(2) Records shall be kept securely and retained for the prescribed period.

(3) A resident is entitled, on request, to see and obtain a copy of his or her own records, subject to any lawful restriction.

55. Restrictive practices

(1) A provider shall not use a restrictive practice for the purposes of punishment, discipline or convenience, or by reason of a shortage of staff.

(2) A restrictive practice may be used only where:

(a) it is necessary to prevent serious harm to the resident or another person;

(b) it is the least restrictive measure reasonably available and is proportionate to the risk;

(c) it is used for no longer than necessary; and

(d) its use is authorised, recorded and reviewed in accordance with the prescribed requirements.

(3) Chemical restraint may be used only on the prescription of a medical practitioner.

(4) Every use of a restrictive practice in an emergency shall be recorded and reported to the Director in the prescribed manner.

56. Authorisation of deprivation of liberty

(1) A provider shall not deprive a resident of his or her liberty, whether by locking the resident in, by continuous supervision and control together with the prevention of his or her leaving, or otherwise, except:

(a) with the current consent of the resident, given while he or she has decision-making capacity in relation to the matter and not withdrawn;

(b) in accordance with an order or interim order of the High Court under this section;

(c) under subsection (5); or

(d) while the resident is kept at a place of safety under section 100(4).

(2) The High Court may, on the application of the provider, the Director or a person interested in the welfare of the resident, authorise the deprivation of liberty of a resident where the Court is satisfied that:

(a) the resident lacks decision-making capacity in relation to his or her residence and care by reason of an impairment of, or a disturbance in the functioning of, the mind or brain;

(b) the deprivation of liberty is necessary for the resident's care or treatment, or to protect the resident from serious harm; and

(c) no less restrictive arrangement would be adequate.

(3) An order under subsection (2) shall specify its duration, which shall not exceed 12 months, and may be renewed.

(4) On an application under subsection (2), the High Court may make an interim order authorising the deprivation of liberty until the application is determined.

(5) In an emergency, where the provider reasonably believes that the conditions in subsection (2)(a) to (c) are satisfied, a provider may deprive a resident of liberty for not more than 7 days, within which the provider

shall make an application under subsection (2), and the deprivation of liberty may continue after that period only under an interim order of the High Court under subsection (4).

(6) The provider shall, as soon as reasonably practicable, inform the resident, in a manner he or she can understand, of the reasons for the deprivation of liberty and of his or her right to apply to the High Court, and shall notify the Director within 24 hours.

(7) The resident shall be entitled to be heard, and to be represented, on any application under this section.

(8) A provider or manager who deprives a resident of liberty in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars ($25,000) or to imprisonment for a term not exceeding twelve months, or to both.

57. Emergency and disaster preparedness

(1) A provider shall maintain, test at least once in every year and keep under review written plans for infection prevention and outbreak control, fire, hurricane, flood, earthquake and other disasters, evacuation, back-up electricity and water, continuity of medication and medical records, communication with families, and the transport and relocation of residents.

(2) Plans under subsection (1) shall be consistent with any directions or plans issued under the Disaster Management Act, 2002.

(3) A provider shall give the Director a copy of its current plans and of any material revision.

58. Reportable incidents

A provider shall notify the Director, and any other prescribed authority, within the prescribed time of:

(a) the death of a resident;

(b) a serious injury to a resident;

(c) the unexplained absence of a resident;

(d) any suspected abuse, neglect or financial exploitation of a resident;

(e) a serious medication error;

(f) a fire, outbreak of infectious disease or other emergency affecting residents; or

(g) any other prescribed incident.

59. Residents' money and property

(1) A provider that receives or holds money or other property on behalf of a resident shall:

(a) keep it separate from the provider's own money and property;

(b) keep complete and accurate accounts;

(c) use it only in accordance with the resident's instructions or other lawful authority; and

(d) give the resident, or a person lawfully acting for him or her, a statement of account at least once in every 3 months and on request.

(2) A provider, manager, employee or volunteer of a care establishment or care agency, a home caregiver, or a member of the household of any of them, shall not:

(a) borrow money or property from a resident or a person receiving care;

(b) accept a gift from a resident or a person receiving care, other than a gift of small value of a prescribed kind;

(c) act as the donee of a power of attorney granted by, or the financial administrator of, a resident or a person receiving care, except where he or she is a relative of the resident or person receiving care and the Director has given written approval;

(d) witness, or verify the execution of, a will, power of attorney or disposition of land made by a resident or a person receiving care; or

(e) take, or be named as transferee, lessee, chargee or beneficiary under, a disposition of land made by a resident or a person receiving care, except where he or she is a relative of the resident or person receiving care.

(3) A person who contravenes subsection (2) commits an offence.

60. Register of departures and returns

(1) A provider shall keep a register in which is recorded, whenever a resident leaves the care establishment in the company of any person other than a member of staff:

(a) the name, address and telephone number of that person and his or her relationship to the resident;

(b) the date and time of departure and of return;

(c) the stated purpose and destination; and

(d) the condition of the resident on departure and on return.

(2) Where a provider or manager has reasonable grounds to suspect that a resident is being, or has been, taken from the care establishment for the purpose of procuring a disposition of land, the grant of a power of attorney or another financial transaction by coercion, deception, undue influence or while the resident lacks decision-making capacity, the provider or manager shall immediately report the matter to the Director.

(3) Nothing in this section authorises a provider to prevent a resident who has decision-making capacity from leaving the care establishment with any person.

(4) A provider or manager who, without reasonable excuse, fails to comply with subsection (1) or (2) commits an offence.

61. Residents' committee

(1) A provider of a care establishment for 10 or more residents shall facilitate the establishment of a residents' committee, consisting of residents and such relatives or other persons as the residents may choose, but not including the provider, the manager or a member of staff.

(2) The functions of a residents' committee are:

(a) to represent the views and interests of residents to the provider;

(b) to monitor the quality of care, food, accommodation and activities at the establishment;

(c) to promote contact between residents, their families and the community;

(d) to receive complaints from residents and to refer them to the provider or to the Director; and

(e) to report any allegation of abuse, neglect or financial exploitation of a resident to the Director.

(3) A provider shall meet the residents' committee at least once in every 3 months, provide it with reasonable facilities, and respond in writing within 28 days to any written representation made by it.

(4) A provider of a care establishment for fewer than 10 residents shall hold a meeting of residents, and of such relatives as the residents may invite, at least once in every 3 months to discuss the care and conditions at the establishment.

(5) Section 15 applies to a member of a residents' committee as it applies to an older person.

PART VII
SAFEGUARDING: REPORTING AND INQUIRY

62. Meaning of "abuse"

(1) In this Act, "abuse" means any act or omission that causes, or is likely to cause, harm or serious distress to an older person, and includes:

(a) physical abuse, being the use of physical force, or the threat of it, causing or likely to cause injury, pain or impairment;

(b) sexual abuse, being any sexual contact or conduct with an older person without his or her consent, or with an older person who lacks the capacity to consent;

(c) psychological or emotional abuse, being conduct such as threats, humiliation, intimidation, harassment, isolation from family or friends, or coercive or controlling behaviour;

(d) financial exploitation;

(e) the misuse of medication, or the use by a provider of a restrictive practice otherwise than in accordance with section 55 or section 56; and

(f) neglect and abandonment.

(2) Conduct does not constitute abuse merely because it is a lawful exercise of authority under this Act or any other written law.

63. Meaning of "neglect", "self-neglect" and "abandonment"

(1) In this Act, "neglect" means a failure by a responsible person, without reasonable excuse, to provide an older person with adequate food, drink, clothing, shelter, hygiene, supervision, medication, medical attention or other necessaries, where the failure causes, or creates a substantial risk of, serious harm to the older person.

(2) In this Act, "self-neglect" means a failure by an older person to meet his or her own basic needs for food, drink, clothing, shelter, hygiene, medication or medical attention, where the failure creates a substantial risk of serious harm to the older person and is attributable to an impairment of, or a disturbance in the functioning of, the mind or brain.

(3) In this Act, "abandonment" means the desertion of an older person by a responsible person, knowing or being reckless as to whether the older person will thereby be left without the care, accommodation or maintenance that he or she reasonably requires and has no other reasonable means of obtaining.

(4) Subject to the knowledge or recklessness required by subsection (3), abandonment includes:

(a) leaving an older person at a hospital, care establishment or other place without making, or without co-operating in making, reasonable arrangements for his or her continuing care; and

(b) failing, without reasonable excuse, to collect from a hospital an older person who is medically fit for discharge, or to make reasonable alternative arrangements for his or her care, within 72 hours after being given notice under section 67(1)(a).

(5) The following does not constitute abandonment:

(a) the lawful admission of an older person to a care establishment or hospital, made with the agreement of the establishment or hospital and, where he or she has decision-making capacity, of the older person;

(b) giving the Director written notice that the responsible person is unable to continue to provide care, and co-operating with the Director in making alternative arrangements; or

(c) a decision by an older person who has decision-making capacity to live apart from the responsible person.

64. Older person in need of care and protection

An older person is in need of care and protection if he or she:

(a) is experiencing, or is at risk of, abuse, neglect, self-neglect, abandonment or financial exploitation; and

(b) because of age, illness, infirmity, disability, dependency, isolation or coercion, is unable to protect himself or herself against that abuse, neglect, self-neglect, abandonment or financial exploitation, or against the risk of it.

65. Mandatory reporters

The following persons are mandatory reporters:

(a) a medical practitioner, nurse, pharmacist, dentist, physiotherapist or other health care professional registered under any written law;

(b) the administrator or a social worker of a hospital;

(c) a social worker, a social protection officer under the Social Protection Act, 2020, and a public officer employed in the Department;

(d) a police officer;

(e) a provider, manager, employee or volunteer of a care establishment or care agency, and a home caregiver;

(f) the Superintendent and staff of the Fiennes Institute;

(g) a Registrar and any person authorised to verify the execution of instruments under the Registered Land Act Cap 374 or the Title by Registration Act Cap 429, or before whom a deed is acknowledged under the Registration and Records Act Cap. 375;

(h) an attorney-at-law, accountant or other professional person when acting as the donee of a power of attorney, financial administrator, trustee or agent of the older person;

(i) an officer of a financial institution of a prescribed class; and

(j) any other person of a prescribed class.

66. Duty to report

(1) A mandatory reporter who, in the course of his or her professional or official duties, knows or has reasonable grounds to suspect that an older person is in need of care and protection shall report the matter to the Director or to a police officer.

(2) A report under subsection (1) shall be made:

(a) within 24 hours, where the mandatory reporter believes that the older person is at immediate risk of serious harm; and

(b) in any other case, within 3 working days.

(3) A police officer who receives a report under this section shall transmit it to the Director within 24 hours, without prejudice to any action that the police may take.

(4) Nothing in this section requires the disclosure of any communication protected by legal professional privilege.

(5) A mandatory reporter who, without reasonable excuse, fails to make a report required by this section commits an offence.

(6) It is a reasonable excuse for the purposes of subsection (5) that the mandatory reporter knew that the matter had already been reported to the Director or to a police officer.

67. Older patient awaiting discharge

(1) Where an older person who is an in-patient at a hospital is medically fit for discharge and the hospital is unable to discharge him or her because no responsible person has collected him or her or made arrangements for his or her care, the administrator of the hospital:

(a) shall give written notice that the older person is medically fit for discharge to every relative or other person who appears to the hospital to be a responsible person in relation to the older person; and

(b) shall, if the older person remains in the hospital 48 hours after notice is given, forthwith notify the Director.

(2) On receiving a notification under subsection (1)(b), the Director shall, within 5 working days, cause the needs of the older person to be assessed, shall take reasonable steps to identify and contact any responsible person, and shall arrange for the safe discharge of the older person to suitable care.

(3) A notice under subsection (1)(a) shall state the effect of section 63(4)(b) and of section 122.

68. Older in-patient taken from hospital

(1) A member of the staff of a hospital who has reasonable grounds to suspect that an older person who is an in-patient is to be, or has been, taken from the hospital by any person for the purpose of procuring a disposition of land, the grant of a power of attorney or another financial transaction by coercion, deception or undue influence, or while the older person lacks decision-making capacity, shall inform the administrator of the hospital.

(2) The administrator of a hospital who is informed under subsection (1), or who otherwise has such grounds, shall:

(a) record the name, address and telephone number of the person concerned and his or her relationship to the older person, the date and time of departure and of return, and the stated purpose and destination; and

(b) immediately report the matter to the Director.

(3) Nothing in this section requires a hospital to record the departure of an in-patient in any other circumstances, or authorises the detention of an in-patient who has decision-making capacity.

(4) An administrator who, without reasonable excuse, fails to comply with subsection (2) commits an offence.

69. Voluntary and anonymous reports

(1) Any person who has reasonable grounds to suspect that an older person is in need of care and protection may report the matter to the Director or to a police officer.

(2) A report may be made anonymously and by any means, including by telephone or electronic means.

(3) Section 66(3) applies to a report made to a police officer under this section.

70. Protection of persons who report

(1) No civil, criminal, disciplinary or administrative proceedings lie against a person in respect of a report or information given in good faith under this Act.

(2) A report made in good faith under this Act does not constitute a breach of any duty of confidentiality or secrecy imposed by any written law, contract or rule of professional conduct.

(3) The identity of a person who makes a report shall not be disclosed except:

(a) with his or her consent;

(b) to a police officer or the Director of Public Prosecutions for the purpose of a criminal investigation or prosecution; or

(c) by order of a court, where disclosure is necessary in the interests of justice.

71. Duty to make safeguarding inquiry

(1) Where the Director receives a report, or otherwise has reasonable grounds to suspect that an older person is in need of care and protection, the Director shall cause a safeguarding inquiry to be made.

(2) A safeguarding inquiry shall begin:

(a) within 24 hours, where there is reason to believe that the older person is at immediate risk of serious harm; and

(b) in any other case, within 5 working days.

(3) A protection officer making a safeguarding inquiry shall, so far as practicable, see and speak with the older person in private, ascertain his or her wishes, and determine what action, if any, is required to protect him or her.

(4) Where the older person has decision-making capacity and does not wish any action to be taken, the Director shall respect that wish, except so far as action is necessary:

(a) to protect another person;

(b) to investigate or prevent a criminal offence; or

(c) because the older person is subject to coercion or undue influence that prevents him or her from expressing a free wish.

72. Powers on safeguarding inquiry

(1) For the purposes of a safeguarding inquiry, the Director may, by written notice, require any person to produce, within a reasonable time specified in the notice, any document or information in that person's possession or control that is reasonably required for the inquiry, including records held by a provider, a financial institution, a hospital or a Registrar.

(2) A notice under subsection (1) addressed to a financial institution shall be limited to information relating to the accounts, transactions or property of the older person.

(3) Nothing in this section requires a person to produce a document or give information that is protected by legal professional privilege.

(4) A statement made by a person in compliance with a notice under subsection (1) is not admissible in evidence against that person in criminal proceedings, other than proceedings for an offence under section 127.

(5) A person who, without reasonable excuse, fails to comply with a notice under subsection (1) commits an offence.

73. Access to older person and warrant

(1) A person, other than the older person, shall not, without reasonable excuse, prevent a protection officer from seeing and speaking with an older person in private for the purposes of a safeguarding inquiry.

(2) Where a protection officer is refused access to an older person, or entry to premises where an older person is believed to be, a Magistrate may, on information on oath that there are reasonable grounds to believe that the older person is in need of care and protection, issue a warrant authorising a protection officer,

accompanied by a police officer, to enter the premises, by reasonable force if necessary, at any time within 7 days, to see and speak with the older person and to assess his or her condition.

(3) A warrant under subsection (2) does not authorise the removal of the older person, which may take place only in accordance with section 100.

(4) Where a police officer has reasonable grounds to believe that an older person on any premises is at immediate risk of death or serious injury, the police officer may enter the premises without a warrant, by reasonable force if necessary, to protect the older person.

(5) A person who contravenes subsection (1) commits an offence.

74. Safeguarding plan

(1) Where a safeguarding inquiry establishes that an older person is in need of care and protection, the Director shall, with the participation of the older person so far as practicable, prepare a safeguarding plan.

(2) A safeguarding plan shall identify the measures to be taken to protect the older person, the persons and authorities responsible for each measure, the arrangements for review, and any application to be made to a court.

75. Referral to police and other authorities

(1) Where the Director has reasonable grounds to suspect that an offence has been committed against an older person, the Director shall refer the matter to the Commissioner of Police.

(2) The Director may refer a matter to any professional regulatory body, the Registrar, a financial institution or any other authority having functions in relation to it.

(3) A referral under this section does not prevent the Director from continuing to take protective action.

76. Register of persons unsuitable to work with older persons

(1) The Director shall keep a confidential register of persons unsuitable to work with older persons.

(2) The Director shall enter in the register the name and prescribed particulars of a person who:

(a) is convicted of an offence under section 59(3), 121, 122, 123, 124, 125 or 133(2), or of an offence under any other written law against an older person involving violence, sexual misconduct, dishonesty, neglect or abandonment;

(b) is subject to a disqualification order under section 133; or

(c) is found by a court in proceedings under this Act to have abused or financially exploited an older person.

(3) Before making an entry under subsection (2)(c), the Director shall give the person written notice and an opportunity of at least 14 days to make representations.

(4) The Director shall disclose whether a person is entered in the register only to:

(a) a provider or a prospective employer of that person in a position involving the care of older persons;

(b) the person himself or herself;

(c) a police officer for the purposes of an investigation; or

(d) a court.

(5) A person entered in the register may, after the prescribed period, apply to the Director for removal of the entry, and may appeal against the refusal of that application under section 116.

(6) A person who discloses information from the register otherwise than in accordance with this section commits an offence.

(7) Where a court convicts a person of an offence mentioned in subsection (2)(a), makes a disqualification order under section 133 or makes a finding mentioned in subsection (2)(c), the Registrar of the High Court or, as the case may be, the clerk of the Magistrate's Court shall, within 14 days, notify the Director in writing of the name of the person, the offence, order or finding, and any sentence imposed, and where the offence is under any other written law, the court shall state whether it is satisfied that the offence was committed against an older person.

PART VIII
FINANCIAL EXPLOITATION AND PROTECTION OF PROPERTY

77. Meaning of "financial exploitation"

(1) In this Act, "financial exploitation" means the obtaining, use, control or disposal of, or the deprivation of an older person of, any land, money, pension, benefit, income, credit or other property or economic resource of the older person:

(a) by deception, coercion, intimidation, threats, manipulation or undue influence;

(b) by the abuse of a position of trust, or by taking advantage of the older person's dependency, isolation or illness;

(c) where the older person lacks decision-making capacity in relation to the matter, otherwise than in accordance with lawful authority; or

(d) by a person acting under a power of attorney, a financial administration order or other authority, otherwise than in accordance with that authority or the duties set out in section 79.

(2) Without limiting subsection (1), financial exploitation includes any of the following, where done by a means mentioned in subsection (1)(a) to (d):

(a) withdrawals or transfers of money without authority;

(b) the misuse of a pension, benefit, bank account, payment card or electronic credential;

(c) procuring a disposition of land, the grant of a power of attorney, a change of beneficiary, the execution or revocation of a will, or the making of a contract;

(d) procuring a charge over the older person's land to secure the debts of another person;

(e) inducing the older person to incur debt for the benefit of another person;

(f) withholding from the older person access to his or her own money, documents or records; and

(g) excluding the older person from, or evicting him or her from, his or her home without lawful authority.

(3) Nothing in this section affects the right of an older person who has decision-making capacity, and who acts freely, to deal with his or her property as he or she chooses, including by way of gift.

78. Matters relevant to abuse of trust and undue influence

In determining whether a transaction was procured by financial exploitation, a court may have regard to all the circumstances, including:

(a) the relationship between the older person and the person benefiting, and whether that person occupied a position of trust, confidence or influence;

(b) the nature and value of the benefit in relation to the older person's resources;

(c) the older person's dependency, isolation, illness or decision-making capacity at the time;

(d) whether the older person received independent advice;

(e) whether the transaction was concealed, hurried or inconsistent with the older person's previous intentions; and

(f) whether the person benefiting has since provided the care or support that was expected in connection with the transaction.

79. Duties of persons managing property of older person

A donee of a power of attorney, a financial administrator, a person who receives a pension or benefit on behalf of an older person, and any other person who manages the money or property of an older person under any authority shall:

(a) act honestly, in good faith and in the best interests of the older person, giving effect to the older person's known wishes so far as practicable;

(b) act only within the scope of that authority;

(c) keep the older person's money and property separate from his or her own;

(d) not benefit himself or herself, or any other person, from the older person's money or property except as expressly authorised;

(e) keep accurate records and accounts; and

(f) produce those records and accounts when required by the older person, the Director or a court.

80. Payment of pensions and benefits

(1) Where the Director has reasonable grounds to believe that a person receiving a pension, benefit or other periodic payment on behalf of an older person is not applying it for the benefit of the older person, the Director may give written notice to the body or person by whom the payment is made.

(2) On receiving a notice under subsection (1), the paying body or person may, notwithstanding any other written law or any instrument, suspend payment to the person receiving it on behalf of the older person, and pay it directly to the older person or to such other person as the Director, with the consent of the older person or by order of a court, approves.

(3) A suspension under subsection (2) lapses after 90 days unless, before then, the Director applies to the High Court for an order under section 89 or 90, in which case it continues until the application is determined.

(4) The paying body or person shall give written notice of a suspension to the older person and to the person whose payment is suspended, either of whom may apply to the High Court to lift it.

(5) A paying body or person that acts in good faith under this section is discharged to the extent of any payment so made.

81. Disclosure and temporary holds by financial institutions

(1) A financial institution that has reasonable grounds to suspect that an older person is the subject of financial exploitation may, notwithstanding any duty of confidentiality imposed by any written law, contract or rule of practice:

(a) report the matter, and disclose information relating to the older person's accounts, to the Director or to a police officer; and

(b) delay, for not more than 10 working days, a transaction on the older person's account, or a transaction effected under a power of attorney granted by the older person, that it suspects to form part of the financial exploitation.

(2) A financial institution that delays a transaction under subsection (1)(b) shall, as soon as practicable, notify the older person, the Director and, where it is not suspected of involvement, any person authorised to operate the account.

(3) The High Court may, on the application of the Director made before a delay under subsection (1)(b) expires, extend the delay for such further period as the Court considers necessary, and the delay continues until the application is determined.

(4) No civil or criminal liability lies against a financial institution or its officers for any act done in good faith under this section.

(5) This section does not affect any obligation of a financial institution under the Money Laundering (Prevention) Act, 1996 or any other written law relating to the reporting of suspicious transactions.

82. Meaning of "protected property transaction"

(1) In this Act, "protected property transaction" means any of the following transactions in which the person making the disposition or granting the power is an individual who has attained the age of 65 years or, in the case of a transaction mentioned in paragraph (b), (c) or (f), an individual of any age who is, or within the preceding 30 days was, a resident of a care establishment:

(a) a disposition of land by way of gift, or for consideration materially less than its market value, in favour of a connected person;

(b) a disposition of land made while the person making it is a resident of a care establishment or an in-patient of a hospital, or within 30 days after he or she ceases to be such a resident or in-patient;

(c) a disposition of land in favour of a person who, at the time, is a provider, manager, employee or volunteer of a care establishment or care agency providing care to the person making the disposition, or a home caregiver providing care to him or her, or is a member of the household of any of them;

(d) a charge over land to secure the debts or obligations of a connected person;

(e) a power of attorney that authorises the donee to make a disposition of land, granted in favour of a connected person;

(f) a power of attorney that authorises the donee to make a disposition of land, granted while the donor is a resident of a care establishment or an in-patient of a hospital, or within 30 days after he or she ceases to be such a resident or in-patient; or

(g) any other disposition of land in respect of which the Registrar or the person verifying execution has reasonable grounds to suspect coercion, undue influence, lack of decision-making capacity or financial exploitation.

(2) The following are not protected property transactions:

(a) a disposition made in pursuance of an order of a court;

(b) a transmission on death;

(c) a disposition to the spouse of the person making it by which that person retains an interest as joint proprietor or proprietor in common;

(d) a disposition mentioned only in subsection (1)(b), made for consideration not less than the market value of the land in favour of a person who is neither a connected person nor a person mentioned in subsection (1)(c), where the instrument is accompanied by a valuation of the land made within the preceding 6 months by a valuer of a prescribed class, unless the Registrar has reason to believe that the consideration is less than the market value of the land; and

(e) a disposition of a prescribed class.

(3) In subsection (1), "disposition of land" does not include a lease for a term not exceeding 5 years.

(4) A disposition of land made by the donee of a power of attorney on behalf of the donor is made by the donor for the purposes of this section and sections 83 to 86, and section 84(1)(a) to (c) applies in relation to the donor, and, where the instrument is executed by the donee, the date of birth required by section 83(1)(a) is that of the donor, as shown by the registered power of attorney or other prescribed evidence.

83. Particulars to accompany instruments disposing of land

(1) The Registrar shall not register or record an instrument by which an individual makes a disposition of land, or grants a power of attorney authorising a disposition of land, unless:

(a) the certificate of verification or acknowledgment of the execution of the instrument by the individual states his or her date of birth as shown by the evidence of identity produced or, where that evidence does not show it, as shown by a birth certificate or other prescribed evidence, or, where the written law under which the instrument is registered or recorded does not require such a certificate, a certificate in the prescribed form by the person before whom the instrument was executed states that date of birth; and

(b) where the individual has attained the age of 65 years, the instrument is accompanied by a statutory declaration in the prescribed form, made by the individual and by the person in whose favour the instrument is made, stating:

(i) whether the individual is, or was within the preceding 30 days, a resident of a care establishment or an in-patient of a hospital;

(ii) whether the person in whose favour the instrument is made is a connected person of the individual, or a person mentioned in section 82(1)(c), and, if so, the nature of the connection; and

(iii) the consideration for the disposition.

(2) Where the individual is unable, by reason of physical infirmity, to make the declaration, or has died or lost decision-making capacity after executing the instrument, the declaration may be made on his or her behalf by an attorney-at-law acting for the individual, or by his or her personal representative, who does not act for the person in whose favour the instrument is made.

(3) Subsection (1) does not apply to a disposition by an individual who is acting as a personal representative, or as a trustee where that capacity appears from the register or the instrument under which he or she holds the land, or to a disposition of a prescribed class.

(4) Where the person in whose favour the instrument is made is a body corporate, the declaration required of that person may be made by a director, secretary or authorised officer, and the declarations required by subsection (1)(b) may be made separately.

84. Safeguards for protected property transactions

(1) The Registrar shall not register or record an instrument effecting a protected property transaction unless:

(a) the person making the disposition or granting the power has appeared, for the purpose of verification of execution, before the Registrar or a person authorised to verify execution under the written law under which the instrument is registered or recorded, or prescribed for that purpose under this Act, not being a person who acts for, or is a connected person of, the person in whose favour the instrument is made;

(b) the person verifying execution has interviewed the person making the disposition or granting the power in private, in the absence of the person in whose favour the instrument is made and of any connected person other than a trusted supporter chosen by the person making the disposition who does not stand to benefit;

(c) the person verifying execution has certified, in the form set out in Part 1 of Schedule 3, that he or she explained the nature and effect of the instrument, that the person making it appeared to understand that nature and effect, and that he or she appeared to be acting freely and voluntarily; and

(d) in the case of a transaction mentioned in section 82(1)(a), (c), (d), (e) or (f), an attorney-at-law who does not act for, and is not a connected person of, the person in whose favour the instrument is made has certified, in the form set out in Part 2 of Schedule 3, that he or she gave independent legal advice to the person making the disposition or granting the power, in private, on the nature and effect of the instrument.

(2) In the case of a transaction mentioned in section 82(1)(b), (c) or (f), the Registrar shall, on the lodging of the instrument, give written notice to the Director, and shall not register or record the instrument until:

(a) 10 working days have elapsed after the notice was given; or

(b) the Director has notified the Registrar in writing that the Director does not object,

whichever first occurs, unless the Director has lodged a safeguarding notice under section 86.

(2A) A notice under subsection (2) shall be treated as a report for the purposes of section 71.

(3) An older person who has decision-making capacity and acts freely may proceed with a protected property transaction notwithstanding any advice given to him or her.

(4) The power of the Registrar under any written law to dispense with the verification of execution does not apply to an instrument effecting a protected property transaction.

(5) A registration made in contravention of this section is not, for that reason alone, void, but the contravention may be taken into account by a court in any proceedings concerning the transaction.

85. Deferral of registration and referral

(1) Where the Registrar, or a person verifying execution, has reasonable grounds to doubt that the person making a protected property transaction has decision-making capacity in relation to it, or to suspect that the transaction is procured by coercion, undue influence or financial exploitation, the Registrar may defer registration for not more than 21 days and shall:

(a) record the reasons for the deferral;

(b) notify the parties and the Director; and

(c) where the doubt relates to decision-making capacity, inform the parties that the transaction may be registered on the production of a certificate by a medical practitioner that, having examined the person making the disposition, he or she has formed the opinion that the person has decision-making capacity in relation to the transaction.

(2) A certificate under subsection (1)(c) shall address the particular transaction and shall not be based solely on the person's age or diagnosis.

(3) Before the end of the period of deferral, the Registrar shall register the instrument, refuse to register it with written reasons, or, where the Registrar considers the matter cannot properly be determined by the Registrar, refer it to the High Court for directions.

(4) A party aggrieved by a deferral or refusal under this section may apply to the High Court, which may give such directions as it considers just.

86. Safeguarding notice to Registrar

(1) Where the Director has reasonable grounds to suspect that identified land of which an older person is, or within the preceding 6 years was, the owner or proprietor is, or is about to be, the subject of financial

exploitation, the Director may lodge with the Registrar a safeguarding notice in the prescribed form stating the grounds.

(2) On the lodging of a safeguarding notice, the Registrar shall, notwithstanding anything in any other written law:

(a) not register or record any disposition of the land, other than a disposition in favour of the older person, or any power of attorney granted by the older person authorising a disposition of the land, while the notice remains in force;

(b) in the case of land under the Registered Land Act, enter a restriction in the register in accordance with section 132 of that Act; and

(c) in the case of land under the Title by Registration Act or the Registration and Records Act, note the safeguarding notice against the land in the manner prescribed.

(3) The Director shall, within 3 working days after lodging a safeguarding notice, give written notice of it to the older person, to every other person who appears from the register to have an interest in the land, and to every person by whom or in whose favour an instrument affecting the land has been lodged and not registered or recorded.

(4) A safeguarding notice lapses at the end of 21 days after it is lodged unless, before that time, the Director has applied to the High Court for an order under section 88, 89 or 90, in which case it continues until the application is determined or the Court otherwise orders.

(5) The older person, or any other person affected by a safeguarding notice, may at any time apply to the High Court for an order that the notice be discharged.

(6) Where the Court discharges a safeguarding notice on the ground that it was lodged without reasonable cause, the Court may order the Crown to pay costs and compensation to any person who has suffered loss.

(7) Nothing in this section authorises the compulsory acquisition of any property or any permanent restriction on dealing with land without an order of the High Court.

(8) Where a safeguarding notice lapses or is discharged, the Registrar shall forthwith remove any restriction entered, and cancel any note made, under subsection (2), and shall notify the persons notified under subsection (3).

87. Protected financial transactions

(1) The Minister may, by Regulations, designate as protected financial transactions such classes of transaction by an individual who has attained the age of 65 years, other than a disposition of land, as exceed a prescribed value or are of a prescribed kind, including:

(a) a transfer or withdrawal of money, securities or other investments;

(b) the grant of a power of attorney or mandate over an account or investment;

(c) a change of beneficiary under a policy of insurance, a pension scheme or an account;

(d) a transfer of shares in a company; and

(e) a guarantee of the debts or obligations of a connected person.

(2) Regulations under subsection (1) may require a financial institution, or any other person through whom a protected financial transaction is effected, to apply, with such modifications as are prescribed, safeguards corresponding to those in section 84, including the confirmation of the older person's instructions in private, independent advice, notice to the Director and a delay of not more than 10 working days.

(3) Before making Regulations under this section, the Minister shall consult the Eastern Caribbean Central Bank and the Financial Services Regulatory Commission.

(4) No civil or criminal liability lies against a financial institution or other person, or its officers, for anything done in good faith in compliance with Regulations made under this section.

88. Transfers made on condition of care

(1) This section applies where, after the commencement of this section, an older person makes a disposition of land, or of other property of substantial value, by way of gift or for consideration materially less than its market value, on an agreement, condition or understanding that the person in whose favour it is made will provide the older person with care, accommodation, maintenance or other necessaries.

(2) Where the person in whose favour the disposition is made, or a person deriving title from him or her otherwise than for value, fails without reasonable excuse to a substantial extent to provide the care, accommodation, maintenance or necessaries contemplated, the High Court may, on the application of the older person, the Director acting with the consent of the older person or, where the older person lacks decision-making capacity in relation to the application, with the leave of the Court, or a financial administrator, make one or more of the following orders:

(a) an order setting aside the disposition and directing the re-transfer of the land or other property to the older person;

(b) an order that the person in whose favour the disposition was made pay to the older person such sum as the Court considers just, having regard to the value received and the extent of the failure;

(c) an order charging the land or other property with the payment of that sum or with the cost of the older person's care;

(d) an order directing that the care, accommodation or maintenance be provided on such terms as the Court specifies; or

(e) any ancillary order that the Court considers necessary.

(3) The agreement, condition or understanding referred to in subsection (1) may be express or may be inferred from the circumstances, and where the disposition was made in favour of a connected person who, within 5 years after it was made, has abandoned the older person, or has failed without reasonable excuse to provide or contribute to his or her care, accommodation or maintenance so that it is provided by the Crown, a statutory body or a care establishment, it shall be presumed, unless the contrary is shown, that the disposition was made on such an understanding.

(4) The Court shall not make an order under subsection (2) that affects the title of a person who acquired the land or other property for valuable consideration in good faith and without notice of the matters giving rise to the application, but the Court may make an order against the proceeds of any disposition to such a person.

(5) The interest of an older person under this section in land under the Registered Land Act is an interest capable of being protected by a caution under section 127 of that Act.

(6) An application under this section shall be made within 6 years after the failure first occurred.

(7) This section does not limit any other remedy, including relief for undue influence, unconscionable bargain or breach of contract.

89. Orders of the High Court concerning property and finances

On the application of an older person, the Director, a financial administrator or, with the leave of the High Court, any other person, the High Court may, where it is satisfied that it is necessary to prevent or remedy the financial exploitation of an older person, make one or more of the following orders:

(a) an order restraining any person from making, registering or completing a disposition of identified land or other property;

(b) an order continuing, or directing the Registrar to enter, a restriction, inhibition or caveat against identified land;

(c) an order suspending, restricting or revoking a power of attorney, in whole or in part;

(d) an order requiring a person to deliver up documents of title, bank cards, identity documents or other property of the older person;

(e) an order requiring a person to produce accounts and records and to account for dealings with the older person's property;

(f) an order for the preservation, recovery or tracing of property or its proceeds;

(g) an order for repayment, restitution or compensation;

(h) an order setting aside or varying a transaction in accordance with the principles of law and equity relating to fraud, undue influence, unconscionable bargains and lack of capacity; or

(i) any ancillary order that the Court considers necessary.

90. Financial administration order

(1) Where the High Court is satisfied that an older person lacks decision-making capacity in relation to his or her property and financial affairs, or a part of them, and that an order is necessary to protect those affairs, the Court may appoint a suitable person as financial administrator of the older person's property and financial affairs, or of such part of them as the Court specifies.

(2) The Court shall not appoint as financial administrator a person who has been found to have financially exploited the older person, or who is entered in the register under section 76.

(3) In deciding whether to make an order and whom to appoint, the Court shall have regard to the older person's wishes, so far as they can be ascertained, and to whether a less restrictive arrangement would be adequate.

(4) A financial administrator:

(a) has the powers specified in the order, which shall be no greater than are necessary;

(b) is subject to the duties in section 79;

(c) shall, if the Court so orders, give security for the due performance of his or her duties;

(d) shall file accounts with the Court at such intervals as the Court directs; and

(e) shall not make a gift or a disposition of land on behalf of the older person without the leave of the Court.

(5) The Court may at any time vary or discharge an order under this section, and shall review the order at least once in every 3 years.

(6) An order under this section may be registered against the older person's land in the manner prescribed, and the Registrar shall give effect to it.

(7) This section is in addition to the jurisdiction of the High Court under the Mental Treatment Act and the Eastern Caribbean Supreme Court Act in relation to the property of persons of unsound mind.

91. Supervision of powers of attorney

(1) On the application of the donor, the Director or, with the leave of the High Court, any person interested in the welfare of the donor, the High Court may in relation to a power of attorney granted by an older person:

(a) require the donee to produce accounts and records;

(b) give directions as to the exercise of the power;

(c) suspend or revoke the power, in whole or in part; or

(d) order the donee to compensate the donor for loss caused by a breach of the duties in section 79.

(2) Where the Court suspends or revokes a power of attorney that has been entered in a register of powers of attorney, the Registrar shall, on production of the order, enter the suspension or revocation in the register.

92. Restitution and tracing

(1) A person who has obtained a benefit by the financial exploitation of an older person is liable to restore the benefit, or its traceable proceeds, to the older person, subject to any defence available in law or equity.

(2) Nothing in this Part affects the title of a person who acquired land or other property for valuable consideration in good faith and without notice of the financial exploitation, or affects section 140 of the Registered Land Act.

(3) A court that convicts a person of an offence under section 123 or 124 may, in addition to any other penalty, order the offender to pay compensation to the older person in respect of any loss caused by the offence, and the order may be enforced as a judgment debt.

PART IX
PROTECTION ORDERS AND INTERVENTION

93. Jurisdiction

(1) A Magistrate's Court has jurisdiction to make a protection order under section 95, an interim protection order under section 96 and a contribution order under section 102.

(2) The High Court has jurisdiction under this Part and under Part VIII, and may also exercise the jurisdiction of a Magistrate's Court under this Part in any proceedings before it.

(3) Proceedings for an order under this Part, other than proceedings for an offence, shall be heard otherwise than in open court, unless the court directs otherwise in the interests of justice.

(4) In this Part, "the court" means the Magistrate's Court or the High Court before which the proceedings are brought.

94. Persons who may apply

An application for an order under section 95, 96 or 99 may be made by:

(a) the older person;

(b) the Director;

(c) a police officer;

(d) an attorney-at-law acting for the older person;

(e) a relative or caregiver of the older person, with the consent of the older person or, where the older person lacks decision-making capacity, with the leave of the court; or

(f) any other person, with the leave of the court.

95. Protection order

(1) A Magistrate's Court may make a protection order where it is satisfied, on the balance of probabilities, that an older person is in need of care and protection, that the respondent has abused, neglected, abandoned or financially exploited the older person, or is likely to do so, and that the order is necessary for his or her protection.

(2) A protection order may:

(a) prohibit the respondent from abusing, threatening, harassing or intimidating the older person;

(b) prohibit or regulate contact between the respondent and the older person;

(c) prohibit the respondent from entering or remaining in the older person's home or a care establishment at which the older person resides, whether or not the respondent has an interest in the home;

(d) require the respondent to return to the older person his or her identity documents, documents of title, bank cards, keys or other property;

(e) prohibit the respondent from dealing with property of the older person, or from operating the older person's bank account or exercising a power of attorney, pending further order of the High Court;

(f) require the respondent to permit a protection officer to see and speak with the older person; and

(g) contain such other provisions as are necessary for the protection of the older person.

(3) A protection order remains in force for the period, not exceeding 2 years, specified in it, and may be renewed.

96. Interim protection order

(1) A Magistrate's Court may make an interim protection order without notice to the respondent where it is satisfied that there are reasonable grounds to believe that the older person is at risk of serious harm from the respondent and that the delay caused by giving notice would, or might, cause that harm.

(2) An interim protection order made without notice remains in force for not more than 14 days, and the court shall fix a date within that period for the respondent to show cause why it should not be confirmed, varied or discharged.

97. Matters to be considered

In proceedings under this Part, the court shall consider:

(a) the wishes of the older person, so far as they can be ascertained;

(b) whether the older person has decision-making capacity in relation to the matter;

(c) the safety and well-being of the older person;

(d) the older person's relationships and property interests;

(e) the risk of retaliation against the older person;

(f) whether a less restrictive measure would be adequate; and

(g) the rights of any other person affected by the order.

98. Older person with decision-making capacity

(1) Where an older person has decision-making capacity in relation to the matter, the court shall give primary weight to his or her wishes and shall not make an order regulating his or her residence, care or contact with others against those wishes.

(2) Subsection (1) does not prevent a court from making an order against another person to restrain coercion, abuse, intimidation or financial exploitation, where the court is satisfied that the wishes of the older person are not freely expressed or that the order is necessary to prevent a criminal offence.

99. Intervention order where older person lacks capacity

(1) Where the High Court is satisfied that an older person lacks decision-making capacity in relation to his or her residence or care, and that an order is necessary to protect him or her from serious harm, the Court may make an intervention order:

(a) determining where the older person is to reside;

(b) directing that specified care be provided; or

(c) regulating contact between the older person and any other person.

(2) In making an intervention order, the Court shall give effect, so far as practicable, to the older person's known wishes, values and beliefs, and shall choose the least restrictive measure that will adequately protect him or her.

(3) An intervention order shall specify its duration, not exceeding 12 months, and may be renewed.

(4) On an application under this section, the High Court may also make an order or interim order under section 56(2) or (4).

100. Emergency removal to a place of safety

(1) A protection officer, or a police officer, may remove an older person to a place of safety where the officer has reasonable grounds to believe that the older person is at immediate risk of death or serious harm that cannot be prevented while he or she remains where he or she is, and:

(a) the older person consents to being removed; or

(b) the older person lacks decision-making capacity in relation to the matter by reason of an impairment of, or a disturbance in the functioning of, the mind or brain, and removal is necessary for his or her care or protection.

(2) An older person who has decision-making capacity shall not be removed under this section against his or her wishes.

(3) Where an older person is removed under subsection (1)(b), the removing officer shall immediately inform the Director, and the Director shall:

(a) within 24 hours after the removal, inform a relative or responsible person of the removal and of the place of safety, unless to do so would put the older person at risk; and

(b) within 72 hours after the removal, apply to the High Court for an intervention order or for directions,

and, if no application is made within that period, the older person shall be returned or released in accordance with his or her wishes so far as practicable.

(4) An older person removed under subsection (1)(b) may be kept at the place of safety for the period mentioned in subsection (3)(b) and, where an application is made within that period, for not more than 7 days after it unless the High Court otherwise orders, and the removing officer shall, as soon as reasonably practicable, inform him or her, in a manner he or she can understand, of the reasons for the removal and of his or her right to apply to the High Court.

(5) An older person shall not be removed to, or kept in, a prison or police station under this section, and shall not be removed to a mental hospital under this section unless he or she is admitted in accordance with the Mental Treatment Act.

101. Places of safety

(1) The Minister may, by Notice published in the Gazette, designate any care establishment, hospital or other suitable premises as a place of safety.

(2) A person who, without lawful authority, removes or attempts to remove an older person from a place of safety at which he or she has been placed under this Part, against his or her wishes or, where he or she lacks decision-making capacity, without the authority of the court or the Director, commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars ($25,000) or to imprisonment for a term not exceeding eighteen months, or to both.

102. Contribution to cost of care

(1) Where care, accommodation or maintenance is provided to an older person by the Crown, a statutory body or a care establishment, and a responsible person or a connected person:

(a) has abandoned the older person, or has failed without reasonable excuse to provide or contribute to his or her care, accommodation or maintenance; and

(b) received from the older person, at any time during the abandonment or failure or within 5 years before it began, land or other property of substantial value by way of gift or for consideration materially less than its market value,

a Magistrate's Court, or the High Court where the value of the claim exceeds the monetary limit of the jurisdiction of a Magistrate's Court, may, on the application of the Director or the provider, order that person to contribute to the cost of that care, accommodation or maintenance.

(2) The amount of a contribution order shall not exceed the value of the property received, and the court shall have regard to the means of the responsible person.

(3) A contribution order may be enforced as a civil debt and does not affect any order under section 88.

103. Variation, discharge and appeal

(1) A court that has made an order under this Part may vary or discharge it on the application of any party or of the Director.

(2) An appeal lies from an order of a Magistrate's Court under this Part to the Court of Appeal, and from an order of the High Court in accordance with the Eastern Caribbean Supreme Court Act and the rules of court.

(3) An appeal does not operate as a stay of an order under this Part unless the court so orders.

104. Orders where Domestic Violence Act, 2015 applies

(1) The Director is a person with a material interest in the well-being of an older person for the purposes of an application on his or her behalf under the Domestic Violence Act, 2015.

(2) A court shall not make an order under this Part that is inconsistent with an order in force under the Domestic Violence Act, 2015 in respect of the same parties, but may vary its own order to avoid any inconsistency.

PART X
INSPECTION AND ENFORCEMENT

105. Inspection of registered premises

(1) An inspector may, at any reasonable time and without prior notice, enter and inspect a registered care establishment, a care establishment deemed to be registered or carried on under section 141, or the premises of a registered care agency for the purpose of determining whether this Act, the Regulations and the conditions of registration are being complied with.

(2) Where the inspector has reasonable grounds to believe that a resident is at risk of serious harm, the power under subsection (1) may be exercised at any time.

(3) Subsection (1) does not authorise entry without warrant into any part of premises used solely as a private dwelling and not used for the provision of care.

(4) The Director shall cause every care establishment to be inspected at such intervals as are prescribed and in any event not less than once in every 12 months, and every care agency not less than once in every 2 years.

106. Warrant for unregistered premises

Where a Magistrate is satisfied, on information on oath, that there are reasonable grounds to believe that a care establishment or care agency is being carried on at any premises without registration, the Magistrate may issue a warrant authorising an inspector, accompanied by a police officer, to enter the premises, by reasonable force if necessary, at any time within 14 days, and to exercise the powers in section 108 or to give effect to a direction under section 107.

107. Direction to cease unregistered operation

(1) Where the Director is satisfied that a care establishment or care agency is being carried on without registration, otherwise than in accordance with section 141(1), the Director may, by written notice to the person carrying it on, direct that person to cease to carry on the establishment or agency within such period, not being less than 30 days or, where subsection (2) dispenses with representations, such shorter period as is reasonable, as is specified in the notice.

(2) Before giving a direction, the Director shall give the person written notice of the proposed direction and the reasons for it, and at least 14 days to make written representations, unless the Director has reasonable grounds to believe that residents are at immediate risk of serious harm.

(3) Before the period specified in a direction expires, the Director shall make reasonable arrangements for the safe accommodation and continuing care of every resident or person receiving care who wishes to accept them or, where he or she lacks decision-making capacity, in accordance with section 13(2).

(4) A police officer shall, on the request of the Director, assist in giving effect to a direction under this section, but nothing in this subsection authorises entry into premises otherwise than under a warrant issued under section 106 or with the consent of the occupier.

(5) A person who fails to comply with a direction under this section commits an offence.

(6) Where, within the period specified in a direction, the person applies for registration:

(a) the person does not commit an offence under section 31(3) until the application is determined;

(b) unless subsection (2) dispensed with representations, the direction is suspended until the application is determined; and

(c) where the application is refused, a suspended direction takes effect 14 days after notice of the refusal.

(7) The Director shall determine an application mentioned in subsection (6) within 60 days after it is made.

108. Powers on inspection

(1) An inspector exercising a power of entry under this Part may:

(a) inspect the premises, equipment and facilities;

(b) inspect, copy or take extracts from records and, where necessary, remove records for copying against a receipt;

(c) photograph or record the condition of the premises;

(d) interview in private any resident or person receiving care who consents, and any member of staff;

(e) with the consent of the resident, examine the resident's condition, where the inspector is a registered medical practitioner or nurse; and

(f) require the provider or manager to give any reasonable assistance or explanation.

(2) An inspector shall exercise the powers under this section with due regard to the privacy and dignity of residents and to the confidentiality of medical information.

(3) An explanation given in compliance with a requirement under subsection (1)(f) is not admissible in evidence against the person who gave it in criminal proceedings, other than proceedings for an offence under section 127.

(4) The Director shall, within 28 days after the completion of each inspection, give the provider a written report of the findings and may publish a summary of the report that does not identify any resident.

109. Compliance notice

(1) Where the Director has reasonable grounds to believe that a provider has contravened this Act, the Regulations or a condition of registration, the Director may serve on the provider a compliance notice.

(2) A compliance notice shall specify the contravention, the action required to remedy it, and a period for compliance that is reasonable having regard to the risk to residents.

(3) A compliance notice may require the provider to submit a written plan of corrective action.

(4) A provider who fails, without reasonable excuse, to comply with a compliance notice commits an offence.

110. Undertaking by provider

(1) The Director may accept a written undertaking from a provider to take, or refrain from taking, specified action within a specified period.

(2) Acceptance of an undertaking does not prevent the Director from taking any other action under this Part where the undertaking is not complied with or the risk to residents increases.

111. Prohibition notice

(1) Where the Director has reasonable grounds to believe that an activity, practice or condition at a care establishment or care agency presents an immediate risk of serious harm to residents or persons receiving care, the Director may serve on the provider a prohibition notice prohibiting the activity or practice, the use of any part of the premises, or the admission of new residents, for a period not exceeding 7 days.

(2) The Director may, before the prohibition notice expires, apply to the High Court for an order continuing the prohibition, and the notice continues in force until the application is determined.

(3) A person who contravenes a prohibition notice commits an offence.

112. Variation of conditions

(1) The Director may vary, add to or remove a condition of registration after giving the provider written notice of the proposal and at least 14 days to make representations.

(2) Where the Director has reasonable grounds to believe that residents are at immediate risk of serious harm, the Director may impose a condition with immediate effect for not more than 14 days, during which time the procedure in subsection (1) shall be commenced.

113. Suspension and cancellation

(1) The Director may suspend registration for a period not exceeding 6 months, or cancel registration, where:

(a) the provider or manager is no longer a fit and proper person;

(b) the provider has failed to comply with a compliance notice or prohibition notice;

(c) the provider has been convicted of an offence under this Act;

(d) the provider has repeatedly or seriously contravened this Act, the Regulations or a condition of registration;

(e) the provider is insolvent; or

(f) the registration was obtained by a false or misleading statement.

(2) Before suspending or cancelling registration, the Director shall give the provider written notice of the proposed action, the reasons for it and the evidence relied on, and shall allow the provider at least 14 days to make written representations.

(3) Where the Director has reasonable grounds to believe that residents are at immediate risk of serious harm, the Director may suspend registration with immediate effect for not more than 14 days, during which time the Director shall commence the procedure in subsection (2), and may apply to the High Court for an order under section 114, in which case the suspension continues until the application is determined.

(4) On suspension or cancellation, the Director shall take all reasonable steps to secure the safety and continuity of care of residents, and the provider shall co-operate with the Director for that purpose.

114. Interim manager

(1) Where the registration of a care establishment or care agency is suspended, or a care establishment or care agency is abandoned by its provider or manager, or so mismanaged that residents are at risk of serious harm, the High Court may, on the application of the Director, appoint a suitably qualified person as interim manager of the establishment or agency for a period not exceeding 90 days, which the Court may extend.

(2) The order may specify the powers of the interim manager, his or her remuneration and its source, and the arrangements for access to records, bank accounts and premises.

(3) An interim manager is not personally liable for any act done in good faith in the exercise of his or her powers.

115. Publication of enforcement action

The Director may publish particulars of any suspension, cancellation, prohibition notice or conviction relating to a provider, and of any compliance notice that has not been complied with, but shall not publish information that identifies a resident.

116. Appeal against decisions of the Director

(1) A person aggrieved by a decision of the Director to refuse, refuse to renew, suspend or cancel registration, to impose or vary a condition, to serve a prohibition notice, to refuse to approve a change under section 42, to refuse to enter, or to remove, an individual in or from the register of home caregivers under section 45, to give a direction under section 107, or to make or refuse to remove an entry in the register under section 76, may appeal to a Judge of the High Court in chambers within 28 days after being notified of the decision, or within such longer period as the Judge may allow.

(2) On an appeal the Judge may confirm, vary or set aside the decision, or remit it to the Director for reconsideration, and may make such order as to costs as the Judge considers just.

(3) An appeal does not suspend the operation of the decision unless the Judge so orders.

PART XI
COMPLAINTS AND ADVOCACY

117. Complaints procedure of provider

(1) A provider shall establish and publicise an accessible procedure for complaints by residents, persons receiving care, their relatives and representatives, and staff, including confidential complaints.

(2) A provider shall acknowledge a complaint within 3 working days, investigate it, inform the complainant in writing of the outcome within 28 days, and keep a record of every complaint and its outcome.

118. Complaint to the Director

(1) Any person may complain to the Director about a provider, a manager, a home caregiver, a public authority acting under this Act, or the denial of a right under this Act.

(2) A complainant is not required to use the provider's complaints procedure before complaining to the Director.

119. Handling of complaints

(1) The Director may investigate a complaint, attempt to resolve it by conciliation, make recommendations, take enforcement action under Part X, or refer the complaint for a safeguarding inquiry.

(2) The Director may decline to investigate a complaint that is frivolous, vexatious or more appropriately dealt with by another body, and shall give the complainant written reasons.

(3) The Director shall inform the complainant of the outcome of the complaint.

120. Independent advocacy

(1) The Minister may approve and fund independent advocacy services for older persons.

(2) A provider shall permit an advocate chosen by a resident to have reasonable private access to the resident.

(3) Nothing in this Part limits the jurisdiction of the Ombudsman or of any other person or body having power to investigate complaints against public authorities.

PART XII
OFFENCES

121. Ill-treatment or wilful neglect

(1) A responsible person who intentionally or recklessly abuses an older person, otherwise than by financial exploitation or abandonment, or wilfully neglects an older person, commits an offence and is liable:

(a) on summary conviction, to a fine not exceeding fifty thousand dollars ($50,000) or to imprisonment for a term not exceeding three years, or to both; or

(b) on conviction on indictment, to a fine not exceeding one hundred and fifty thousand dollars ($150,000) or to imprisonment for a term not exceeding ten years, or to both.

(2) A provider, manager, employee or volunteer of a care establishment or care agency who intentionally or recklessly abuses, otherwise than by financial exploitation or abandonment, or wilfully neglects, a resident or a person receiving care commits an offence and is liable to the penalties in subsection (1), whatever the age of the resident or person.

(3) For the purposes of subsection (2), sections 62 and 63(1) apply as if the resident or person receiving care were an older person and the provider, manager, employee or volunteer were a responsible person in relation to him or her.

122. Abandonment

(1) A responsible person who abandons an older person commits an offence and is liable:

(a) on summary conviction, to a fine not exceeding thirty thousand dollars ($30,000) or to imprisonment for a term not exceeding two years, or to both; or

(b) on conviction on indictment, to a fine not exceeding one hundred thousand dollars ($100,000) or to imprisonment for a term not exceeding five years, or to both.

(2) It is a defence for a person charged with an offence under this section to prove that he or she was unable, by reason of his or her own health, means, responsibilities or circumstances, to provide or arrange the care required, and that he or she informed the Director or the hospital of that inability as soon as practicable.

123. Financial exploitation

(1) A person who dishonestly engages in the financial exploitation of an older person commits an offence and is liable:

(a) on summary conviction, to a fine not exceeding one hundred thousand dollars ($100,000) or to imprisonment for a term not exceeding five years, or to both; or

(b) on conviction on indictment, to a fine not exceeding two hundred and fifty thousand dollars ($250,000) or to imprisonment for a term not exceeding ten years, or to both.

(2) For the purposes of subsection (1), a person's conduct is dishonest if, having regard to his or her actual knowledge or belief as to the facts, it is dishonest by the standards of ordinary decent people.

124. Coercion to execute instrument

(1) A person who, by coercion, intimidation, threats or deception, causes or attempts to cause an older person to execute, alter or revoke a disposition of land, a power of attorney, a will, a beneficiary designation, a contract or any other legal or financial instrument commits an offence and is liable to the penalties in section 123(1).

(2) A person may be convicted of an offence under subsection (1) whether or not the instrument is registered, recorded or takes effect.

125. Retaliation

A person who contravenes section 15 commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars ($25,000) or to imprisonment for a term not exceeding twelve months, or to both.

126. Unregistered care establishment or care agency

A person who commits an offence under section 31(3) or 107(5) is liable on summary conviction to a fine not exceeding fifty thousand dollars ($50,000) or to imprisonment for a term not exceeding two years, or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand dollars ($1,000) for each day on which the offence continues after conviction.

127. Obstruction and false information

A person who:

(a) without reasonable excuse obstructs or hinders an authorised officer in the exercise of a power under this Act;

(b) conceals, destroys or falsifies a record required to be kept under this Act;

(c) knowingly or recklessly gives false or misleading information to the Director, an authorised officer or a Registrar in connection with this Act;

(d) knowingly makes a false report under this Act to the Director or a police officer; or

(e) knowingly or recklessly makes a false or misleading statement in a declaration or certificate made or given for the purposes of section 83, 84 or 85,

commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars ($20,000) or to imprisonment for a term not exceeding twelve months, or to both.

128. Breach of order

A person who, without reasonable excuse, contravenes a protection order, an interim protection order, an intervention order or an order of the High Court under Part VIII commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars ($25,000) or to imprisonment for a term not exceeding eighteen months, or to both, and on a second or subsequent conviction to imprisonment for a term not exceeding three years.

129. General penalty

A person who commits an offence under this Act for which no other penalty is provided is liable on summary conviction to a fine not exceeding ten thousand dollars ($10,000) or to imprisonment for a term not exceeding six months, or to both.

130. Offences by bodies corporate

Where an offence under this Act 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, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, commits the offence and is liable to be proceeded against and punished accordingly.

131. Aggravating factor in sentencing

Where a court is sentencing a person for an offence under this Act or any other written law committed against an older person, the court shall treat as an aggravating factor the fact that the offender was a responsible person or a connected person in relation to the older person, or otherwise abused a position of trust or the older person's dependency, unless the fact is an element of the offence.

132. Time for instituting summary proceedings

Notwithstanding anything in the Magistrate's Code of Procedure Act or any other written law, summary proceedings for an offence under this Act may be instituted at any time within 3 years after the commission of the offence or within 12 months after evidence sufficient to justify proceedings came to the knowledge of the Commissioner of Police or the Director, whichever is the later, but not later than 6 years after the commission of the offence.

133. Disqualification order

(1) A court that convicts a person of an offence under section 59(3), 121, 122, 123 or 124, or of an offence under any other written law against an older person involving violence, sexual misconduct or dishonesty, may, in addition to any other penalty, make an order disqualifying the person, for such period as the court specifies, from all or any of the following:

(a) carrying on, managing or being employed or engaged in a care establishment or care agency;

(b) acting as the donee of a power of attorney granted by, or the financial administrator of, an older person; or

(c) acting as a home caregiver.

(2) A person who contravenes a disqualification order commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars ($25,000) or to imprisonment for a term not exceeding twelve months, or to both.

PART XIII
MISCELLANEOUS, TRANSITIONAL AND CONSEQUENTIAL

134. Confidentiality and information-sharing

(1) Information relating to an older person obtained in the administration of this Act is confidential and shall not be disclosed except:

(a) with the consent of the older person or of a person lawfully acting on his or her behalf;

(b) where disclosure is reasonably necessary for the protection of the older person or another person from serious harm;

(c) to the Director, an authorised officer, a police officer, a Registrar, a hospital or a financial institution, to the extent reasonably necessary for the performance of a function under this Act;

(d) for the purposes of criminal investigation or proceedings, or proceedings before a court under this Act; or

(e) as otherwise required or authorised by law.

(2) A disclosure authorised by subsection (1) is a disclosure authorised by law for the purposes of the Data Protection Act, 2013 and any other written law imposing a duty of confidentiality.

(3) Any disclosure shall be limited to what is reasonably necessary for its purpose.

(4) A person who discloses information in contravention of subsection (1) commits an offence.

135. Restriction on publication

(1) A person shall not publish, by any means, the name, address, photograph or other particulars likely to identify an older person who is the subject of a report, inquiry or proceedings under this Act, or the location of a place of safety at which an older person has been placed under Part IX, without the consent of the older person or the leave of the High Court or of the court before which the proceedings are pending.

(2) A person who contravenes subsection (1) commits an offence.

136. Protection from liability

No action or other proceeding lies against the Minister, the Director, an authorised officer, a Registrar or any other public officer for any act done or omitted in good faith in the performance or purported performance of a function under this Act, but this section does not affect the liability of the Crown for the acts or omissions of its servants, or an order under section 86(6).

137. Service of documents

A notice or other document required to be given or served under this Act may be given or served personally, by registered post to the last known address of the person, by leaving it at the premises to which it relates, by electronic means where the person has provided an electronic address for that purpose, or in any other prescribed manner.

138. Evidence

(1) A certificate signed by the Director as to the registration status of a person or premises, or as to the contents of the register under section 40, is admissible in any proceedings as evidence of the facts stated in it.

(2) In proceedings under this Act, the court may, where an older person is unable to attend court or would be distressed by doing so, permit the older person to give evidence by video link, from behind a screen, or at the place where he or she resides, and may admit any statement of the older person in accordance with the law of evidence.

139. Regulations

(1) The Minister may make Regulations for giving effect to this Act.

(2) Without limiting subsection (1), Regulations may provide for any of the matters set out in Schedule 2.

(3) Regulations may prescribe offences punishable on summary conviction by a fine not exceeding ten thousand dollars ($10,000).

(4) Regulations made under this section shall be subject to negative resolution of Parliament.

140. Standards and codes of practice

(1) The Minister may, after consultation with providers, representatives of older persons and such other persons as the Minister considers appropriate, issue standards and codes of practice for care establishments, care agencies, home caregivers, persons verifying execution of instruments and financial institutions, and shall cause them to be published in the Gazette.

(2) A standard or code may adopt, with or without modification, any regional or international standard.

(3) A failure to comply with a standard or code is not of itself an offence, but may be taken into account in determining whether a person has complied with this Act or a condition of registration.

141. Transitional provisions

(1) A person who, immediately before the commencement of section 31, was carrying on a care establishment or care agency may continue to do so without registration if that person:

(a) notifies the Director in the prescribed form within 60 days after that commencement; and

(b) applies for registration within 6 months after that commencement,

and may continue until the application is determined.

(2) The Fiennes Institute, and every other care establishment carried on by or on behalf of the Crown immediately before the commencement of section 31, is deemed to be registered for a period of 12 months after that commencement and, where an application for registration is made within that period, until the application is determined, and Parts VI, VII and X apply to it as they apply to a registered care establishment.

(3) The Minister may, by Order, extend a period under subsection (1) or (2) once, by not more than 6 months, where the Minister is satisfied that it is necessary to avoid the unsafe displacement of residents.

(4) Section 88 does not apply to a disposition effected by an instrument executed before the commencement of that section, but nothing in this subsection affects any other remedy in respect of such a disposition.

(5) No act or omission before the commencement of section 122 constitutes an offence under that section, and a person who left an older person at a hospital, care establishment or other place before that commencement commits an offence under that section only if, after receiving written notice from the Director, he or she fails without reasonable excuse, within the period specified in the notice, to make or co-operate in making reasonable arrangements for the older person's continuing care.

(6) Section 102 does not apply in respect of land or other property received under an instrument executed, or a transaction completed, before the commencement of that section.

(7) Sections 83 and 84 of this Act, section 108(2A) and (2C) and section 114(7) of the Registered Land Act, and section 8A(1) of the Registration and Records Act, do not apply to an instrument executed before the commencement of section 83 and lodged within 6 months after that commencement.

(8) An individual who, immediately before the commencement of section 45, was acting as a home caregiver does not contravene section 45(1) during the 6 months after that commencement or, where he or she applies for entry in the register within that period, until the application is determined.

(9) A provider who, immediately before the commencement of section 56, was depriving a resident of liberty does not contravene section 56(1) in respect of that resident during the 3 months after that commencement or, where an application under section 56(2) is made within that period, until it is determined.

142. Consequential amendments

The written laws specified in Schedule 4 are amended as set out in that Schedule.

SCHEDULE 1

(Section 9)

STATEMENT OF RIGHTS OF OLDER PERSONS

An older person has the right:

1. to be treated with dignity and respect, and to be free from degrading treatment;
2. to equality of treatment, without discrimination on the ground of age;
3. to make his or her own decisions about his or her life, care, residence and property, including decisions that involve reasonable risk, and to be presumed capable of doing so;
4. to be given the support he or she needs to make his or her own decisions;
5. to give, refuse or withdraw consent to care and treatment, in accordance with law;
6. to personal liberty and security, and to be free from restraint except in accordance with this Act;
7. to privacy, including privacy in personal care, correspondence and communications;
8. to control his or her own money, land and other property and to be free from financial exploitation;
9. to be free from abuse, neglect and abandonment;
10. to receive safe, competent and person-centred care that respects his or her culture and religious beliefs;
11. to information about his or her care, fees and rights in a form he or she can understand;
12. to maintain relationships with family and friends and to take part in the life of the community;
13. to take part in planning his or her care;
14. to complain, to have an advocate, and to communicate privately with an attorney-at-law, an authorised officer or the police, without fear of retaliation; and
15. to see his or her own records, subject to any lawful restriction.

SCHEDULE 2

(Section 139)

MATTERS FOR REGULATIONS

1. Classes of registration, application forms, fees, and the procedure for registration and renewal.
2. Standards of accommodation, including space, accessibility, sanitation, lighting, ventilation, furnishing and security.
3. Staffing levels, qualifications, training, supervision and the screening of staff, including police record certificates.
4. Standards of care, including care planning, dementia care, palliative care, the prevention of falls and pressure injuries, mobility and continence care.
5. Food, drink, special diets and the management, storage and administration of medication.
6. Infection prevention and the management of outbreaks of infectious disease.
7. Fire safety, hurricane and disaster preparedness, evacuation, back-up electricity and water, and continuity of medication and records.
8. The use, authorisation, recording and review of restrictive practices.
9. Admission and service agreements, fees, discharge, transfer and closure.
10. The management of residents' money, property and gifts, and the gifts of small value excepted by section 59(2)(b).
11. Reportable incidents and the time and manner of reporting them.
12. Records, their retention, confidentiality and security.
13. Complaints procedures and residents' committees.
14. Standards for care agencies, the supervision of persons providing home care, the register of home caregivers, and the training required of home caregivers.
15. The form of reports, annual returns, safeguarding notices and certificates, the classes of mandatory reporters, and the intervals at which care establishments and care agencies are to be inspected.
16. The form of the statutory declaration under section 83(1)(b), the persons who may verify the execution of instruments effecting protected property transactions, the procedure for private interviews, the classes of valuer for the purposes of section 82(2)(d), and the classes of disposition excluded under section 82(2)(e).
17. Protected financial transactions under section 87.
18. The register under section 76, the particulars to be entered and the period after which removal may be sought.
19. Any other matter that is to be or may be prescribed under this Act.

SCHEDULE 3

(Section 84)

FORMS OF CERTIFICATE

Part 1: Certificate of verification of execution of protected property transaction

I, [name], [capacity, being the Registrar or a person authorised to verify execution], certify that:

1. On [date] at [place], [name of person making the disposition or granting the power] appeared before me and was identified to my satisfaction by [means of identification], and that person's date of birth, as shown by [that evidence] [a birth certificate or other prescribed evidence], is [date].

2. I interviewed that person in private, in the absence of [name of person in whose favour the instrument is made] and of every connected person other than [name of trusted supporter, if any], being a trusted supporter who does not stand to benefit from the instrument.

3. I explained to that person, in language that he or she appeared to understand, the nature and effect of the instrument, namely [brief description of the instrument and its effect].

4. That person appeared to me to understand the nature and effect of the instrument and to be executing it, or (where it is executed under a power of attorney) to be authorising it, freely and voluntarily.

5. I am not acting for, and I am not a connected person of, the person in whose favour the instrument is made.

Signed: [signature] Date: [date]

Part 2: Certificate of independent legal advice

I, [name], attorney-at-law, certify that:

1. On [date] I advised [name of person making the disposition or granting the power] in private, in the absence of [name of person in whose favour the instrument is made] and of every connected person other than [name of trusted supporter, if any], being a trusted supporter who does not stand to benefit from the instrument.

2. I explained the nature and effect of the instrument, the alternatives available to him or her, and the risks of the transaction, including its effect on his or her future accommodation, care and financial security.

3. I do not act for, and I am not a connected person of, the person in whose favour the instrument is made.

4. The person informed me that he or she wishes to proceed with the transaction.

Signed: [signature] Date: [date]

SCHEDULE 4

(Section 142)

CONSEQUENTIAL AMENDMENTS

1. Medical and Holberton Institution Act, Cap. 270

(1) Section 2 of the Medical and Holberton Institution Act is amended by inserting, in the appropriate alphabetical order, the following definitions:

"Fiennes Institute" means the Fiennes Institute which forms part of the Holberton Institution under section 3;

"Older Persons Act" means the Older Persons (Care and Protection) Act, 2026;

(2) Section 8 of the Medical and Holberton Institution Act is amended by inserting after subsection (1) the following subsection:

"(1A) Rules made under subsection (1) in relation to the Fiennes Institute shall be consistent with the Older Persons Act and with any Regulations made under it, and to the extent of any inconsistency the Older Persons Act and those Regulations prevail."

(3) Section 12 of the Medical and Holberton Institution Act is repealed and replaced by the following section:

"12. Fiennes Institute

(1) The Fiennes Institute shall be maintained for the accommodation and care of older persons and other persons who, by reason of age, infirmity or disability, are admitted to it in accordance with the rules.

(2) The Fiennes Institute is a care establishment for the purposes of the Older Persons Act, and the provisions of that Act relating to the rights of residents, standards of care, safeguarding, inspection and enforcement apply to it."

(4) The Medical and Holberton Institution Act is further amended by substituting the word "resident" for the word "inmate", and the word "residents" for the word "inmates", wherever those words occur in relation to the Fiennes Institute.

2. Registered Land Act, Cap. 374

(1) Section 108 of the Registered Land Act is amended by inserting after subsection (2) the following subsections:

"(2A) Where an instrument effects a protected property transaction within the meaning of section 82 of the Older Persons (Care and Protection) Act, 2026, the person before whom the instrument is executed shall comply with section 84(1)(a) to (c) of that Act, and the certificate required by subsection (2) shall be in the form set out in Part 1 of Schedule 3 to that Act.

(2B) Subsection (5) does not apply to an instrument referred to in subsection (2A).

(2C) The certificate required by subsection (2) shall state the date of birth required by section 83(1)(a), read with section 82(4), of the Older Persons (Care and Protection) Act, 2026."

(2) The Registered Land Act is amended by inserting after section 108 the following section:

"108A. Protected property transactions

The Registrar shall not register an instrument by which an individual makes a disposition of land, or grants a power of attorney authorising a disposition of land, otherwise than in accordance with sections 83 to 86 of the Older Persons (Care and Protection) Act, 2026."

(3) Section 114 of the Registered Land Act is amended by inserting after subsection (6) the following subsections:

"(7) The Registrar shall not enter in the register of powers of attorney a power of attorney that is a protected property transaction within the meaning of section 82 of the Older Persons (Care and Protection) Act, 2026 unless section 84 of that Act has been complied with.

(8) On production of an order of the High Court under section 89 or 91 of the Older Persons (Care and Protection) Act, 2026 suspending or revoking a power of attorney, the Registrar shall enter the suspension or revocation in the register of powers of attorney and note it on the power, and section 115 shall not apply in favour of a person who acquires an interest after that entry."

(4) Section 127 of the Registered Land Act is amended by inserting at the end the following subsection:

"([ ]) The interest of an older person under section 88 of the Older Persons (Care and Protection) Act, 2026 is an interest in land for the purposes of this section."

(5) Section 132 of the Registered Land Act is amended by inserting after subsection (1) the following subsection:

"(1A) A safeguarding notice lodged under section 86 of the Older Persons (Care and Protection) Act, 2026 constitutes sufficient cause for the entry of a restriction under subsection (1), and the Registrar shall enter the restriction without directing inquiries, serving notices or hearing any person, but shall give notice of the restriction to the proprietor within 3 working days after entering it."

3. Registration and Records Act, Cap. 375

The Registration and Records Act Cap. 375is amended by inserting after section 8 the following section:

"8A. Protected property transactions

(1) A deed that effects a protected property transaction within the meaning of section 82 of the Older Persons (Care and Protection) Act, 2026 shall not be recorded unless sections 83 and 84 of that Act have been complied with and any deferral under section 85 of that Act has ended, and the proof or acknowledgment of its execution shall be accompanied by a certificate in the form set out in Part 1 of Schedule 3 to that Act.

(2) A deed affecting land against which a safeguarding notice has been noted under section 86 of that Act shall not be recorded, unless it is in favour of the older person, while the notice remains in force."

4. Title by Registration Act, Cap. 429

The Title by Registration Act is amended by inserting after section 21 the following section:

"21A. Protected property transactions

(1) The Registrar of Titles shall not register an instrument effecting a protected property transaction within the meaning of section 82 of the Older Persons (Care and Protection) Act, 2026, or register a dealing under a power of attorney that is such a transaction, otherwise than in accordance with sections 83 to 86 of that Act.

(2) A safeguarding notice noted under section 86 of that Act has effect as a caveat forbidding the registration of any dealing with the land, other than a dealing in favour of the older person, while the notice remains in force."

5. Social Protection Act, 2020 (No. 22 of 2020)

Section 91(4) of the Social Protection Act, 2020 is amended by inserting the following paragraph after paragraph (i):

"(J) to the Director of Older Persons Care and Protection, to the extent necessary for the performance of a function under the Older Persons (Care and Protection) Act, 2026."

6. Childcare and Protection Act, 2003 (No. 29 of 2003)

Section 2(2) of the Childcare and Protection Act, 2003 is amended by inserting at the end the words "but this subsection does not apply to a person who has attained the age of 65 years".

Passed the House of Representatives this day of , 2026.

Speaker Clerk to the House of Representatives

Passed the Senate this day of , 2026.

President Clerk to the Senate

EXPLANATORY MEMORANDUM

This Bill provides a modern and comprehensive legal framework for the care and protection of older persons in Antigua and Barbuda. It responds in particular to cases in which older persons are placed in the Fiennes Institute, a hospital or a private home, are taken out by relatives or others to sign transfers of land, powers of attorney or other documents, and are then returned and left without care or support. The Bill treats that conduct as financial exploitation and abandonment, and provides preventive, protective, civil and criminal remedies. It does so without treating old age as incapacity: a capable older person remains free to deal with his or her property as he or she chooses.

Part-by-Part Analysis

Part I – Preliminary (clauses 1 to 8) provides for the short title, commencement, interpretation, objects and guiding principles of the Act. It defines an older person and a responsible person, establishes the scope of application of the Act and provides that the Act binds the Crown.

Part II – Rights and Decision-Making (clauses 9 to 15) provides for the rights of older persons, the assessment and presumption of decision-making capacity, supported decision-making and consent to care and admission. It also prohibits requiring the transfer of property or control of finances as a condition of care and protects persons against retaliation for exercising their rights or making complaints.

Part III – Administration (clauses 16 to 23) establishes the Older Persons Care and Protection Unit and the office of Director of Older Persons Care and Protection. It provides for the functions and powers of the Director, the appointment of protection officers and inspectors, co-operation among public authorities, the development of a national policy on ageing and annual reporting to Parliament.

Part IV – Community and Home-Based Care and Support (clauses 24 to 30) provides for measures to support older persons living in their homes and communities, including the assessment of care needs, preparation of care and support plans, community-based services, assistance to caregivers, respite and emergency accommodation, and co-ordination with existing social protection programmes.

Part V – Registration of Care Establishments, Care Agencies and Home Caregivers (clauses 31 to 46) establishes a registration and regulatory framework for care establishments, care agencies and home caregivers. It provides for registration requirements, eligibility criteria, the appointment of registered managers, conditions and renewal of registration, admission and service agreements, the closure of care establishments, maintenance of registers and annual reporting obligations.

Part VI – Standards of Care (clauses 47 to 61) prescribes standards governing the provision of care, including individual care plans, staffing, nutrition, medication, access to health care, dignity, privacy and visitation. It also regulates restrictive practices and deprivation of liberty, emergency and disaster preparedness, reporting of incidents, protection of residents' money and property, recording of departures and returns, and the establishment of residents' committees.

Part VII – Safeguarding: Reporting and Inquiry (clauses 62 to 76) establishes measures for identifying, reporting and investigating abuse, neglect, self-neglect and abandonment of older persons. It provides for mandatory reporting, the protection of persons making reports, safeguarding inquiries, access to older persons, safeguarding plans and referrals to relevant authorities. It also establishes a register of persons unsuitable to work with older persons.

Part VIII – Financial Exploitation and Protection of Property (clauses 77 to 92) provides safeguards against the financial exploitation of older persons, including abuse of trust, undue influence and improper dealings with their money and property. It regulates protected property transactions, including dispositions of land and powers of attorney, and establishes requirements for verification, independent legal advice and notification to the Director. It also provides for safeguarding notices, protection of financial transactions, remedies where property is transferred on condition of care, financial administration orders, supervision of powers of attorney, restitution and other orders of the High Court.

Part IX – Protection Orders and Intervention (clauses 93 to 104) provides for applications to the courts for protection orders, interim protection orders and intervention orders to safeguard older persons from abuse, neglect, abandonment and exploitation. It also regulates emergency removal to places of safety, contributions towards the cost of care, variation and discharge of orders, appeals and the relationship with the Domestic Violence Act, 2015.

Part X – Inspection and Enforcement (clauses 105 to 116) establishes inspection and enforcement powers in relation to care establishments and care agencies. It provides for inspections, warrants, compliance notices, undertakings, prohibition notices, variation of registration conditions, suspension and cancellation of registration, appointment of interim managers, publication of enforcement action and appeals against decisions of the Director.

Part XI – Complaints and Advocacy (clauses 117 to 120) establishes procedures for receiving, investigating and resolving complaints concerning the care and treatment of older persons and provides for independent advocacy to assist older persons in exercising their rights.

Part XII – Offences (clauses 121 to 133) creates offences relating to ill-treatment, wilful neglect, abandonment, financial exploitation, coercion, retaliation, unregistered care operations, obstruction and breaches of orders. It also provides for penalties, corporate liability, aggravating factors in sentencing, time limits for instituting summary proceedings and disqualification orders.

Part XIII – Miscellaneous, Transitional and Consequential (clauses 134 to 142) provides for confidentiality, restrictions on publication, protection from liability, service of documents, evidentiary matters, regulations and codes of practice. It also establishes transitional arrangements and provides for consequential amendments to existing legislation.

Schedules 1 to 4 supplement the provisions of the Bill. Schedule 1 sets out the rights of older persons, Schedule 2 specifies matters for which regulations may be made, Schedule 3 prescribes certificates relating to protected property transactions, and Schedule 4 provides for consequential amendments to the Medical and Holberton Institution Act, the Registered Land Act, the Registration and Records Act, the Title by Registration Act, the Social Protection Act, 2020 and the Childcare and Protection Act, 2003.