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SRI LANKA**

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SUPPLEMENT

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CHILDREN AND YOUNG PERSONS (AMENDMENT)

A

BILL

to amend the Children and Young Persons Ordinance (Chapter 23)

*Ordered to be published by the Minister of Justice, Prison Affairs and
Constitutional Reforms*

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STATEMENT OF LEGAL EFFECT

Clause 2 : This clause amends the Children and Young Persons Ordinance (Chapter 23) (hereinafter referred to as the “principal enactment) and the legal effect of this section as amended is–

- (a) to raise the age of a person who shall be a child for the purpose of the principal enactment, from the age of sixteen years to the age of eighteen years;
- (b) to omit the reference to “young person” in the principal enactment and any written law where such words occur in relation the principal enactment; and
- (c) to rename the principal enactment as the “Children’s Ordinance”.

Clause 3 : This clause amends section 9 of the principal enactment and the legal effect of this section as amended is to enable the provisions of subsection (4) thereof to be applicable to a child who is above the age of fourteen years.

Clause 4 : This clause amends section 13 of the principal enactment and is consequential to the amendments made by clause 2.

Clause 5 : This clause amends section 15 of the principal enactment and the legal effect of this section as amended is to make the provisions of this clause applicable to a child who is above the age of sixteen years.

Clause 6 : This clause amends the sub-heading of Part II of the principal enactment and is consequential to the amendments made by clause 2.

Clause 7 : This clause replaces section 23 of the principal enactment and the legal effect is to impose restrictions on punishment of children.

Clause 8 : This clause amends section 24 of the principal enactment and is consequential to the provisions of Penal Code (Amendment) Act, No. 25 of 2021.

Clause 9 : This clause amends section 25 of the principal enactment and is consequential to the amendment made by clause 7.

Clause 10 : This clause amends section 26 of the principal enactment and is consequential to the amendments made by clauses 2 and 13.

Clause 11 : This clause amends section 27 of the principal enactment and is consequential to the amendments made by clauses 2 and 13.

Clause 12 : This clause amends section 28 of the principal enactment and is consequential to the amendment made by clause 13.

Clause 13 : This clause repeals section 29 of the principal enactment and the legal effect is to remove the infliction of corporal punishment on children.

Clause 14 : This clause amends section 30 of the principal enactment and is consequential to the amendment made by clause 13.

Clause 15 : This clause amends section 31 of the principal enactment and is consequential to the amendments made by clause 2.

Clause 16 : This clause amends section 32 of the principal enactment and is consequential to the amendments made by clauses 2 and 7.

Clause 17 : This clause replaces section 42 of the principal enactment and the legal effect is to introduce provisions for the duration of stay in an approved or certified school to be specified in the court order relating thereto.

Clause 18 : This clause amends section 43 of the principal enactment and is consequential to the amendments made by clause 2.

Clause 19 : This clause amends section 44 of the principal enactment and the legal effect of this section as amended is to raise the age limit which should not exceed when extending the period of detention in an approved or certified school, from nineteen years to twenty one years.

Clause 20 : This clause amends section 45 of the principal enactment and the legal effect of this section as amended is to amend the age limits of a child applicable in relation to supervision by a manager after the expiry of the period of detention in an approved or certified school.

Clause 21 : This clause inserts new section 51A in the principal enactment and the legal effect is to introduce provisions for every approved or certified school to have a primary and secondary division.

Clause 22: This clause amends section 55 of the principal enactment and is consequential to the amendments made by clause 2.

Clause 23: This clause amends section 57 of the principal enactment and is consequential to the amendments made by clause 2.

Clause 24: This clause amends section 71 of the principal enactment and is consequential to the amendment made by clause 13.

Clause 25: This clause amends section 72 of the principal enactment and the legal effect of this section as amended is to provide that causing or encouraging the commission of any offence under section 345, 360A, 363, 364, 364A, 365 or 365B of the Penal Code or any offence under the Obscene Publications Ordinance (Chapter 30) in respect of such child by a person having custody, charge or care of a child to be an offence under the principal enactment.

Clause 26 : This clause amends section 73 of the principal enactment and the legal effect of this section as amended is to enable this section to be applicable to any child without a restriction on age.

Clause 27 : This clause amends section 74 of the principal enactment and is consequential to the amendments made by clause 2.

Clause 28 : This clause repeals section 76 of the principal enactment and the legal effect is such that the said section has become redundant consequent to the provisions of section 31 of the National Authority on Tobacco and Alcohol Act, No. 27 of 2006.

Clause 29 : This clause amends section 80 of the principal enactment and is consequential to the amendment made by clause 2.

Clause 30 : This clause amends section 88 of the principal enactment and the legal effect of this section as amended is to re-define a “child” as a person under the age of eighteen years, to remove the definition of a young person consequent to the amendments made by clause 2 and to introduce a new definition for the expression “training school for youthful offenders”.

Children and Young Persons (Amendment)

L.D.—O. 26/2019

AN ACT TO AMEND THE CHILDREN AND YOUNG PERSONS
ORDINANCE (CHAPTER 23)

BE it enacted by the Parliament of the Democratic Socialist
Republic of Sri Lanka as follows: -

1. This Act may be cited as the Children and Young Persons (Amendment) Act, No. of 2022 and shall come into operation on such date as the Minister may by Order published in the *Gazette* appoint.

Short title
and date of
operation

2. (1) In the Children and Young Persons Ordinance (Chapter 23) (hereinafter referred to as the “principal enactment”) there shall be substituted—

Amendment
of Chapter
23 and
written law &
etc.

10 (a) for the words “Children and Young Persons Ordinance”, the words “Children’s Ordinance”;

(b) for the words “children and young persons”, the word “children”;

15 (c) for the words “child or young person”, the word “child”; and

(d) for the words “age of sixteen years”, the words “age of eighteen years”,

wherever such words appear in the principal enactment.

20 (2) In any other written law, there shall be substituted for the words “Children and Young Persons Ordinance”, “children and young persons” and “child or young person”, the words “Children’s Ordinance”, “children” and “child”, respectively, wherever those words occur in relation to the principal enactment.

2 *Children and Young Persons (Amendment)*

(3) Every reference to “Children and Young Persons Ordinance”, “children and young persons”, “child or young person” and “age of sixteen years” in any regulation or rule made under the principal enactment or notice, notification,
5 contract, communication or other document issued under the principal enactment shall be read and construed as a reference respectively, to “Children’s Ordinance”, “children”, “child” and “age of eighteen years”.

10 **3.** Section 9 of the principal enactment is hereby amended as follows:–

Amendment
of section 9
of the
principal
enactment

(1) by the repeal of subsection (3) of that section; and

(2) in subsection (4) of that section-

15 (a) by the substitution, for the words “Where a young person is brought”, of the words “Where a child who is above the age of fourteen years is brought”; and

(b) by the substitution, for the words “the young person”, of the words “such child”, wherever those words appear in that subsection.

20 **4.** Section 13 of the principal enactment is hereby amended in the marginal note to that section, by the substitution for the words “children and young offenders”, of the word “children”.

Amendment
of section 13
of the
principal
enactment

25 **5.** Section 15 of the principal enactment is hereby amended as follows:–

Amendment
of section 15
of the
principal
enactment

(1) in subsection (1) of that section-

(a) by the substitution for the words “in due course of law:” of the words “in due course.”; and

30 (b) by the repeal of the proviso to that subsection; and

5 (2) by the substitution, in subsection (2) of that section, for the words “in the case of a young person” and “the young person may be committed to prison.”, of the words “in the case of a child who is above the age of sixteen years” and “such child who is above the age of sixteen years shall be placed in a remand home”, respectively.

10 6. The sub-heading appearing immediately before section 22 of Part II of the principal enactment is hereby repealed and the following sub-heading is substituted therefor:—

Amendment of sub-heading of Part II of the principal enactment

“CHILD OFFENDERS”.

7. Section 23 of the principal enactment is hereby repealed and the following section is substituted therefor: -

Replacement of section 23 of the principal enactment

15 “Restrictions on punishment of children. 23. (1) A child shall not be ordered to be imprisoned for any offence or be committed to prison in default of payment of a fine.

20 (2) In the case of a child who has attained the age of sixteen years or above, where the probation officer is of the opinion that such child is so unruly a character and cannot be detained in a remand home or certified school or if such child is of so depraved a character that such child is not a fit person to be so
25 detained, the court shall direct the probation officer to cause a psychological assessment to be made of such child by the medical experts and report to court.

30 (3) Where the report of a psychological assessment referred to in subsection (2) confirms that the child is not fit to be detained in a remand home, the court shall order such child to be detained in a training school for

4 *Children and Young Persons (Amendment)*

youthful offenders, notwithstanding the provisions relating to age and the period of detention specified in the Youthful Offenders (Training Schools) Ordinance (Chapter 25).”.

5 **8.** Section 24 of the principal enactment is hereby amended as follows:- Amendment of section 24 of the principal enactment

(1) by the repeal of subsection (1) of that section and the substitution therefor of the following subsection:-

10 “(1) Where in lieu of sentence of death, a sentence of detention has been passed by any court under section 53 of the Penal Code in respect of a person who is under the age of eighteen years at the time of the commission of an offence by such person, the court may order such person to be detained in a remand home for such period as may be specified in the sentence.”; and

(2) by the repeal of subsection (3) of that section and the substitution therefor of the following subsection:-

20 “(3) A person detained pursuant to an order made by a court under section 53 of the Penal Code as referred to in subsection (1) or a direction made by the Minister under subsection (2) shall, while so detained be deemed to be in legal custody.”.

25 **9.** Section 25 of the principal enactment is hereby amended as follows:- Amendment of section 25 of the principal enactment

(1) by the substitution, in subsection (1) of that section, for all the words from “may be specified in the order,” to the words “exceeding one month.”, of the following words:-

30 “may be specified in the Order:

5 Provided however, in the case of a child who has attained the age of sixteen years or above, the provisions of subsection (2) and (3) of section 23 shall *mutatis mutandis* apply to and in relation to such child.”; and

(2) by the substitution, in subsection (2) of that section, for the words and figures “under section 28(1) or section 29(1).”, of the words and figures “under section 28(1).”.

10 **10.** Section 26 of the principal enactment is hereby amended as follows:-

Amendment
of section 26
of the
principal
enactment

15 (1) by the substitution, in subsection (1) of that section, for the words “a child who has attained the age of twelve years or a young person”, of the words “a child who has attained the age of twelve years”;

(2) by the substitution, in subsection (2) of that section, for the words and figures “under section 28(1) or section 29(1).”, of the words and figures “under section 28(1).”; and

20 (3) by the substitution, in the marginal note to that section, for the words “a child or young offender” of the words “a child offender”.

11. Section 27 of the principal enactment is hereby amended as follows:-

Amendment
of section 27
of the
principal
enactment

25 (1) by the substitution, in subsection (2) of that section, for the words and figures “under section 28(1) or section 29(1).”, of the words and figures “under section 28(1).”; and

30 (2) by the substitution, in the marginal note to that section, for the words “child or young offender” of the words “child offender”.

12. Section 28 of the principal enactment is hereby amended, by the repeal of subsection (2) of that section.

Amendment of section 28 of the principal enactment

13. Section 29 of the principal enactment is hereby repealed.

Repeal of section 29 of the principal enactment

5 **14.** Section 30 of the principal enactment is hereby amended, by the substitution for the words and figures “sections 25 to 29,” of the words and figures “sections 25 to 28,”.

Amendment of section 30 of the principal enactment

10 **15.** Section 31 of the principal enactment is hereby amended in the marginal note to that section, by the substitution for the words “child or young offender” of the words “child offender”.

Amendment of section 31 of the principal enactment

16. Section 32 of the principal enactment is hereby amended as follows:-

Amendment of section 32 of the principal enactment

15 (1) by the repeal of paragraph (b) of that section and the substitution therefor of the following paragraph:-

20 “(b) a child who has attained the age of sixteen years or above who has been ordered to be detained in a training school for youthful offenders and pardoned by the President on condition of his agreeing to undergo training in a school,”;

(2) in the proviso to that section-

25 (a) by the substitution, in paragraph (a) of that proviso, for the word “person”, of the word “child”; and

(b) by the substitution, in paragraph (b) of that proviso, for the words “a young person”, of the words “a child”; and

5 (3) in the marginal note to that section, by the substitution for the words “children and young offenders”, of the words “child offenders”.

17. Section 42 of the principal enactment is hereby repealed and the following section is substituted therefor: - Replacement of section 42 of the principal enactment

10 “Duration of approved or certified school Orders. 42. Where a court orders a child to be sent to an approved or certified school, the order shall specify the duration of stay which shall not be more than three years and be an authority for such child’s detention in such approved or certified school, as the case may be, until the expiration of such period as is specified in such order.”.

15

18. Section 43 of the principal enactment is hereby amended in the marginal note to that section, by the substitution for the words “children or young persons”, of the word “children”. Amendment of section 43 of the principal enactment

20

19. Section 44 of the principal enactment is hereby amended, by the substitution for the words “age of nineteen years:”, of the words “age of twenty one years:”. Amendment of section 44 of the principal enactment

20. Section 45 of the principal enactment is hereby amended in subsection (1) of that section, by the substitution for the words “not attained the age of fourteen years, until he attains the age of sixteen years.”, of the words “not attained the age of eighteen years, until he attains the age of twenty years.”. Amendment of section 45 of the principal enactment

25

21. The following new section is hereby inserted immediately after section 51 of the principal enactment and shall have effect as section 51A of the principal enactment:-

Insertion of section 51A in the principal enactment

5 “Every approved or certified school to have primary and secondary sections. 51A. (1) In every approved or certified school, there shall be-

(a) a “primary section” in which children who have not attained the age of fifteen years shall be detained; and

10 (b) a “secondary section” in which children who have attained the age of fifteen years but not attained the age of eighteen years shall be detained.

(2) Where-

15 (a) a Magistrate makes an order under section 26; or

(b) the Minister makes an Order under section 32,

20 committing a child to an approved or certified school, such order under section 26 or order under section 32 shall, at the time of commitment, specify whether the child should be committed to the primary section or the secondary section of such school, depending on the age of the child:

25 Provided however, the manager of such school shall transfer a child who is in the primary section, to the secondary section upon such child reaching the age of fifteen years.”.

22. Section 55 of the principal enactment is hereby amended in subsection (1) of that section as follows:-

Amendment
of section 55
of the
principal
enactment

5 (1) by the substitution, in paragraph (a) of that subsection, for the words “(a) if he is”, of the words “(i) if he is”; and

(2) by the substitution, in paragraph (b) of that subsection, for the words “(b) if he has”, of the words “(ii) if he has”.

23. Section 57 of the principal enactment is hereby amended, by the substitution for the words “the expressions “child” and “young person” mean”, of the words “the expression “child” means”.

Amendment
of section 57
of the
principal
enactment

24. Section 71 of the principal enactment is hereby amended, by the repeal of subsection (6) of that section.

Amendment
of section 71
of the
principal
enactment

25. Section 72 of the principal enactment is hereby amended as follows:-

Amendment
of section 72
of the
principal
enactment

15 (1) by the substitution, in subsection (1) of that section, for all the words from “of a young person” to the words “Penal Code,”, of the words “of a child, causes
20 or encourages the commission in respect of such child of any offence under section 345, 360A, 363, 364, 364A, 365 or 365B of the Penal Code or any offence under the Obscene Publications Ordinance (Chapter 30),”;

25 (2) by the substitution, in subsection (2) of that section, for the words “in respect of a child or young person being a female, a person shall, if he has knowingly allowed her to consort with,” of the words “in respect
30 of a child, a person shall, if he has knowingly allowed such child to consort with,”; and

10 *Children and Young Persons (Amendment)*

(3) by the substitution, in the marginal note to that section, for the words “of girl under sixteen.”, of the words “of a child.”.

5 **26.** Section 73 of the principal enactment is hereby amended as follows:-

Amendment of section 73 of the principal enactment

(1) by the substitution for all the words from “care of a child” to the words “to reside”, of the words “care of a child allows that child to reside”; and

10 (2) by the repeal of the marginal note to that section and the substitution therefor, of the following marginal note: -

“Allowing children to be in brothels”.

15 **27.** Section 74 of the principal enactment is hereby amended by the repeal of the marginal note to that section and the substitution therefor, of the following marginal note:-

Amendment of section 74 of the principal enactment

“Causing or procuring children to beg”.

20 **28.** Section 76 of the principal enactment is hereby repealed.

Repeal of section 76 of the principal enactment

29. Section 80 of the principal enactment is hereby amended by the repeal of subsection (3) of that section.

Amendment of section 80 of the principal enactment

30. Section 88 of the principal enactment is hereby amended as follows:-

Amendment of section 88 of the principal enactment

25 (1) by the repeal of the definition of the expression “child” and the substitution therefor of the following definition: -

“ “child” means a person under the age of eighteen years;”;

- (2) by the insertion, immediately after the definition of the expression “scheduled offence”, of the following definition: -

5 “training school for youthful offenders” means a training school established under the Youthful Offenders (Training Schools) Ordinance (Chapter 25);” and

- (3) by the repeal of the definition of the expression “young person”.

10 **31.** In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail. Sinhala text to prevail in case of inconsistency

