



PARLIAMENT OF UGANDA

REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON THE ESTATES OF MISSING PERSONS (MANAGEMENT) (AMENDMENT) BILL, 2019

OFFICE OF THE CLERK TO PARLIAMENT

PARLIAMENT BUILDINGS, KAMPALA

February, 2021

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1.0. Background

On 12th August, 2019, Government introduced in Parliament, the Estate of Missing Persons (Management) (Amendment) Bill, 2019. The Bill was accordingly referred to the Committee on Legal and Parliamentary Affairs pursuant to Rule 128 of the Rules of Procedure of Parliament.

2.0. Methodology

The Committee was guided by the provisions of Rule 128 of the Rules of Procedure and examined the Bill in detail by making inquiries in relation to it and received views and memoranda from the following;

- a) The Minister of Justice and Constitutional Affairs
- b) The Attorney General
- c) Uganda Law Reform Commission
- d) The Equal Opportunity Commission
- e) The Justice Centre Uganda
- f) Foundation for Human Rights Initiative

3.0. Object of the bill

The Bill seeks to amend the Estate Of Missing Persons (Management) Act Cap 159 to align the age of the child in the Act to that age in the Constitution of the Republic of Uganda, to provide for the rights of children with disabilities and to revise the monetary jurisdiction of the Magistrates courts to conform to the Magistrate Court Act, Cap 16.

4.0. Administration of Estates of Missing Persons

In Uganda, the Administration of estates of missing persons is governed by the Estates of Missing Persons (Management) Act, Cap 159.

Under the Estates of Missing Persons (Management) Act, Cap 159, section 1 (f) of the Estate of Missing Persons (Management) Act defines a "missing person" to mean a person who disappears from Uganda without making provision for the administration of

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his or her estate and investigations have shown that his or her whereabouts are not known.

Section 2 of the Estate of Missing Persons (Management) Act requires that where a person is missing person without making provision for the administration of his or her estate, or the maintenance of his or her dependent relatives, if any, and is not heard of within six months, any relative of the missing person with the concurrence of the family may apply to court for a management order.

Section 3 of the Estate of Missing Persons (Management) Act lists the court that have jurisdiction over estates of missing persons and these include-

- (a) a magistrate grade II, where the total value of the estate does not exceed ten thousand shillings;
- (b) a magistrate grade I, where the total value of the estate exceeds ten thousand shillings but does not exceed fifty thousand shillings;
- (c) a chief magistrate, where the total value of the estate exceeds fifty thousand shillings but does not exceed one hundred thousand shillings; or
- (d) the High Court, where the value of the estate exceeds one hundred thousand shillings.

The court does not make any grant of a management unless it is satisfied that the missing person is unlikely to reappear within a reasonable time. An order of management is a court authority given to an applicant to manage the estate of the missing person until such missing person is presumed dead or reappears to regain the management of his or her estate.

The manager appointed by court allows a person so appointed, with the leave of court to mortgage, charge or transfer by will, sale or gift, inter vivos, surrender, exchange or otherwise, any immovable property of the missing person, lease any such property for a term exceeding three years or invest any property of the missing person in any securities other than those authorized by the Trustees Act.

Where a person goes missing or is not found within three years, the missing person is presumed to be dead and the management order issued by court ceases to have effect. A person may, in accordance with the succession Act, apply for letters of administration for the estate of the deceased person.

5.0. Need for the Bill

The Estate of Missing Persons (Management) Act Cap 159 is the law that governs the management of estates of missing person. This Act commenced on the 1st October 1973 and due to passage of time, some aspects of it have become outdated, especially in light of the Constitution, Government policies, emerging international best practices and the legal environment.

The Committee notes that amendment of the Estate of Missing Persons (Management) Act is premised on the need to expand the pecuniary jurisdiction of the magistrate Court in granting management orders in estates of missing persons and to align the jurisdiction with the jurisdiction granted to such courts under the Magistrate Court Act Cap 16.

Furthermore, the values prescribed in section 3 of the Estates of Missing Persons (Management) Act have, with the passage of time, been eroded by inflation, making the provisions redundant and ineffective. For instance, the provision requires a missing person's estate of a value above UGX 100,000 to apply to the High Court for a management order. The Committee notes that this is a small estate and the cost of obtaining a management order from the High Court might exhaust the beneficial value of the estate.

The Committee is of the considered opinion that the Estate of Missing Persons (Management) Act is still a relevant law that makes provision for the management of the estate of a missing person and the provision of welfare to persons in that estate.

The Committee notes that where a person disappears, a number of problems arise, including the provision of welfare for the family, the need to take care of the missing

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The Committee observes that in spite of the prevailing peace and stability in Uganda to date, there are instances where persons who own property disappear without trace. It can thereby be argued that the Missing Person's Act is applicable to date because the mischief that the law set out to cure is prevalent.

The Committee examined the amendment proposed in the Bill, its legality, effect and effectiveness in light of the Constitution, existing public policy, court decisions, other laws and the mischief it intends to cure and recommend its adoption, deletion or amendment.

The Bill proposes in clause 1 to provide for the short title and commencement of the Bill once enacted into law.

The Committee finds this provision to be redundant in light of section 3, 14 and 15 of the Acts of Parliament Act.

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requires that the citation of the short title to an Act shall be sufficient to identify the Act.

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On commencement of the Bill, section 14 of the Acts of Parliament Act requires that an Act commences on the date as is provided in or under the Act, or where no date is provided, the date of its publication as notified in the Gazette.

From the foregoing, it is evident that clause 1 is redundant since it proposes to provide for the citation of the Act which is already provided for in section 15 of the Acts of Parliament Act as well as prescribing the commencement of the Act on publication, yet the same is already prescribed in section 14 of the Acts of Parliament Act. Since clause 1 does not introduce anything new beyond what is provided for in the Acts of Parliament Act, then I see no need for it to be included in the Bill.

Secondly, the Committee is aware that for a long time, Acts of Parliament have not prescribed a citation section in any Act. The Committee is also aware that citations clauses have, in the recent past, been only used in the statutory instruments and not in Acts of Parliament. Unless this is a new policy that Parliament should be aware of, the Committee finds no value in having a citation clause in the Bill.

Recommendation

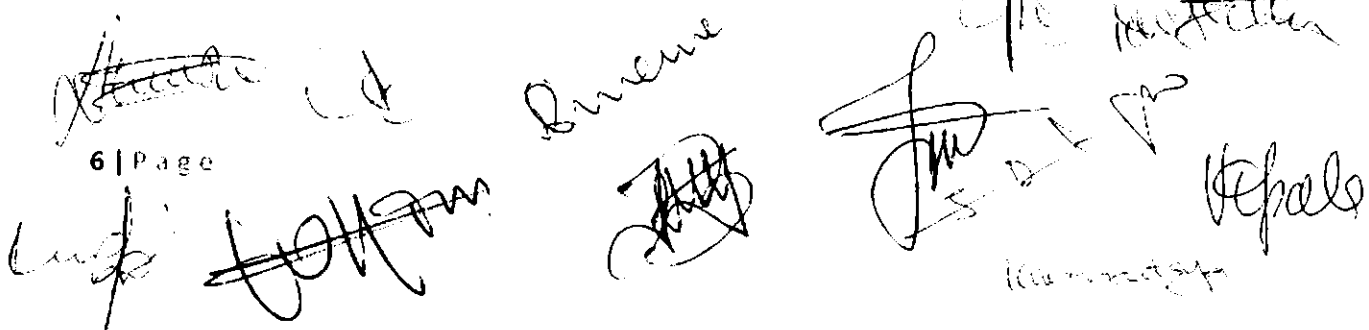
- *In light of the above, the Committee recommends that clause 1 of the Bill is deleted with the justification that it is redundant in light of section 14 and 15 of the Acts of Parliament Act, Cap 2.*

6.2. Dependent relatives

The Bill proposes to amend section 1 of the Principal Act by amending the definition of the word "dependent relative" as well as imposing restrictions on who may be appointed manager of the estate.

The Committee has reviewed the proposed amendment and it makes the following observations.

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On the proposal to amend the definition of the word "dependent relative", especially, the inclusion of a missing person's children amongst his or her relatives, the Committee is of the considered view that the provision is ambiguous hereby creating confusion.

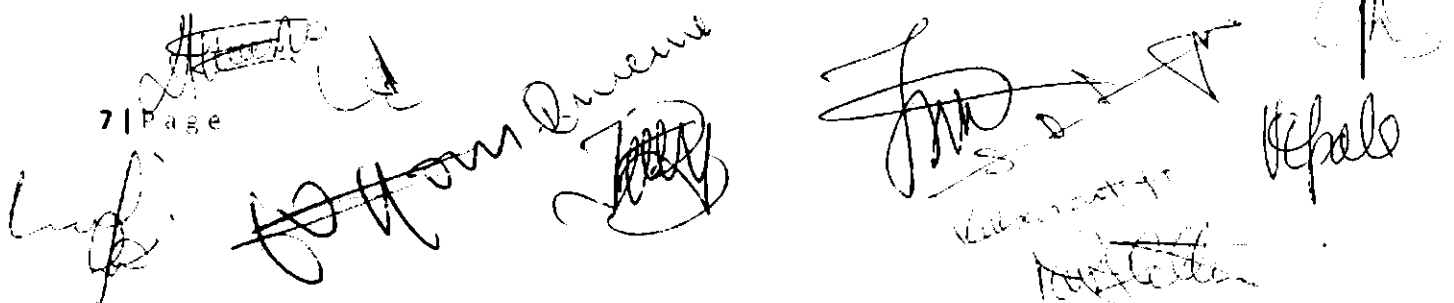
Currently, section (1) (b) of the Estate of Missing Persons (Management) Act defines a dependent relative as follows-

"Dependent relative" includes—

- i. a wife, a husband, a son or daughter under eighteen years of age or daughter of or above eighteen years of age who is wholly or substantially dependent on the missing person;*
- ii. a parent, a brother or sister, a grandparent or grandchild who, on the date when a missing person disappeared, was wholly or substantially dependent on the missing person for the provision of the ordinary necessities of life suitable to a person of his or her station;*

The above provision wrongly assumes that a child of a missing person is at the same time a relative of that person. A child of a missing person is a lineal descendant and not a dependent relative. The Committee notes that the same definition of dependent relative as contained in the the Estate of Missing Persons (Management) Act is similar to the one contained in the succession Act.

The Committee however notes that Government, in the Succession (Amendment) Bill, 2019 intends to amend this definition by restricting a person's relatives to only *a parent, a brother or sister, a grandparent or grandchild who, on the date of the deceased's death, was wholly or substantially dependent on the deceased for the provision of the ordinary necessities of life suitable to a person of his or her station.*

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The Committee adopted the amendment proposed by Government under the Succession (Amendment) Bill, 2019 since that amendment is in line with the ordinary use of that word.

Furthermore, the Committee notes that the definition of word "family" is similar to the definition of the word "dependent". The Committee observes that the word family is defined to include a parent, grandparent, uncle, first cousin, child, grandchild, wife or husband of a missing person while the definition of a "dependent relative" also includes the same people. The Committee finds this situation to be confusing and also, it seems to extend the ordinary meaning of family to persons who do not constitute such class of people.

The Committee however disagrees with the proposal to introduce a fit and proper person test without guiding the person making such a decision on who this fit and proper person is. The Committee observes that the imposition of a fit and proper person's test might be abused since the judicial officer is not guided on the characteristics of such a person.

The Committee further notes that subsection (2) and the proposed (3) are misplaced since they do not relate with the head note of the provision.

The Committee notes that section 1 of the principal Act deals with interpretation of the major terms, phrases and words used in the Act. The Committee observes that subsection (2), which bars an order for the management of an estate of a missing person from being granted to any person under the age of twenty-one years, is miss placed since it is a condition of grant rather than an interpretation aid. Furthermore, the proposed subsection (3) is also misplaced for the same reasons.

Recommendation

In light of the above, the Committee recommends as follows-

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- (a) define the word "dependent relative" to only include a parent, a brother or sister, a grandparent or grandchild who is wholly or substantially dependent on the missing person for the provision of the ordinary necessities of life suitable to a person of his or her station;*
- (b) define "family" to include "spouse and lineal dependents of the missing person.*
- (c) reject the proposal to insert sub section (3)*
- (d) subsection (2) should be deleted and inserted in section 7 of the principal Act.*

6.3. Jurisdiction of court

Clause 3 of the Bill proposes to amend section 3 by-

- (a) exempting magistrate grade II from handling matters of missing persons;
- (b) expanding the value of the estate that can be handled by magistrate grade I and Chief magistrate;
- (c) repealing the reference to the High Court in the provision.

The Committee has reviewed the proposed amendments and it find the amendment, especially the proposal to remove the magistrate Grade II as well as expanding the value of estates magistrates have jurisdiction over, to be in line with the Magistrate Court Act Cap 16. The Committee notes that Magistrate Grade IIs are being phased out, making the reference to such a court under the principal Act redundant.

The Committee further notes that the pecuniary Jurisdiction of Magistrate Courts was revised in 2007 through an amendment to section 207 of the Magistrate Court Act and the Administration of Small Estates (Small Estates) (Special Provisions) (Amendment of Jurisdiction Magistrates Courts) Order, S.I 20 and 21 of 2009.

Through that amendment, a chief Magistrate's jurisdiction was increased from 5 million Shillings to 50 million shillings while that of a Magistrate Grade 1 was increased from 2

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million to 20 million shillings. The Committee therefore supports the amendment since it will harmonise the provisions of the principal Act with the Magistrate Court Act making the law book easy to use.

The Committee however notes that the proposal to express the jurisdiction of court in Ugandan shillings does not shield the provision from inflation. The Committee notes that one of the shortcomings of the section 3 was its failure to shield the jurisdiction of court from inflation and changes in the value of money over time. The Committee observes that one of the ways of the shielding a provision from inflation is by expressing it in currency points and not in Uganda shillings. This is because the value of a currency point is expressed and changes with changes in the time value of money, making the value remain consistent.

Recommendation

In light of the above, the Committee recommends for the adoption clause 3 of the Bill except that the provision should express the values in currency points.

6.4. Harmonisation with other succession laws

The Committee has examined the Bill and the principal Act and is of the considered view that the Act is not in harmony with the other succession laws. The Committee notes that the succession laws in Uganda include the Succession Act, the Administration Of Estates (Small Estates) (Special Provisions) Act, the Probate Resealing Act, the Estate Of Missing Persons (Management) Act and the Administrator General's Act. The Committee notes that all these laws must be in harmony if the succession law book of Uganda is going to be effective.

The Committee notes that the Bill currently has provisions which are not in harmony with the other Acts as they currently stand or as proposed for amendment. For instance, the Committee observes that there is disharmony with the use of certain words, such as the word dependent relatives and the provisions on intermeddling in the estate of a missing person. The Committee notes that in order for harmony to be

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restored, the Bill should be harmonized with the provisions of the other succession laws.

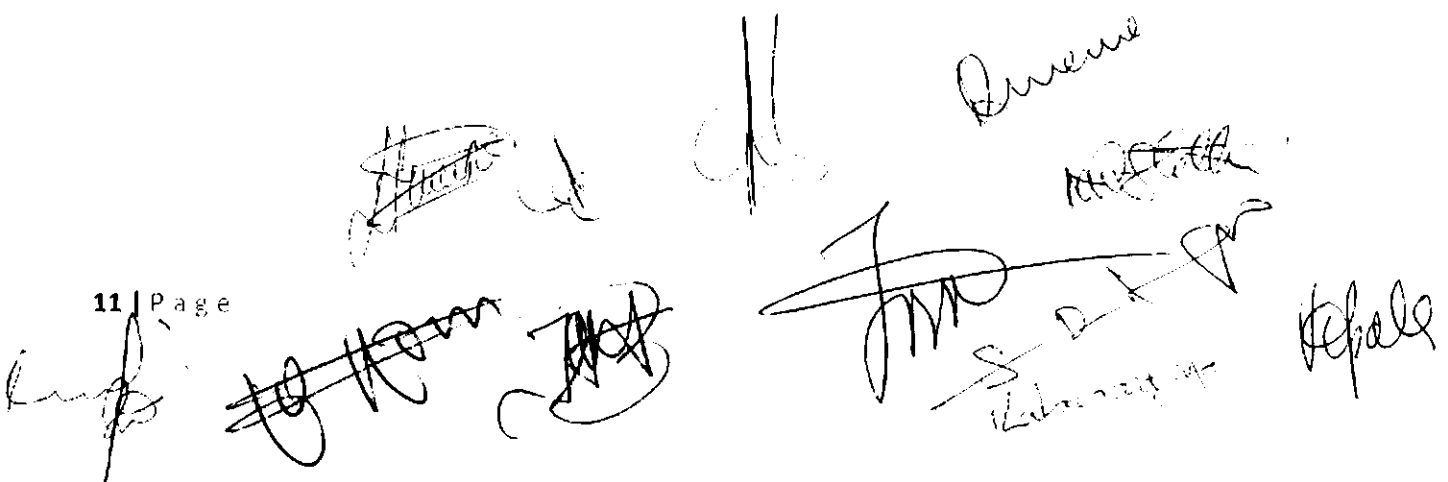
Recommendation

In light of the above, the Committee recommends that the Bill should be harmonized with the Succession Act, the Administration Of Estates (Small Estates) (Special Provisions) Act, the probate Resealing Act and the Administrator General's Act.

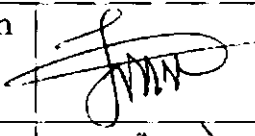
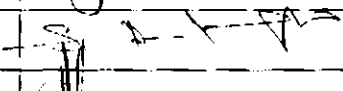

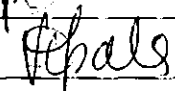


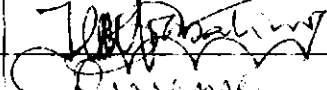
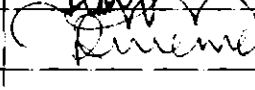
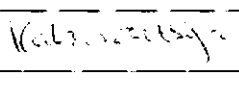
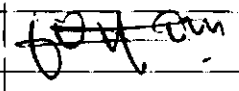
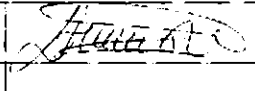
7.0. CONCLUSION AND RECOEMENDATION

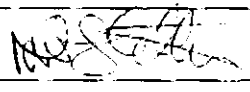
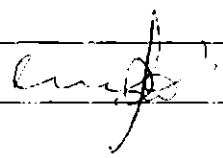
In light of the above, the Committee proposes that the Estate of Missing Persons (Management) (Amendment) Bill, 2019 is due for amendment as explained above.

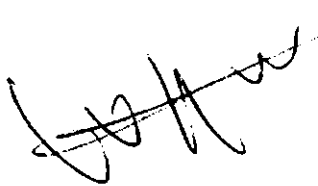
The Committee recommends that the Estate of Missing Persons (Management) (Amendment) Bill, 2019 is read the second time and does pass with the amendments.

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**SIGNATURE OF MEMBERS ENDORSING THE REPORT ON THE ESTATES OF MISSING PERSONS
(MANAGEMENT) (AMENDMENT) BILL, 2019**

SN	NAME	CONSTITUENCY	SIGNATURE
1.	Hon. Jacob Marksons Oboth (Chair)	West Budama South	
2.	Hon. Bitangaro Sam Kwezira	Bufumbira South	
3.	Hon. Jovah Kamateeka	Mitooma DWR	
4.	Hon. Isala Eragu Veronica	Kaberaimaido County	
5.	Hon. Kajara Aston	Mwenge South	
6.	Hon. Mwiru Paul	Jinja East County	
7.	Hon. Basalirwa Asuman	Bugiri Municipality	
8.	Hon. Gureme R. Rwakoojo	Gomba West	
9.	Hon. Ongalo Kenneth Obote	Kalaki County	
10.	Hon. Agaba Abbas Mugisha	Kitagwenda County	
11.	Hon. Azairwe Dorothy. K	DWR Kamwenge	
12.	Hon. Mugoya Kyawa Gaster	Bukooli North	
13.	Hon. Akamba Paul	Busiki County	
14.	Hon. Otto Edward Makmot	Agago County	
15.	Hon. Adeke Anna Ebaju	NFY MP	
16.	Hon. Nsereko Muhammed	Kampala Central Division	
17.	Hon. Wilfred Niwagaba	Ndorwa East	
18.	Hon. Abdu Katuntu	Bugweri County	
19.	Hon. Ssemujju Ibrahim	Kira Municipality	
20.	Hon. Medard Ssegona Lubega	Busiro East	
21.	Hon. Mathias Mpuuga	Masaka Municipality	
22.	Hon. Byarugaba Alex	Isingiro County South	
23.	Hon. Akello Rose Lilly	DWR, Karenga	
24.	Hon. Asamo Hellen Grace	PWD Eastern	

25	Hon. Namoe Stella	Napak DWR	
26	Hon. Akampulira Prosy	DWR Rubanda	
27	Hon. Suubi Brenda Asinde	DWR Iganga	
28	Hon. Amoding Monica	DWR Kumi	
29	Hon. Silwany Solomon	Bukooli County West	







**PROPOSED AMENDMENTS TO ESTATE OF MISSING PERSONS
(MANAGEMENT) (Amendment) BILL, 2019**

CLAUSE 1: SHORT TITLE AND COMMENCEMENT

Delete clause 1

Justification

- *Clause 1 is redundant in light of section 14 and 15 of the Acts of Parliament Act, Cap 2.*

CLAUSE 2: AMENDMENT OF SECTION 1 OF THE PRINCIPAL ACT

In clause 2-

(i)Substitute for paragraph (a) the following-

“(a) by substituting for the definition of the phrase “dependant relative” the following-

“(b) “dependent relative” includes a parent, a brother or sister, a grandparent or grandchild who is wholly or substantially dependent on the missing person for the provision of the ordinary necessities of life suitable to a person of his or her station”

(ii) Insert the following new paragraph immediately after paragraph (a) and re-number the provision accordingly-

“(b) by substituting for the definition of the word “family” the following-

“(c) “family” include a spouse and a lineal descendant of the missing person”

(iii) By inserting the following new definition immediately after paragraph (b) as follows-

“(ca) lineal descendant” means the child of a missing person regardless of the age of the child including those adopted by the missing person under the laws of Uganda;”

(iv) Delete paragraphs (b) and (c).

(v) Insert the following new paragraph immediately after paragraph (c) as follows-

“(d) by deleting subsection (2);”

Justification

- *To define the word “dependent relative” as the word is ordinarily used and to harmonise it with the way it is used under the Succession Act.*
- *To define the word “family” as the word is usually understood and used.*
- *For completeness, to define the word lineal descendant*
- *Paragraphs (b) and (d) are misplaced since they do not relate with the head note and the rest of the provision.*
- *The deletion of subsection (2) of the principal Act is intended to remove a misplaced section.*
- *The introduction of a fit and proper persons test is redundant since the Act already limits the grant of a management order to relatives of the missing person and imposing of a fit and proper person test will be an unreasonable addition that is not necessary.*

CLAUSE 3: AMENDMENT OF SECTION 3 OF PRINCIPAL ACT

In clause 3 of the bill is amended-

(a) In paragraph (b), by substituting for the words "twenty Million shillings" the words "one thousand currency points"

(b) In paragraph (c), by substituting for the words "fifty million" the words "two thousand five hundred currency points"

(c) By substituting for paragraph (d) the following –

"(d) by substituting for paragraph (d) the following-

"(d) the High Court, where the value of the estate exceeds the values prescribed in paragraph (b) and (c),"

Justification

- *To express the values of the estates in currency points in order to shield the provision from inflation and the loss of value of the shilling over time.*
- *To prescribe the jurisdiction of the High Court*

INSERTION OF NEW CLAUSE IN THE BILL

Immediately after clause 3, insert the following new clauses

"4. Amendment of section 7 of principal Act

Section 7 of the principal Act is amended by inserting immediately after subsection (2) the following-

“(2a) For the purpose of this Act, an order for the management of an estate of a missing person shall not be granted to any person under the age of eighteen years.”

“5. Replacement of section 9 of principal Act

For section 9, there is substituted the following-

“9. Intermeddling with property of a missing person

- (1) “A person who intermeddles with the estate of a missing person commits an offence and is liable, on conviction, to a fine not exceeding one thousand currency points or imprisonment not exceeding ten years, or both.
- (2) A person is taken to intermeddle in the estate of a missing person where that person, while not being the manager -
 - (a) takes possession or disposes of a missing person’s property;
 - (b) unlawfully refuses or neglects to deliver to the manager any property in his or her possession belonging to the estate of the missing person, or
 - (c) does any other act which belongs to the office of the manager.
- (3) Subsection (1) shall not apply in cases where the intermeddling is by a spouse or lineal descendant of the missing person and it happens before the grant of an order under section 7 of this Act, in circumstances prescribed in subsection (4).
- (4) The circumstances referred to in subsection (3) are where the intermeddling is for the purpose of,-
 - (a) preserving the estate of a missing person;

- (b) providing for the welfare of the missing person's lineal descendants;
 - (c) providing immediate necessities of the missing person's family;
 - (d) preserving and prudent management of the missing person's business, including preserving the missing person's goods of trade; or
 - (e) receiving money or other funds belonging to the missing person.
- (5) The duration for which a person referred to in subsection (3) may intermeddle in the estate of a missing person is six months from the date the person is presumed to be missing or until the grant of an order under section 7, whichever first occurs.
- (6) A person intermeddling with the estate of a missing person pursuant to subsection (3) shall forthwith report particulars of the property and of the steps taken to the manager or Administrator General or its agent.
- (7) A person who has reason to believe that the person intermeddling in the estate of a missing person pursuant to subsection (4) has caused loss or damage to the estate or that there are reasonable grounds for ending the intermeddling may to the Administrator General or its agent for redress.
- (8) A person who intermeddles in the estate of a missing person pursuant to subsection (3) shall be personally liable for any loss occasioned to the estate arising from the intermeddling and shall make good the loss caused to the estate.
- (9) A person who intermeddles in the estate of a missing person beyond the time prescribed in subsection (5) commits an offence and is liable to a fine not exceeding one thousand currency points or imprisonment not exceeding ten years, or both.

Justification

- *Consequential amendment arising from the deletion of section 2 (2) of the principal Act which was misplaced were it was.*

- *For harmony with other succession laws where processes are awarded to persons above 18 years and not 21 years, to require the award of a management order to be made to a person above 18 years and not 21 years.*
- *to harmonise the provision on intermeddling with similar provisions in the other succession laws.*
- *To revise upwards, the penalty prescribed in the provision*