
BILLS

SUPPLEMENT No. 11

27th September, 2021

BILLS SUPPLEMENT

to The Uganda Gazette No. 71, Volume CXIV, dated 27th September, 2021

Printed by UPPC, Entebbe, by Order of the Government.

Bill No. 24

Succession (Amendment) Bill

2021

THE SUCCESSION (AMENDMENT) BILL, 2021

MEMORANDUM

The Constitutional Court, in the case of *Law Advocacy for Women in Uganda v Attorney General, Constitutional Petitions No. 13/05 and 05/06*, declared provisions of the Succession Act relating to the distribution of estates of intestate persons unconstitutional and discriminatory against the female gender. For example the Succession Act, which was enacted in 1906, provides that a widow ceases to occupy the principal residential property when she remarries but the Act is silent on widowers who remarry. The Court ruling caused a lacuna in the law and at the moment the distribution of estates of persons who do not leave wills is not uniform, but is determined on a case by case basis at the discretion of judicial officers thus leading to uncertainty. To address the disparity, the Bill seeks to provide for the rights of women and accords women the right to equal treatment with men and provides for equality between spouses in the distribution of property.

The Succession Act, Cap.261 provides for equal distribution of estates of deceased parents amongst all the children, regardless of the age or the level of dependency on the deceased at the time of death. Increasingly, many estates have adult and minor beneficiaries who have different levels of dependency and in some instances there are children who

are above 18 years but still in school. The equal distribution of the property amongst all the beneficiaries is therefore not equitable where there are adult beneficiaries on the one hand, school-going children and dependant relatives on the other hand.

The objective of the Succession (Amendment) Bill, 2021 is therefore—

- to align the Succession Act to Article 31 (Rights of the family), Article 32 (affirmative action in favour of marginalised groups) and Article 33 (Rights of women) of the Constitution of the Republic of Uganda;
- to provide for the distribution of estates of intestate deceased persons in accordance with Article 33 (Rights of women) of the Constitution of the Republic of Uganda;
- to provide for the guardianship of minor children of deceased persons;
- to provide for the discretion of courts in the grant of probate and letters of administration;
- to provide for an expiry period of two years for grants of probate and letters of administration;
- to provide for the requirement of the consent of spouses and lineal descendants prior to disposal of estate property by administrators;
- to provide for the joint administration of executors and administrators of estates; and
- to remove from the Act, all the obsolete terms used therein.

Key clauses of the Succession (Amendment) Bill, 2021

Clause 21 repeals the definitions of legitimate and illegitimate children and replaces the age of minority of twenty one years with eighteen years in accordance with the Constitution.

Clause 14 inserts a new subsection under section 27 of the Act to provide that twenty percent of a deceased's estate shall not be distributed but shall be held in trust for the education, maintenance and welfare of the

minor children, children above eighteen years of age but below twenty five years of age, if at the time of the death of the intestate, these children were undertaking studies and were not married, children with disabilities who are above eighteen years of age, if at the time of the death of the intestate, these children were not married and were wholly dependent on the intestate for their livelihood.

Clauses 18, 19 and 20 repeal sections 31, 34 and 35 of the Act, which are obsolete.

Clause 21 upholds Article 32 of the Constitution (affirmative action) by allowing married women to dispose of any property which they would be entitled to dispose of during their life or which they are entitled to under a will. The clause also repeals the phrases “is deaf or dumb or blind”, “is ordinarily insane” and “is of sound mind” and replaces them with more suitable terms.

Clause 22 makes it compulsory for testators to provide for their spouses, lineal descendants and dependant relatives in their wills.

Clause 24 provides that either parent of a minor may, by will, appoint a guardian for the minor.

Clause 25 lists the persons who qualify to be guardians. These include the surviving parent, except where there is a court order to the contrary, a person appointed as such by the surviving parent where the surviving parent is not willing or able to act as the guardian and a person appointed jointly by the brothers and sisters of both the deceased and the surviving parent.

Clause 31 makes an addition to the legal requirements of making a will that is valid in law. The clause makes it a requirement for each of the witnesses to write his or her name and address on every page of the will, in the presence of the testator.

Clause 32 seeks to amend the Act to provide that where a will is hand written or produced in a typed format by a person other than the testator, on the instructions of the testator, and that person who writes or produces the will has a benefit given by the will, either by way of bequest or by way of appointment, the bequest or appointment shall be void, so far as concerns the person who wrote or produced the will, or the spouse of that person or any other person who would claim under that person or under the spouse of that person.

Clause 37 provides that where a testator who is survived by minor children does not expressly appoint an executor or executrix but appoints a guardian for the minor children, the guardian shall act as the executor or executrix.

Clause 38 grants the courts discretion to determine whether a person who is otherwise qualified to be granted probate, is fit and proper and allows a court to defer the appointment of an executor or executrix to a later date or to refuse to grant probate where an applicant is not suitable.

Clauses 39 and 41 create offences where executors, executrices or administrators who, before the grant of probate, misapply the estates of the deceased, or subject the estates to loss or damage and provide penalties for the offences.

Clauses 46 and 47, respectively, substitute sections 215 and repeal section 216 which provide for administration of estates by minors.

Clauses 52 and 53 amend sections 258 and 259 to provide for a period of validity of probate and letters of administration of two years from the date of issue, which period may be extended as the court may determine.

Clause 56 provides that executors, executrices or administrators may, only dispose of estate property with the consent of the spouses

and the lineal descendants of the deceased persons, and that where the beneficiaries are minors, the guardians of the minors shall give consent and that where the guardians are the executors, executrices or administrators, the court shall give the authorisation to dispose of the property.

Clause 58 provides that where there are several executors, executrices or administrators, the powers of the executors, executrices or administrators, shall be exercised jointly and that all the executors, executrices or administrators, shall sign all the documents necessary for the administration of the estate.

Clauses 64, 65 and 67 create offences where a person misapplies the estate of the deceased, or subjects an estate to loss or damage or causes a loss to an estate by neglecting to get any part of the property of the deceased or wilfully and without reasonable excuse omits to surrender the probate or letters of administration when requested to do so, and provide penalties for the offences.

Clause 68 deletes the words “district delegate” and “lunatic” because they are obsolete.

KIRYOWA KIWANUKA,
Attorney General.

THE SUCCESSION (AMENDMENT) BILL, 2021**ARRANGEMENT OF CLAUSES***Clause*

1. Amendment of section 2 of the Succession Act
2. Repeal of section 3 of principal Act
3. Repeal of section 6 of principal Act
4. Repeal of section 7 of principal Act
5. Amendment of section 9 of principal Act
6. Replacement of section 13 of principal Act
7. Replacement of section 14 of principal Act
8. Repeal of section 15 of principal Act
9. Replacement of section 18 of principal Act
10. Replacement of section 20 of principal Act
11. Amendment of section 22 of principal Act
12. Amendment of section 23 of principal Act
13. Amendment of section 26 of principal Act
14. Replacement of section 27 of principal Act
15. Replacement of section 28 of principal Act
16. Replacement of section 29 of principal Act
17. Replacement of section 30 of principal Act
18. Repeal of section 31 of principal Act
19. Repeal of section 34 of principal Act
20. Repeal of section 35 of principal Act

Clause

- 21. Amendment of section 36 of principal Act**
- 22. Replacement of section 37 of principal Act**
- 23. Amendment of section 38 of principal Act**
- 24. Replacement of section 43 of principal Act**
- 25. Replacement of section 44 of principal Act**
- 26. Insertion of sections 44A and 44B in principal Act**
- 27. Replacement of section 45 of principal Act**
- 28. Replacement of section 46 of principal Act**
- 29. Insertion of sections 46A and 46B in principal Act**
- 30. Replacement of section 47 of principal Act**
- 31. Amendment of section 50 of principal Act**
- 32. Replacement of section 54 of principal Act**
- 33. Replacement of section 55 of principal Act**
- 34. Replacement of section 86 of principal Act**
- 35. Amendment of section 87 of principal Act**
- 36. Replacement of section 179 of principal Act**
- 37. Amendment of section 183 of principal Act**
- 38. Amendment of section 184 of principal Act**
- 39. Amendment of section 189 of principal Act**
- 40. Amendment of section 190 of principal Act**
- 41. Amendment of section 192 of principal Act**
- 42. Amendment of section 200 of principal Act**
- 43. Insertion of section 201A in principal Act**

Clause

44. Amendment of section 202 of principal Act
45. Replacement of section 204 of principal Act
46. Replacement of section 215 of principal Act
47. Repeal of section 216 of principal Act
48. Amendment of section 234 of principal Act
49. Amendment of section 235 of principal Act
50. Amendment of section 236 of principal Act
51. Replacement of section 249 of principal Act
52. Amendment of section 258 of principal Act
53. Amendment of section 259 of principal Act
54. Amendment of section 265 of principal Act
55. Replacement of section 268 of principal Act
56. Replacement of section 270 of principal Act
57. Repeal of section 271 of principal Act
58. Amendment of section 272 of principal Act
59. Replacement of section 273 of principal Act
60. Repeal of section 276 of principal Act
61. Replacement of section 279 of principal Act
62. Replacement of section 311 of principal Act
63. Amendment of section 331 of principal Act
64. Replacement of section 332 of principal Act
65. Replacement of section 333 of principal Act
66. Insertion of section 333A in principal Act

Clause

- 67. Amendment of section 335 of principal Act**
- 68. Miscellaneous amendments to principal Act**
- 69. Insertion of sections 340, 341 and 342 in principal Act**
- 70. Amendment of First Schedule to principal Act**
- 71. Amendment of Second Schedule to principal Act**
- 72. Amendment of Third Schedule to principal Act**
- 73. Amendment of Fourth Schedule to principal Act**

A Bill for an Act

Entitled

THE SUCCESSION (AMENDMENT) ACT, 2021

An Act to amend the Succession Act, Cap. 162, to bring it in conformity with the Constitution; to provide for gender equality in accordance with Articles 21 and 33 of the Constitution; to repeal sections that were declared unconstitutional by the Constitutional Court; to refine the definition of customary heir or heiress to remove discrimination; to provide for the protection of the principal residential property for the benefit of the surviving spouse and lineal descendants; to revise the percentages of distribution of the estate of an intestate; to provide for the appointment of a guardian for a child by either parent; to provide for the powers and duties of a guardian; to introduce modern terminologies and definitions of persons who suffer from mental illness and repeal repugnant terms such as “lunatics” and “insane”; to provide for the duration of probate and letters of administration and execution of wills of deceased persons; to enhance penalties for certain offences and to prescribe penalties for contravention of the Act; and to provide for related matters.

BE IT ENACTED by Parliament as follows—

1. Amendment of section 2 of the Succession Act

The Succession Act, in this Act referred to as the principal Act, is amended in section 2—

- (a) by repealing the words “legitimate, illegitimate and” appearing in paragraph (b);
- (b) by inserting a new paragraph immediately after paragraph (d) as follows—
 - “(da) “currency point” has the value assigned to it in Schedule 1 to this Act;”;
- (c) by substituting for paragraph (e) the following—
 - “(e) “customary heir or heiress” means a person recognised under the rites and customs of a particular tribe or community of a deceased person as being the customary successor of that person;”;
- (d) by substituting for paragraph (f), the following—
 - “(f) “daughter” includes a daughter adopted in the manner recognised under the laws of Uganda;”;
- (e) by substituting for paragraph (g), the following—
 - “(g) “dependent relative” includes a parent, a brother or sister, a niece or nephew, 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;”;
- (f) by inserting immediately after paragraph (g), the following—
 - “(ga) “disability” has the meaning assigned to it under the Persons with Disabilities Act, 2020;”;

(g) by inserting immediately after paragraph (j), the following—

“(ja) “guardian” means a person having legal and parental responsibility for a child and includes a customary guardian;”;

(h) by substituting for paragraph (k) (ii) the following—

“(ii) married to the deceased in another country by a marriage recognised as valid under the laws of Uganda;”;

(i) by repealing paragraph (l);

(j) by repealing paragraph (n);

(k) by substituting for the words “twenty-one years” appearing in paragraph (o), the words “eighteen years;”;

(l) by repealing paragraph (t);

(m) by repealing paragraph (u);

(n) by substituting for paragraph (v) the following—

“(v) “son” includes a son adopted in a manner recognised under the laws of Uganda;”

(o) by inserting immediately after paragraph (v), the following—

“(va) “spouse” means a husband or wife married in accordance with the laws of Uganda or in accordance with the laws of another country and recognised in Uganda as a valid marriage;” and

(p) by substituting for paragraph (w) (ii) the following—

“(ii) married to the deceased in another country by a marriage recognised as valid under the laws of Uganda.”

2. Repeal of section 3 of principal Act

Section 3 of the Principal Act is repealed.

3. Repeal of section 6 of principal Act

Section 6 of the principal Act is repealed.

4. Repeal of section 7 of principal Act

Section 7 of the principal Act is repealed.

5. Amendment of section 9 of principal Act

The principal Act is amended in section 9—

(a) by substituting for the word “man” the word “person”; and

(b) by inserting immediately after the word “his” wherever it appears, the word “or her”.

6. Replacement of section 13 of principal Act

The principal Act is amended by substituting for section 13, the following—

“13. Domicile of origin of child

(1) The domicile of a child follows the domicile of the child’s parent or the child’s guardian from whom the child derives his or her domicile of origin.

(2) Where the parents of a child have different domicile, the domicile of the child shall follow the domicile of the parent who has custody of the child.”

7. Replacement of section 14 of principal Act

The principal Act is amended by substituting for section 14, the following—

“14. Domicile of choice

(1) A person may, upon marriage, acquire the domicile of his or her spouse.

(2) A spouse may, upon dissolution of a marriage or upon judicial separation or any other separation recognised under the laws of Uganda, acquire any other domicile.”

8. Repeal of section 15 of principal Act

Section 15 of the principal Act is repealed.

9. Replacement of section 18 of principal Act

The principal Act is amended by substituting for section 18, the following—

“18. Succession to movable property in Uganda

Where a person dies leaving movable property in Uganda, succession to the property shall, in the absence of proof of any domicile elsewhere, be regulated by the laws of Uganda.”

10. Replacement of section 20 of principal Act

The principal Act is amended by substituting for section 20, the following—

“20. Lineal consanguinity

(1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other.

(2) For avoidance of doubt, every generation constitutes a degree, either ascending or descending.”

11. Amendment of section 22 of principal Act

The principal Act is amended in section 22 by inserting immediately after paragraph (b), the following—

“(c) male or female relatives of the deceased person.”

12. Amendment of section 23 of principal Act

The principal Act is amended in section 23—

- (a) in subsection (2), by inserting immediately after the word—
 - (i) “father”, the words “or mother”;
 - (ii) “grandfather” the words “or grandmother”; and
 - (iii) “uncle” the words “or aunt”;
- (b) in subsection (3), by inserting immediately after—
 - (i) the word “grandson” the words “or granddaughter”;
 - (ii) the word “brother” the words “or sister”;
 - (iii) the word “son” the words “or daughter”;
 - (iv) the word “uncle” the words “or aunt”; and
 - (v) the words “great nephew” the words “great niece”;
- (c) in subsection (4), by inserting immediately after—
 - (i) the word “grandson” the words “or granddaughter”;
and
 - (ii) “great uncle” the words “or great aunt.”

13. Amendment of section 26 of principal Act

Section 26 of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “legal heir” the words “spouse and lineal descendants”;

- (b) by inserting immediately after subsection (2), the following—

“(2a) Upon the death of a surviving spouse, the residential holding or any other residential holding shall devolve to the lineal descendants equally who shall occupy it subject to terms and conditions set out in the Second Schedule to this Act.

(2b) A person who evicts or attempts to evict a lawful occupant of the residential holding or any other residential holding commits an offence and is liable to a fine not exceeding one hundred and sixty eight currency points or imprisonment not exceeding seven years or both.

(2c) Where the residential holding or any other residential holding devolves to the lineal descendants under subsection (2a), the lineal descendants shall be deemed to be entitled to the residential holding or any other residential holding as joint tenants.”; and

- (c) in subsection (4), by substituting for the word “a magistrate” the word “a court of competent jurisdiction.”

14. Replacement of section 27 of principal Act

The principal Act is amended by substituting for section 27, the following—

“27. Distribution on death of intestate

(1) Subject to sections 29 and 30, the estate of an intestate, except for his or her principal residential property or other residential property, shall be divided among the following classes in the following manner—

- (a) where the intestate is survived by a spouse, a lineal descendant, a dependent relative and a customary heir—

- (i) the spouse shall receive 20 percent;
 - (ii) the dependent relatives shall receive 4 percent;
 - (iii) the lineal descendants shall receive 75 percent;
and
 - (iv) the customary heir shall receive 1 per cent;
of the whole of the property of the intestate.
- (b) where the intestate leaves no surviving spouse or dependant relative under paragraph (a) (i) or (ii) capable of taking a proportion of his or her property, that proportion shall go to the lineal descendants;
 - (c) where the intestate is survived by a spouse, a dependent relative and a customary heir but no lineal descendant—
 - (i) the spouse shall receive 50 percent;
 - (ii) the dependent relative shall receive 49 percent;
and
 - (iii) the customary heir shall receive 1 percent;
of the whole of the property of the intestate;
 - (d) where the intestate is survived by a spouse or a dependent relative but no lineal descendant, the spouse or the dependent relative, as the case may be, shall receive one hundred percent, of the whole of the property of the intestate;
 - (e) where the intestate leaves no person surviving him or her, capable of taking a proportion of his or her property under paragraph (a), (b), (c) or (d), the estate shall be divided equally between the relatives nearest in kinship to the intestate; and

(f) where the intestate leaves no person surviving him or her, capable of taking a proportion of his or her property under paragraph (a), (b), (c), (d) or (e), the whole of their property shall be managed by the Administrator General in accordance with the Administrator General's Act.

(2) Notwithstanding subsection (1), twenty percent of the estate shall not be distributed, but shall be held in trust for the education, maintenance and welfare of the following categories of lineal descendants until they cease to qualify as such—

(a) a minor child of the intestate and where he or she attains eighteen years of age, until he or she ceases to qualify under paragraph (b) or (c);

(b) a lineal descendant of the deceased who is above eighteen years of age but below twenty five years of age if, at the time of the death of the intestate, was undertaking studies and was not married; and

(c) a lineal descendant of the intestate, who has a disability if, at the time of the death of the intestate was not married and was wholly dependent on the intestate for his or her livelihood.

(3) Where an estate produces an income by way of periodical payments, the percentage referred to in subsection (2) shall be derived from that income.

(4) For the avoidance of doubt, the percentage specified in subsection (2) shall be deducted from the gross estate before the distribution of the estate under subsection (1).

(5) Where the lineal descendants specified in subsection (2) do not require all the twenty percent that is held in trust for their education, maintenance and welfare, the balance of that percentage that is not required, shall form part of the estate to be distributed to all the beneficiaries under subsection (1).

(6) A lump sum settlement may be made for the maintenance and welfare of a lineal descendant who has a disability, specified in subsection (2) (c).

(7) A spouse who remarries before the estate of the deceased is distributed shall be entitled to the share he or she would be entitled to under subsection (1).

(8) When distributing property among the customary heir and dependant relatives, priority shall be given to the parents of the deceased.”

15. Replacement of section 28 of principal Act

The principal Act is amended by substituting for section 28, the following—

“28. Distribution of property between members of same class

(1) Where a lineal descendant entitled to benefit under the estate of a deceased person predeceased the intestate person, the portion of the estate that would have accrued to the deceased beneficiary shall be granted to the lineal descendant of the deceased beneficiary, if any.

(2) A person aggrieved by the distribution of property under this section may appeal to the High Court within fourteen days from the date of the decision of the administrator.”

16. Replacement of section 29 of principal Act

The principal Act is amended by substituting for section 29, the following—

“29. Reservation of principal and other residential property

A spouse or lineal descendant of an intestate occupying a principal residential property or any other residential property under section 26 shall not be required to bring that occupation into account in assessing any share in the property of an intestate to which the spouse, lineal descendant or child may be entitled under section 27.”

17. Replacement of section 30 of principal Act

The principal Act is amended by substituting for section 30, the following—

“30. Separation of spouses

(1) A surviving spouse of an intestate shall not take any interest in the estate of the intestate if, at the death of the intestate the surviving spouse was separated from the intestate as a member of the same household.

(2) Subsection (1) shall not apply where—

(a) the surviving spouse has been absent on an approved course of study in an educational institution; or

(b) the intestate was, at the time of his or her death, the one who had separated from the surviving spouse as a member of the same household.

(3) Notwithstanding subsection (1), a court may, within six months after the death of the intestate, on application made by or on behalf of a surviving spouse, declare that subsection (1) shall not apply to the surviving spouse.

(4) The declaration made under subsection (3) shall authorise the surviving spouse to take no more than—

- (a) a proportion of the property of the intestate entitled to him or her under section 27; or
- (b) a proportion of the property that was acquired before the surviving spouse separated from the intestate as a member of the same household.

(5) For the avoidance of doubt, a child or lineal descendant sired by the surviving spouse and the intestate shall be entitled to benefit from the estate of the intestate, notwithstanding the separation of the surviving spouse from the intestate as a member of the same household.”

18. Repeal of section 31 of principal Act
Section 31 of the principal Act is repealed.

19. Repeal of section 34 of principal Act
Section 34 of the principal Act is repealed.

20. Repeal of section 35 of principal Act
Section 35 of the principal Act is repealed.

21. Amendment of section 36 of principal Act
Section 36 of the principal Act is amended—

- (a) by substituting for subsection (2), the following—

“(2) A spouse may during the subsistence of a marriage hold property in his or her name and may by will, dispose of such property.”

- (b) by substituting for subsection (3), the following—

“(3) A person who has a hearing impairment, physical impairment, speech impairment or visual impairment is capable of making a will if he or she is able to do so.”

- (c) by substituting for subsection (4), the following—

“(4) A person who ordinarily has a mental illness may make a will during an interval in which he or she does not have the mental illness.”; and

- (d) by inserting immediately after subsection (5), the following—

“(6) Notwithstanding subsection (2), where a person making a will is married or has children, the principal residential property and any other residential property of the person making the will shall not form part of the property to be disposed of in the will and shall be reserved for the welfare of the spouse or spouses and lineal descendants of the testator.

(7) Subsection (6) shall not apply where the testator has made provision for the accommodation, at the same station in life, for the spouse and the lineal descendants referred to in section 26 (1), who are entitled to occupy the principal residence at the time of his or her death.”

22. Replacement of section 37 of principal Act

The principal Act is amended by substituting for section 37, the following—

“37. Maintenance of spouse, children, lineal descendants and dependants to be made in a will

(1) A testator shall make reasonable provision for the maintenance of his or her spouse, lineal descendants and dependent relatives.

(2) Subsection (1) shall apply to a spouse, a child and—

- (a) a lineal descendant, who is suffering a mental or physical disability; and
- (b) a dependent relative, who is substantially dependant on the testator.

(3) Section 38 shall apply where a testator, by his or her will, disposes of all his or her property without making reasonable provision for the maintenance of his or her spouse, lineal descendant or dependant relative.”

23. Amendment of section 38 of principal Act

Section 38 of the principal Act is amended—

- (a) by substituting for the head note, the following—

“38. Power of court to order maintenance

- (b) by substituting for subsection (1), the following—

“(1) Where a person dies domiciled in Uganda and by his or her will, disposes of all his or her property without making reasonable provision for the maintenance of his or her spouse, lineal descendant or dependant relative, court may on application, order that such reasonable provision be made out of the estate of the deceased person for the maintenance of the spouse, lineal descendant or dependant relative.”

- (c) by substituting for subsection (2), the following—

“(2) The provision for maintenance to be made by an order under subsection (1) shall—

- (a) where the estate of the deceased person produces an income by way of periodical payments, provide for their termination not later than—
 - (i) in case of a spouse, until he or she remarries;
 - (ii) in case of a child, until the child completes his or her education or attains the age of twenty five years, whichever first occurs;
 - (iii) in the case of a lineal descendant who is, by reason of mental or physical disability, incapable of maintaining himself or herself, upon the cessation of the disability or marriage of that lineal descendant whichever occurs first;
 - (iv) in the case of any other dependent relative, as the court may determine.”; and
- (b) where the estate of the deceased person does not produce any income, authorise the spouse or lineal descendant to receive such share as he or she would be entitled to in the distribution of the estate of an intestate under section 27.
- (d) by substituting for the words “dependents” appearing in subsection (4) the words “spouse, lineal descendant or dependent relatives”;
- (e) by substituting for the words “dependents” appearing in subsection (5) the words “spouse, lineal descendants or dependent relatives.”

24. Replacement of section 43 of principal Act

The principal Act is amended by substituting for section 43, the following—

“43. Testamentary guardian

(1) A parent may by will appoint a guardian for his or her child.

(2) A person shall not, by will, deprive another person of parental rights, except where the parental rights were removed by court.”

25. Replacement of section 44 of principal Act

The principal Act is amended by substituting for section 44, the following—

“44. Statutory guardian

(1) Upon the death of either a father, a mother or both parents of a minor, where no guardian has been appointed by the will of the father or mother of the minor or if the guardian appointed by the will of either the mother or father is dead or refuses to act, the following persons shall, in the following order of priority, be the guardian or guardians of the minor of the deceased person—

- (a) the father or mother of the deceased parent of the minor;
- (b) the brothers and sisters of the deceased; or
- (c) the brothers and sisters of the father or mother of the deceased person.

(2) Where there is no person willing or entitled to be a guardian under subsection (1) (a), (b) or (c), the court may, on the application of any person interested in the welfare of the minor, appoint a guardian.