

SCHEDULES

SCHEDULE 14

Section 108(6).

TRANSITIONALS AND SAVINGS

Pending proceedings, etc.

- 1 (1) Subject to sub-paragraph (4), nothing in any provision of this Act (other than the repeals mentioned in sub-paragraph (2)) shall affect any proceedings which are pending immediately before the commencement of that provision.
- (2) The repeals are those of—
- (a) section 42(3) of the Matrimonial Causes Act 1973 (declaration by court that party to marriage unfit to have custody of children of family); and
 - (b) section 38 of the Sexual Offences Act 1956 (power of court to divest person of authority over girl or boy in cases of incest).
- (3) For the purposes of the following provisions of this Schedule, any reference to an order in force immediately before the commencement of a provision of this Act shall be construed as including a reference to an order made after that commencement in proceedings pending before that commencement.
- (4) Sub-paragraph (3) is not to be read as making the order in question have effect from a date earlier than that on which it was made.
- (5) An order under section 96(3) may make such provision with respect to the application of the order in relation to proceedings which are pending when the order comes into force as the Lord Chancellor considers appropriate.
- 2 Where, immediately before the day on which Part IV comes into force, there was in force an order under section 3(1) of the Children and Young Persons Act 1963 (order directing a local authority to bring a child or young person before a juvenile court under section 1 of the Children and Young Persons Act 1969), the order shall cease to have effect on that day.

CUSTODY ORDERS, ETC.

Cessation of declarations of unfitness, etc.

- 3 Where, immediately before the day on which Parts I and II come into force, there was in force—
- (a) a declaration under section 42(3) of the Matrimonial Causes Act 1973 (declaration by court that party to marriage unfit to have custody of children of family); or
 - (b) an order under section 38(1) of the Sexual Offences Act 1956 divesting a person of authority over a girl or boy in a case of incest;
- the declaration or, as the case may be, the order shall cease to have effect on that day.

Status: This is the original version (as it was originally enacted).

The Family Law Reform Act 1987 (c. 42)

Conversion of orders under section 4

- 4 Where, immediately before the day on which Parts I and II come into force, there was in force an order under section 4(1) of the Family Law Reform Act 1987 (order giving father parental rights and duties in relation to a child), then, on and after that day, the order shall be deemed to be an order under section 4 of this Act giving the father parental responsibility for the child.

Orders to which paragraphs 6 to 11 apply

- 5 (1) In paragraphs 6 to 11 “an existing order” means any order which—
- (a) is in force immediately before the commencement of Parts I and II;
 - (b) was made under any enactment mentioned in sub-paragraph (2);
 - (c) determines all or any of the following—
 - (i) who is to have custody of a child;
 - (ii) who is to have care and control of a child;
 - (iii) who is to have access to a child;
 - (iv) any matter with respect to a child’s education or upbringing; and
 - (d) is not an order of a kind mentioned in paragraph 15(1).
- (2) The enactments are—
- (a) the Domestic Proceedings and Magistrates’ Courts Act 1978;
 - (b) the Children Act 1975;
 - (c) the Matrimonial Causes Act 1973;
 - (d) the Guardianship of Minors Acts 1971 and 1973;
 - (e) the Matrimonial Causes Act 1965;
 - (f) the Matrimonial Proceedings (Magistrates’ Courts) Act 1960.
- (3) For the purposes of this paragraph and paragraphs 6 to 11 “custody” includes legal custody and joint as well as sole custody but does not include access.

Parental responsibility of parents

- 6 (1) Where—
- (a) a child’s father and mother were married to each other at the time of his birth; and
 - (b) there is an existing order with respect to the child,
- each parent shall have parental responsibility for the child in accordance with section 2 as modified by sub-paragraph (3).
- (2) Where—
- (a) a child’s father and mother were not married to each other at the time of his birth; and
 - (b) there is an existing order with respect to the child,
- section 2 shall apply as modified by sub-paragraphs (3) and (4).
- (3) The modification is that for section 2(8) there shall be substituted—

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“(8) The fact that a person has parental responsibility for a child does not entitle him to act in a way which would be incompatible with any existing order or any order made under this Act with respect to the child”.

(4) The modifications are that—

- (a) for the purposes of section 2(2), where the father has custody or care and control of the child by virtue of any existing order, the court shall be deemed to have made (at the commencement of that section) an order under section 4(1) giving him parental responsibility for the child; and
- (b) where by virtue of paragraph (a) a court is deemed to have made an order under section 4(1) in favour of a father who has care and control of a child by virtue of an existing order, the court shall not bring the order under section 4(1) to an end at any time while he has care and control of the child by virtue of the order.

Persons who are not parents but who have custody or care and control

7 (1) Where a person who is not the parent or guardian of a child has custody or care and control of him by virtue of an existing order, that person shall have parental responsibility for him so long as he continues to have that custody or care and control by virtue of the order.

(2) Where sub-paragraph (1) applies, Parts I and II shall have effect as modified by this paragraph.

(3) The modifications are that—

(a) for section 2(8) there shall be substituted—

“(8) The fact that a person has parental responsibility for a child does not entitle him to act in a way which would be incompatible with any existing order or with any order made under this Act with respect to the child”;

(b) at the end of section 10(4) there shall be inserted—

“(c) any person who has custody or care and control of a child by virtue of any existing order”; and

(c) at the end of section 34(1)(c) there shall be inserted—

“(cc) where immediately before the care order was made there was an existing order by virtue of which a person had custody or care and control of the child, that person.”

Persons who have care and control

8 (1) Sub-paragraphs (2) to (6) apply where a person has care and control of a child by virtue of an existing order, but they shall cease to apply when that order ceases to have effect.

(2) Section 5 shall have effect as if—

(a) for any reference to a residence order in favour of a parent or guardian there were substituted a reference to any existing order by virtue of which the parent or guardian has care and control of the child; and

(b) for subsection (9) there were substituted—

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“(9) Subsections (1) and (7) do not apply if the existing order referred to in paragraph (b) of those subsections was one by virtue of which a surviving parent of the child also had care and control of him.”

- (3) Section 10 shall have effect as if for subsection (5)(c)(i) there were substituted—
 “(i) in any case where by virtue of an existing order any person or persons has or have care and control of the child, has the consent of that person or each of those persons”.
- (4) Section 20 shall have effect as if for subsection (9)(a) there were substituted “who has care and control of the child by virtue of an existing order.”
- (5) Section 23 shall have effect as if for subsection (4)(c) there were substituted—
 “(c) where the child is in care and immediately before the care order was made there was an existing order by virtue of which a person had care and control of the child, that person.”
- (6) In Schedule 1, paragraphs 1(1) and 14(1) shall have effect as if for the words “in whose favour a residence order is in force with respect to the child” there were substituted “who has been given care and control of the child by virtue of an existing order”.

Persons who have access

- 9 (1) Sub-paragraphs (2) to (4) apply where a person has access by virtue of an existing order.
- (2) Section 10 shall have effect as if after subsection (5) there were inserted—
 “(5A) Any person who has access to a child by virtue of an existing order is entitled to apply for a contact order.”
- (3) Section 16(2) shall have effect as if after paragraph (b) there were inserted—
 “(bb) any person who has access to the child by virtue of an existing order.”
- (4) Sections 43(11), 44(13) and 46(10), shall have effect as if in each case after paragraph (d) there were inserted—
 “(dd) any person who has been given access to him by virtue of an existing order.”

Enforcement of certain existing orders

- 10 (1) Sub-paragraph (2) applies in relation to any existing order which, but for the repeal by this Act of—
 (a) section 13(1) of the Guardianship of Minors Act 1971;
 (b) section 43(1) of the Children Act 1975; or
 (c) section 33 of the Domestic Proceedings and Magistrates' Courts Act 1978,
 (provisions concerning the enforcement of custody orders) might have been enforced as if it were an order requiring a person to give up a child to another person.
- (2) Where this sub-paragraph applies, the existing order may, after the repeal of the enactments mentioned in sub-paragraph (1)(a) to (c), be enforced under section 14 as if—

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- (a) any reference to a residence order were a reference to the existing order; and
 - (b) any reference to a person in whose favour the residence order is in force were a reference to a person to whom actual custody of the child is given by an existing order which is in force.
- (3) In sub-paragraph (2) “actual custody”, in relation to a child, means the actual possession of his person.

Discharge of existing orders

- 11 (1) The making of a residence order or a care order with respect to a child who is the subject of an existing order discharges the existing order.
- (2) Where the court makes any section 8 order (other than a residence order) with respect to a child with respect to whom any existing order is in force, the existing order shall have effect subject to the section 8 order.
- (3) The court may discharge an existing order which is in force with respect to a child—
- (a) in any family proceedings relating to the child or in which any question arises with respect to the child’s welfare; or
 - (b) on the application of—
 - (i) any parent or guardian of the child;
 - (ii) the child himself; or
 - (iii) any person named in the order.
- (4) A child may not apply for the discharge of an existing order except with the leave of the court.
- (5) The power in sub-paragraph (3) to discharge an existing order includes the power to discharge any part of the order
- (6) In considering whether to discharge an order under the power conferred by sub-paragraph (3) the court shall, if the discharge of the order is opposed by any party to the proceedings, have regard in particular to the matters mentioned in section 1(3).

GUARDIANS

Existing guardians to be guardians under this Act

- 12 (1) Any appointment of a person as guardian of a child which—
- (a) was made—
 - (i) under sections 3 to 5 of the Guardianship of Minors Act 1971;
 - (ii) under section 38(3) of the Sexual Offences Act 1956; or
 - (iii) under the High Court’s inherent jurisdiction with respect to children;and
 - (b) has taken effect before the commencement of section 5,
- shall (subject to sub-paragraph (2)) be deemed, on and after the commencement of section 5, to be an appointment made and having effect under that section.
- (2) Where an appointment of a person as guardian of a child has effect under section 5 by virtue of sub-paragraph (1)(a)(ii), the appointment shall not have effect for a period which is longer than any period specified in the order.

Status: This is the original version (as it was originally enacted).

Appointment of guardian not yet in effect

- 13 Any appointment of a person to be a guardian of a child—
- (a) which was made as mentioned in paragraph 12(1)(a)(i); but
 - (b) which, immediately before the commencement of section 5, had not taken effect,
- shall take effect in accordance with section 5 (as modified, where it applies, by paragraph 8(2)).

Persons deemed to be appointed as guardians under existing wills

- 14 For the purposes of the Wills Act 1837 and of this Act any disposition by will and testament or devise of the custody and tuition of any child, made before the commencement of section 5 and paragraph 1 of Schedule 13, shall be deemed to be an appointment by will of a guardian of the child.

CHILDREN IN CARE

Children in compulsory care

- 15 (1) Sub-paragraph (2) applies where, immediately before the day on which Part IV comes into force, a person was—
- (a) in care by virtue of—
 - (i) a care order under section 1 of the Children and Young Persons Act 1969;
 - (ii) a care order under section 15 of that Act, on discharging a supervision order made under section 1 of that Act; or
 - (iii) an order or authorisation under section 25 or 26 of that Act;
 - (b) deemed, by virtue of—
 - (i) paragraph 7(3) of Schedule 5A to the Army Act 1955;
 - (ii) paragraph 7(3) of Schedule 5A to the Air Force Act 1955; or
 - (iii) paragraph 7(3) of Schedule 4A to the Naval Discipline Act 1957,
 to be the subject of a care order under the Children and Young Persons Act 1969;
 - (c) in care—
 - (i) under section 2 of the Child Care Act 1980; or
 - (ii) by virtue of paragraph 1 of Schedule 4 to that Act (which extends the meaning of a child in care under section 2 to include children in care under section 1 of the Children Act 1948),
 and a child in respect of whom a resolution under section 3 of the Act of 1980 or section 2 of the Act of 1948 was in force;
 - (d) a child in respect of whom a resolution had been passed under section 65 of the Child Care Act 1980;
 - (e) in care by virtue of an order under—
 - (i) section 2(1)(e) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960;
 - (ii) section 7(2) of the Family Law Reform Act 1969;
 - (iii) section 43(1) of the Matrimonial Causes Act 1973; or
 - (iv) section 2(2)(b) of the Guardianship Act 1973;

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- (v) section 10 of the Domestic Proceedings and Magistrates' Courts Act 1978,
(orders having effect for certain purposes as if the child had been received into care under section 2 of the Child Care Act 1980);
- (f) in care by virtue of an order made, on the revocation of a custodianship order, under section 36 of the Children Act 1975; or
- (g) in care by virtue of an order made, on the refusal of an adoption order, under section 26 of the Adoption Act 1976 or any order having effect (by virtue of paragraph 1 of Schedule 2 to that Act) as if made under that section.
- (2) Where this sub-paragraph applies, then, on and after the day on which Part IV commences—
- (a) the order or resolution in question shall be deemed to be a care order;
- (b) the authority in whose care the person was immediately before that commencement shall be deemed to be the authority designated in that deemed care order; and
- (c) any reference to a child in the care of a local authority shall include a reference to a person who is the subject of such a deemed care order,
- and the provisions of this Act shall apply accordingly, subject to paragraph 16.

Modifications

- 16 (1) Sub-paragraph (2) only applies where a person who is the subject of a care order by virtue of paragraph 15(2) is a person falling within sub-paragraph (1)(a) or (b) of that paragraph.
- (2) Where the person would otherwise have remained in care until reaching the age of nineteen, by virtue of—
- (a) section 20(3)(a) or 21(1) of the Children and Young Persons Act 1969; or
- (b) paragraph 7(5)(c)(i) of—
- (i) Schedule 5A to the Army Act 1955;
- (ii) Schedule 5A to the Air Force Act 1955; or
- (iii) Schedule 4A to the Naval Discipline Act 1957,
- this Act applies as if in section 91(12) for the word “eighteen” there were substituted “nineteen”.
- (3) Where a person who is the subject of a care order by virtue of paragraph 15(2) is a person falling within sub-paragraph (1)(b) of that paragraph, this Act applies as if section 101 were omitted.
- (4) Sub-paragraph (5) only applies where a child who is the subject of a care order by virtue of paragraph 15(2) is a person falling within sub-paragraph (1)(e) to (g) of that paragraph.
- (5) Where a court, on making the order, or at any time thereafter, gave directions under—
- (a) section 4(4)(a) of the Guardianship Act 1973; or
- (b) section 43(5)(a) of the Matrimonial Causes Act 1973,
- as to the exercise by the authority of any powers, those directions shall continue to have effect (regardless of any conflicting provision in this Act) until varied or discharged by a court under this sub-paragraph.

Status: This is the original version (as it was originally enacted).

Children placed with parent etc. while in compulsory care

- 17 (1) This paragraph applies where a child is deemed by paragraph 15 to be in the care of a local authority under an order or resolution which is deemed by that paragraph to be a care order.
- (2) If, immediately before the day on which Part III comes into force, the child was allowed to be under the charge and control of—
- (a) a parent or guardian under section 21(2) of the Child Care Act 1980; or
 - (b) a person who, before the child was in the authority's care, had care and control of the child by virtue of an order falling within paragraph 5,
- on and after that day the provision made by and under section 23(5) shall apply as if the child had been placed with the person in question in accordance with that provision.

Orders for access to children in compulsory care

- 18 (1) This paragraph applies to any access order—
- (a) made under section 12C of the Child Care Act 1980 (access orders with respect to children in care of local authorities); and
 - (b) in force immediately before the commencement of Part IV.
- (2) On and after the commencement of Part IV, the access order shall have effect as an order made under section 34 in favour of the person named in the order.
- 19 (1) This paragraph applies where, immediately before the commencement of Part IV, an access order made under section 12C of the Act of 1980 was suspended by virtue of an order made under section 12E of that Act (suspension of access orders in emergencies).
- (2) The suspending order shall continue to have effect as if this Act had not been passed.
- (3) If—
- (a) before the commencement of Part IV; and
 - (b) during the period for which the operation of the access order is suspended, the local authority concerned made an application for its variation or discharge to an appropriate juvenile court, its operation shall be suspended until the date on which the application to vary or discharge it is determined or abandoned.

Children in voluntary care

- 20 (1) This paragraph applies where, immediately before the day on which Part III comes into force—
- (a) a child was in the care of a local authority—
 - (i) under section 2(1) of the Child Care Act 1980; or
 - (ii) by virtue of paragraph 1 of Schedule 4 to that Act (which extends the meaning of references to children in care under section 2 to include references to children in care under section 1 of the Children Act 1948); and
 - (b) he was not a person in respect of whom a resolution under section 3 of the Act of 1980 or section 2 of the Act of 1948 was in force.

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- (2) Where this paragraph applies, the child shall, on and after the day mentioned in sub-paragraph (1), be treated for the purposes of this Act as a child who is provided with accommodation by the local authority under Part III, but he shall cease to be so treated once he ceases to be so accommodated in accordance with the provisions of Part III.
- (3) Where—
- (a) this paragraph applies; and
 - (b) the child, immediately before the day mentioned in sub-paragraph (1), was (by virtue of section 21(2) of the Act of 1980) under the charge and control of a person falling within paragraph 17(2)(a) or (b),
- the child shall not be treated for the purposes of this Act as if he were being looked after by the authority concerned.

Boarded out children

- 21 (1) Where, immediately before the day on which Part III comes into force, a child in the care of a local authority—
- (a) was—
 - (i) boarded out with a person under section 21(1)(a) of the Child Care Act 1980; or
 - (ii) placed under the charge and control of a person, under section 21(2) of that Act; and
 - (b) the person with whom he was boarded out, or (as the case may be) placed, was not a person falling within paragraph 17(2)(a) or (b),
- on and after that day, he shall be treated (subject to sub-paragraph (2)) as having been placed with a local authority foster parent and shall cease to be so treated when he ceases to be placed with that person in accordance with the provisions of this Act.
- (2) Regulations made under section 23(2)(a) shall not apply in relation to a person who is a local authority foster parent by virtue of sub-paragraph (1) before the end of the period of twelve months beginning with the day on which Part III comes into force and accordingly that person shall for that period be subject—
- (a) in a case falling within sub-paragraph (1)(a)(i), to terms and regulations mentioned in section 21(1)(a) of the Act of 1980; and
 - (b) in a case falling within sub-paragraph (1)(a)(ii), to terms fixed under section 21(2) of that Act and regulations made under section 22A of that Act, as if that Act had not been repealed by this Act.

Children in care to qualify for advice and assistance

- 22 Any reference in Part III to a person qualifying for advice and assistance shall be construed as including a reference to a person within the area of the local authority in question who is under twenty-one and who was, at any time after reaching the age of sixteen but while still a child—
- (a) a person falling within—
 - (i) any of paragraphs (a) to (g) of paragraph 15(1); or
 - (ii) paragraph 20(1); or
 - (b) the subject of a criminal care order (within the meaning of paragraph 34).

Status: This is the original version (as it was originally enacted).

Emigration of children in care

- 23 Where—
- (a) the Secretary of State has received a request in writing from a local authority that he give his consent under section 24 of the Child Care Act 1980 to the emigration of a child in their care; but
 - (b) immediately before the repeal of the Act of 1980 by this Act, he has not determined whether or not to give his consent,
- section 24 of the Act of 1980 shall continue to apply (regardless of that repeal) until the Secretary of State has determined whether or not to give his consent to the request.

Contributions for maintenance of children in care

- 24 (1) Where, immediately before the day on which Part III of Schedule 2 comes into force, there was in force an order made (or having effect as if made) under any of the enactments mentioned in sub-paragraph (2), then, on and after that day—
- (a) the order shall have effect as if made under paragraph 23(2) of Schedule 2 against a person liable to contribute; and
 - (b) Part III of Schedule 2 shall apply to the order, subject to the modifications in sub-paragraph (3).
- (2) The enactments are—
- (a) section 11(4) of the Domestic Proceedings and Magistrates' Courts Act 1978;
 - (b) section 26(2) of the Adoption Act 1976;
 - (c) section 36(5) of the Children Act 1975;
 - (d) section 2(3) of the Guardianship Act 1973;
 - (e) section 2(1)(h) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960,
- (provisions empowering the court to make an order requiring a person to make periodical payments to a local authority in respect of a child in care).
- (3) The modifications are that, in paragraph 23 of Schedule 2—
- (a) in sub-paragraph (4), paragraph (a) shall be omitted;
 - (b) for sub-paragraph (6) there shall be substituted—
 - “(6) Where—
 - (a) a contribution order is in force;
 - (b) the authority serve a contribution notice under paragraph 22; and
 - (c) the contributor and the authority reach an agreement under paragraph 22(7) in respect of the contribution notice, - the effect of the agreement shall be to discharge the order from the date on which it is agreed that the agreement shall take effect”;
 - and
 - (c) at the end of sub-paragraph (10) there shall be inserted—
 - “and
 - (c) where the order is against a person who is not a parent of the child, shall be made with due regard to—

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- (i) whether that person had assumed responsibility for the maintenance of the child, and, if so, the extent to which and basis on which he assumed that responsibility and the length of the period during which he met that responsibility;
- (ii) whether he did so knowing that the child was not his child;
- (iii) the liability of any other person to maintain the child.”

SUPERVISION ORDERS

Orders under section 1(3)(b) or 21(2) of the 1969 Act

- 25 (1) This paragraph applies to any supervision order—
- (a) made—
 - (i) under section 1(3)(b) of the Children and Young Persons Act 1969; or
 - (ii) under section 21(2) of that Act on the discharge of a care order made under section 1(3)(c) of that Act; and
 - (b) in force immediately before the commencement of Part IV.
- (2) On and after the commencement of Part IV, the order shall be deemed to be a supervision order made under section 31 and—
- (a) any requirement of the order that the child reside with a named individual shall continue to have effect while the order remains in force, unless the court otherwise directs;
 - (b) any other requirement imposed by the court, or directions given by the supervisor, shall be deemed to have been imposed or given under the appropriate provisions of Schedule 3.
- (3) Where, immediately before the commencement of Part IV, the order had been in force for a period of more than six months, it shall cease to have effect at the end of the period of six months beginning with the day on which Part IV comes into force unless—
- (a) the court directs that it shall cease to have effect at the end of a different period (which shall not exceed three years);
 - (b) it ceases to have effect earlier in accordance with section 91; or
 - (c) it would have ceased to have had effect earlier had this Act not been passed.
- (4) Where sub-paragraph (3) applies, paragraph 6 of Schedule 3 shall not apply.
- (5) Where, immediately before the commencement of Part IV, the order had been in force for less than six months it shall cease to have effect in accordance with section 91 and paragraph 6 of Schedule 3 unless—
- (a) the court directs that it shall cease to have effect at the end of a different period (which shall not exceed three years); or
 - (b) it would have ceased to have had effect earlier had this Act not been passed.

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Other supervision orders

- 26 (1) This paragraph applies to any order for the supervision of a child which was in force immediately before the commencement of Part IV and was made under—
- (a) section 2(1)(f) of the Matrimonial Proceedings (Magistrates Courts) Act 1960;
 - (b) section 7(4) of the Family Law Reform Act 1969;
 - (c) section 44 of the Matrimonial Causes Act 1973;
 - (d) section 2(2)(a) of the Guardianship Act 1973;
 - (e) section 34(5) or 36(3)(b) of the Children Act 1975;
 - (f) section 26(1)(a) of the Adoption Act 1976; or
 - (g) section 9 of the Domestic Proceedings and Magistrates Courts Act 1978.
- (2) The order shall not be deemed to be a supervision order made under any provision of this Act but shall nevertheless continue in force for a period of one year beginning with the day on which Part IV comes into force unless—
- (a) the court directs that it shall cease to have effect at the end of a lesser period; or
 - (b) it would have ceased to have had effect earlier had this Act not been passed.

PLACE OF SAFETY ORDERS

- 27 (1) This paragraph applies to—
- (a) any order or warrant authorising the removal of a child to a place of safety which—
 - (i) was made, or issued, under any of the enactments mentioned in sub-paragraph (2); and
 - (ii) was in force immediately before the commencement of Part IV; and
 - (b) any interim order made under section 23(5) of the Children and Young Persons Act 1963 or section 28(6) of the Children and Young Persons Act 1969.
- (2) The enactments are—
- (a) section 40 of the Children and Young Persons Act 1933 (warrant to search for or remove child);
 - (b) section 28(1) of the Children and Young Persons Act 1969 (detention of child in place of safety);
 - (c) section 34(1) of the Adoption Act 1976 (removal of protected children from unsuitable surroundings);
 - (d) section 12(1) of the Foster Children Act 1980 (removal of foster children kept in unsuitable surroundings).
- (3) The order or warrant shall continue to have effect as if this Act had not been passed.
- (4) Any enactment repealed by this Act shall continue to have effect in relation to the order or warrant so far as is necessary for the purposes of securing that the effect of the order is what it would have been had this Act not been passed.
- (5) Sub-paragraph (4) does not apply to the power to make an interim order or further interim order given by section 23(5) of the Children and Young Persons Act 1963 or section 28(6) of the Children and Young Persons Act 1969.

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- (6) Where, immediately before section 28 of the Children and Young Persons Act 1969 is repealed by this Act, a child is being detained under the powers granted by that section, he may continue to be detained in accordance with that section but subsection (6) shall not apply.

RECOVERY OF CHILDREN

- 28 The repeal by this Act of subsection (1) of section 16 of the Child Care Act 1980 (arrest of child absent from compulsory care) shall not affect the operation of that section in relation to any child arrested before the coming into force of the repeal.
- 29 (1) This paragraph applies where—
- (a) a summons has been issued under section 15 or 16 of the Child Care Act 1980 (recovery of children in voluntary or compulsory care); and
 - (b) the child concerned is not produced in accordance with the summons before the repeal of that section by this Act comes into force.
- (2) The summons, any warrant issued in connection with it and section 15 or (as the case may be) section 16, shall continue to have effect as if this Act had not been passed.
- 30 The amendment by paragraph 27 of Schedule 12 of section 32 of the Children and Young Persons Act 1969 (detention of absentees) shall not affect the operation of that section in relation to—
- (a) any child arrested; or
 - (b) any summons or warrant issued,
- under that section before the coming into force of that paragraph.

VOLUNTARY ORGANISATIONS: PARENTAL RIGHTS RESOLUTIONS

- 31 (1) This paragraph applies to a resolution—
- (a) made under section 64 of the Child Care Act 1980 (transfer of parental rights and duties to voluntary organisations); and
 - (b) in force immediately before the commencement of Part IV.
- (2) The resolution shall continue to have effect until the end of the period of six months beginning with the day on which Part IV comes into force unless it is brought to an end earlier in accordance with the provisions of the Act of 1980 preserved by this paragraph.
- (3) While the resolution remains in force, any relevant provisions of, or made under, the Act of 1980 shall continue to have effect with respect to it.
- (4) Sub-paragraph (3) does not apply to—
- (a) section 62 of the Act of 1980 and any regulations made under that section (arrangements by voluntary organisations for emigration of children); or
 - (b) section 65 of the Act of 1980 (duty of local authority to assume parental rights and duties).
- (5) Section 5(2) of the Act of 1980 (which is applied to resolutions under Part VI of that Act by section 64(7) of that Act) shall have effect with respect to the resolution as if the reference in paragraph (c) to an appointment of a guardian under section 5 of the Guardianship of Minors Act 1971 were a reference to an appointment of a guardian under section 5 of this Act.

Status: This is the original version (as it was originally enacted).

FOSTER CHILDREN

- 32 (1) This paragraph applies where—
- (a) immediately before the commencement of Part VIII, a child was a foster child within the meaning of the Foster Children Act 1980; and
 - (b) the circumstances of the case are such that, had Parts VIII and IX then been in force, he would have been treated for the purposes of this Act as a child who was being provided with accommodation in a children’s home and not as a child who was being privately fostered.
- (2) If the child continues to be cared for and provided with accommodation as before, section 63(1) and (10) shall not apply in relation to him if—
- (a) an application for registration of the home in question is made under section 63 before the end of the period of three months beginning with the day on which Part VIII comes into force; and
 - (b) the application has not been refused or, if it has been refused—
 - (i) the period for an appeal against the decision has not expired; or
 - (ii) an appeal against the refusal has been made but has not been determined or abandoned.
- (3) While section 63(1) and (10) does not apply, the child shall be treated as a privately fostered child for the purposes of Part IX.

NURSERIES AND CHILD MINDING

- 33 (1) Sub-paragraph (2) applies where, immediately before the commencement of Part X, any premises are registered under section 1(1)(a) of the Nurseries and Child-Minders Regulation Act 1948 (registration of premises, other than premises wholly or mainly used as private dwellings, where children are received to be looked after).
- (2) During the transitional period, the provisions of the Act of 1948 shall continue to have effect with respect to those premises to the exclusion of Part X.
- (3) Nothing in sub-paragraph (2) shall prevent the local authority concerned from registering any person under section 71(1)(b) with respect to the premises.
- (4) In this paragraph “the transitional period” means the period ending with—
- (a) the first anniversary of the commencement of Part X; or
 - (b) if earlier, the date on which the local authority concerned registers any person under section 71(1)(b) with respect to the premises.
- 34 (1) Sub-paragraph (2) applies where, immediately before the commencement of Part X—
- (a) a person is registered under section 1(1)(b) of the Act of 1948 (registration of persons who for reward receive into their homes children under the age of five to be looked after); and
 - (b) all the children looked after by him as mentioned in section 1(1)(b) of that Act are under the age of five.
- (2) During the transitional period, the provisions of the Act of 1948 shall continue to have effect with respect to that person to the exclusion of Part X.
- (3) Nothing in sub-paragraph (2) shall prevent the local authority concerned from registering that person under section 71(1)(a).

Status: This is the original version (as it was originally enacted).

- (4) In this paragraph “the transitional period” means the period ending with—
- (a) the first anniversary of the commencement of Part X; or
 - (b) if earlier, the date on which the local authority concerned registers that person under section 71(1)(a).

CHILDREN ACCOMMODATED IN CERTAIN ESTABLISHMENTS

- 35 In calculating, for the purposes of section 85(1)(a) or 86(1)(a), the period of time for which a child has been accommodated any part of that period which fell before the day on which that section came into force shall be disregarded.

CRIMINAL CARE ORDERS

- 36 (1) This paragraph applies where, immediately before the commencement of section 90(2) there was in force an order (“a criminal care order”) made—
- (a) under section 7(7)(a) of the Children and Young Persons Act 1969 (alteration in treatment of young offenders etc.); or
 - (b) under section 15(1) of that Act, on discharging a supervision order made under section 7(7)(b) of that Act.
- (2) The criminal care order shall continue to have effect until the end of the period of six months beginning with the day on which section 90(2) comes into force unless it is brought to an end earlier in accordance with—
- (a) the provisions of the Act of 1969 preserved by sub-paragraph (3)(a); or
 - (b) this paragraph.
- (3) While the criminal care order remains in force, any relevant provisions—
- (a) of the Act of 1969; and
 - (b) of the Child Care Act 1980,
- shall continue to have effect with respect to it.
- (4) While the criminal care order remains in force, a court may, on the application of the appropriate person, make—
- (a) a residence order;
 - (b) a care order or a supervision order under section 31;
 - (c) an education supervision order under section 36 (regardless of subsection (6) of that section); or
 - (d) an order falling within sub-paragraph (5),
- and shall, on making any of those orders, discharge the criminal care order.
- (5) The order mentioned in sub-paragraph (4)(d) is an order having effect as if it were a supervision order of a kind mentioned in section 12AA of the Act of 1969 (as inserted by paragraph 23 of Schedule 12), that is to say, a supervision order—
- (a) imposing a requirement that the child shall live for a specified period in local authority accommodation; but
 - (b) in relation to which the conditions mentioned in subsection (4) of section 12AA are not required to be satisfied.
- (6) The maximum period which may be specified in an order made under sub-paragraph (4)(d) is six months and such an order may stipulate that the child shall not live with a named person.

Status: This is the original version (as it was originally enacted).

- (7) Where this paragraph applies, section 5 of the Rehabilitation of Offenders Act 1974 (rehabilitation periods for particular sentences) shall have effect regardless of the repeals in it made by this Act.
- (8) In sub-paragraph (4) “appropriate person” means—
- (a) in the case of an application for a residence order, any person (other than a local authority) who has the leave of the court;
 - (b) in the case of an application for an education supervision order, a local education authority; and
 - (c) in any other case, the local authority to whose care the child was committed by the order.

MISCELLANEOUS

Consents under the Marriage Act 1949 (c. 76)

- 37 (1) In the circumstances mentioned in sub-paragraph (2), section 3 of and Schedule 2 to the Marriage Act 1949 (consents to marry) shall continue to have effect regardless of the amendment of that Act by paragraph 5 of Schedule 12.
- (2) The circumstances are that—
- (a) immediately before the day on which paragraph 5 of Schedule 12 comes into force, there is in force—
 - (i) an existing order, as defined in paragraph 5(1); or
 - (ii) an order of a kind mentioned in paragraph 16(1); and
 - (b) section 3 of and Schedule 2 to the Act of 1949 would, but for this Act, have applied to the marriage of the child who is the subject of the order.

The Children Act 1975 (c. 72)

- 38 The amendments of other enactments made by the following provisions of the Children Act 1975 shall continue to have effect regardless of the repeal of the Act of 1975 by this Act—
- (a) section 68(4), (5) and (7) (amendments of section 32 of the Children and Young Persons Act 1969); and
 - (b) in Schedule 3—
 - (i) paragraph 13 (amendments of Births and Deaths Registration Act 1953);
 - (ii) paragraph 43 (amendment of Perpetuities and Accumulations Act 1964);
 - (iii) paragraphs 46 and 47 (amendments of Health Services and Public Health Act 1968); and
 - (iv) paragraph 77 (amendment of Parliamentary and Other Pensions Act 1972).

The Child Care Act 1980 (c. 5)

- 39 The amendment made to section 106(2)(a) of the Children and Young Persons Act 1963 by paragraph 26 of Schedule 5 to the Child Care Act 1980 shall continue to have effect regardless of the repeal of the Act of 1980 by this Act.

Status: This is the original version (as it was originally enacted).

Legal aid

- 40 The Lord Chancellor may by order make such transitional and saving provisions as appear to him to be necessary or expedient, in consequence of any provision made by or under this Act, in connection with the operation of any provisions of the Legal Aid Act 1988 (including any provision of that Act which is amended or repealed by this Act).