

*Status: Point in time view as at 01/10/2001.*

**Changes to legislation:** Children Act 1989 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULES

VALID FROM 08/12/2008

### [<sup>F1</sup>SCHEDULE A1

#### ENFORCEMENT ORDERS

##### Textual Amendments

**F1** Sch. A1 inserted (8.12.2008) by [Children and Adoption Act 2006 \(c. 20\)](#), s. 4, **Sch. 1**; S.I. 2008/2870, **art. 2(2)(c)**

### SCHEDULE 1

Section 15(1).

#### FINANCIAL PROVISION FOR CHILDREN

##### *Orders for financial relief against parents*

- 1 (1) On an application made by a parent or guardian of a child, or by any person in whose favour a residence order is in force with respect to a child, the court may—
- (a) in the case of an application to the High Court or a county court, make one or more of the orders mentioned in sub-paragraph (2);
  - (b) in the case of an application to a magistrates' court, make one or both of the orders mentioned in paragraphs (a) and (c) of that sub-paragraph.
- (2) The orders referred to in sub-paragraph (1) are—
- (a) an order requiring either or both parents of a child—
    - (i) to make to the applicant for the benefit of the child; or
    - (ii) to make to the child himself,such periodical payments, for such term, as may be specified in the order;
  - (b) an order requiring either or both parents of a child—
    - (i) to secure to the applicant for the benefit of the child; or
    - (ii) to secure to the child himself,such periodical payments, for such term, as may be so specified;
  - (c) an order requiring either or both parents of a child—
    - (i) to pay to the applicant for the benefit of the child; or
    - (ii) to pay to the child himself,

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- such lump sum as may be so specified;
- (d) an order requiring a settlement to be made for the benefit of the child, and to the satisfaction of the court, of property—
- (i) to which either parent is entitled (either in possession or in reversion); and
- (ii) which is specified in the order;
- (e) an order requiring either or both parents of a child—
- (i) to transfer to the applicant, for the benefit of the child; or
- (ii) to transfer to the child himself,
- such property to which the parent is, or the parents are, entitled (either in possession or in reversion) as may be specified in the order.
- (3) The powers conferred by this paragraph may be exercised at any time.
- (4) An order under sub-paragraph (2)(a) or (b) may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.
- (5) Where a court makes an order under this paragraph—
- (a) it may at any time make a further such order under sub-paragraph (2)(a), (b) or (c) with respect to the child concerned if he has not reached the age of eighteen;
- (b) it may not make more than one order under sub-paragraph (2)(d) or (e) against the same person in respect of the same child.
- (6) On making, varying or discharging a residence order the court may exercise any of its powers under this Schedule even though no application has been made to it under this Schedule.
- [<sup>F2</sup>(7) Where a child is a ward of court, the court may exercise any of its powers under this Schedule even though no application has been made to it.]

#### **Textual Amendments**

**F2** Sch. 1 para. 1(7) inserted (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 116, [Sch. 16 para. 10\(2\)](#); S.I. 1991/1883, [art. 3](#), Sch.

#### **Commencement Information**

**I1** Sch. 1 para. 1 in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and S.I. 1991/828, [art. 3\(2\)](#)

### *Orders for financial relief for persons over eighteen*

- 2 (1) If, on an application by a person who has reached the age of eighteen, it appears to the court—
- (a) that the applicant is, will be or (if an order were made under this paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or
- (b) that there are special circumstances which justify the making of an order under this paragraph,

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the court may make one or both of the orders mentioned in sub-paragraph (2).

- (2) The orders are—
- (a) an order requiring either or both of the applicant’s parents to pay to the applicant such periodical payments, for such term, as may be specified in the order;
  - (b) an order requiring either or both of the applicant’s parents to pay to the applicant such lump sum as may be so specified.
- (3) An application may not be made under this paragraph by any person if, immediately before he reached the age of sixteen, a periodical payments order was in force with respect to him.
- (4) No order shall be made under this paragraph at a time when the parents of the applicant are living with each other in the same household.
- (5) An order under sub-paragraph (2)(a) may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.
- (6) In sub-paragraph (3) “periodical payments order” means an order made under—
- (a) this Schedule;
  - <sup>F3</sup>(b) .....
  - (c) section 23 or 27 of the <sup>M1</sup>Matrimonial Causes Act 1973;
  - (d) Part I of the <sup>M2</sup>Domestic Proceedings and Magistrates’ Courts Act 1978, for the making or securing of periodical payments.
- (7) The powers conferred by this paragraph shall be exercisable at any time.
- (8) Where the court makes an order under this paragraph it may from time to time while that order remains in force make a further such order.

**Textual Amendments**

**F3** Sch. 1 para. 2(6)(b) repealed (25.07.1991) by [Child Support Act 1991 \(c. 48, SIF 20\)](#), s. 58(2)(14) (with saving in s. 9(2))

**Commencement Information**

**I2** Sch. 1 para. 2 wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828](#), art. 3(2)

**Marginal Citations**

**M1** 1973 c. 18.

**M2** 1978 c. 22.

*Duration of orders for financial relief*

- 3 (1) The term to be specified in an order for periodical payments made under paragraph 1(2)(a) or (b) in favour of a child may begin with the date of the making of an application for the order in question or any later date [<sup>F4</sup>or a date ascertained in accordance with sub-paragraph (5) or (6)] but—

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- (a) shall not in the first instance extend beyond the child's seventeenth birthday unless the court thinks it right in the circumstances of the case to specify a later date; and
  - (b) shall not in any event extend beyond the child's eighteenth birthday.
- (2) Paragraph (b) of sub-paragraph (1) shall not apply in the case of a child if it appears to the court that—
- (a) the child is, or will be or (if an order were made without complying with that paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or
  - (b) there are special circumstances which justify the making of an order without complying with that paragraph.
- (3) An order for periodical payments made under paragraph 1(2)(a) or 2(2)(a) shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.
- (4) Where an order is made under paragraph 1(2)(a) or (b) requiring periodical payments to be made or secured to the parent of a child, the order shall cease to have effect if—
- (a) any parent making or securing the payments; and
  - (b) any parent to whom the payments are made or secured,
- live together for a period of more than six months.
- [<sup>F5</sup>(5) Where—
- (a) a maintenance assessment ("the current assessment") is in force with respect to a child; and
  - (b) an application is made for an order under paragraph 1(2)(a) or (b) of this Schedule for periodical payments in favour of that child—
    - (i) in accordance with section 8 of the Child Support Act 1991 <sup>F6</sup>; and
    - (ii) before the end of the period of 6 months beginning with the making of the current assessment,

the term to be specified in any such order made on that application may be expressed to begin on, or at any time after, the earliest permitted date.
- (6) For the purposes of subsection (5) above, "the earliest permitted date" is whichever is the later of—
- (a) the date 6 months before the application is made; or
  - (b) the date on which the current assessment took effect or, where successive maintenance assessments have been continuously in force with respect to a child, on which the first of those assessments took effect.
- (7) Where—
- (a) a maintenance assessment ceases to have effect or is cancelled by or under any provision of the Child Support Act 1991, and
  - (b) an application is made, before the end of the period of 6 months beginning with the relevant date, for an order for periodical payments under paragraph 1(2)(a) or (b) in favour of a child with respect to whom that maintenance assessment was in force immediately before it ceased to have effect or was cancelled,
- the term to be specified in any such order, or in any interim order under paragraph 9, made on that application may begin with the date on which that maintenance

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assessment ceased to have effect or, as the case may be, the date with effect from which it was cancelled, or any later date.

- (8) In sub-paragraph (7)(b)—
- (a) where the maintenance assessment ceased to have effect, the relevant date is the date on which it so ceased; and
  - (b) where the maintenance assessment was cancelled, the relevant date is the later of—
    - (i) the date on which the person who cancelled it did so, and
    - (ii) the date from which the cancellation first had effect.]

#### Textual Amendments

- F4** Words in [Sch. 1 para. 3\(1\)](#) inserted (5.4.1993) by [S.I. 1993/623, art. 2, Sch. 1 para.10](#)
- F5** [Sch. 1 para. 3\(5\)-\(8\)](#) inserted (5.4.1993) by [S.I. 1993/623, art. 2, Sch. 1 para.11](#)
- F6** [1991 c.48.](#)

#### Commencement Information

- I3** [Sch. 1 para. 3](#) wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828, art. 3\(2\)](#)

*Matters to which court is to have regard in making orders for financial relief*

- 4 (1) In deciding whether to exercise its powers under paragraph 1 or 2, and if so in what manner, the court shall have regard to all the circumstances including—
- (a) the income, earning capacity, property and other financial resources which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;
  - (b) the financial needs, obligations and responsibilities which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;
  - (c) the financial needs of the child;
  - (d) the income, earning capacity (if any), property and other financial resources of the child;
  - (e) any physical or mental disability of the child;
  - (f) the manner in which the child was being, or was expected to be, educated or trained.
- (2) In deciding whether to exercise its powers under paragraph 1 against a person who is not the mother or father of the child, and if so in what manner, the court shall in addition have regard to—
- (a) 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;
  - (b) whether he did so knowing that the child was not his child;
  - (c) the liability of any other person to maintain the child.

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- (3) Where the court makes an order under paragraph 1 against a person who is not the father of the child, it shall record in the order that the order is made on the basis that the person against whom the order is made is not the child's father.
- (4) The persons mentioned in sub-paragraph (1) are—
- (a) in relation to a decision whether to exercise its powers under paragraph 1, any parent of the child;
  - (b) in relation to a decision whether to exercise its powers under paragraph 2, the mother and father of the child;
  - (c) the applicant for the order;
  - (d) any other person in whose favour the court proposes to make the order.

**Commencement Information**

**I4** Sch. 1 para. 4 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Provisions relating to lump sums*

- 5 (1) Without prejudice to the generality of paragraph 1, an order under that paragraph for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses—
- (a) incurred in connection with the birth of the child or in maintaining the child; and
  - (b) reasonably incurred before the making of the order,
- to be met.
- (2) The amount of any lump sum required to be paid by an order made by a magistrates' court under paragraph 1 or 2 shall not exceed £1000 or such larger amount as the [F7Lord Chancellor] may from time to time by order fix for the purposes of this sub-paragraph.
- (3) The power of the court under paragraph 1 or 2 to vary or discharge an order for the making or securing of periodical payments by a parent shall include power to make an order under that provision for the payment of a lump sum by that parent.
- (4) The amount of any lump sum which a parent may be required to pay by virtue of sub-paragraph (3) shall not, in the case of an order made by a magistrates' court, exceed the maximum amount that may at the time of the making of the order be required to be paid under sub-paragraph (2), but a magistrates' court may make an order for the payment of a lump sum not exceeding that amount even though the parent was required to pay a lump sum by a previous order under this Act.
- (5) An order made under paragraph 1 or 2 for the payment of a lump sum may provide for the payment of that sum by instalments.
- (6) Where the court provides for the payment of a lump sum by instalments the court, on an application made either by the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying—
- (a) the number of instalments payable;
  - (b) the amount of any instalment payable;

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(c) the date on which any instalment becomes payable.

**Textual Amendments**

**F7** Words in [Sch. 1 para. 5\(2\)](#) substituted (1.4.1992) by [S.I. 1992/709, art. 3\(2\)](#), [Sch. 2](#) (with [art. 5\(2\)](#)).

**Modifications etc. (not altering text)**

**C1** [Sch. 1 para. 5\(2\)](#): functions of the Secretary of State transferred to the Lord Chancellor (1.4.1992) by [S.I. 1992/709, art. 3\(1\)](#), [Sch. 2](#) (with [art. 5\(2\)](#)).

**Commencement Information**

**I5** [Sch. 1 para. 5](#) wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828, art. 3\(2\)](#)

*Variation etc. of orders for periodical payments*

- 6
- (1) In exercising its powers under paragraph 1 or 2 to vary or discharge an order for the making or securing of periodical payments the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order.
  - (2) The power of the court under paragraph 1 or 2 to vary an order for the making or securing of periodical payments shall include power to suspend any provision of the order temporarily and to revive any provision so suspended.
  - (3) Where on an application under paragraph 1 or 2 for the variation or discharge of an order for the making or securing of periodical payments the court varies the payments required to be made under that order, the court may provide that the payments as so varied shall be made from such date as the court may specify, [F8except that, subject to sub-paragraph (9), the date shall not be] earlier than the date of the making of the application.
  - (4) An application for the variation of an order made under paragraph 1 for the making or securing of periodical payments to or for the benefit of a child may, if the child has reached the age of sixteen, be made by the child himself.
  - (5) Where an order for the making or securing of periodical payments made under paragraph 1 ceases to have effect on the date on which the child reaches the age of sixteen, or at any time after that date but before or on the date on which he reaches the age of eighteen, the child may apply to the court which made the order for an order for its revival.
  - (6) If on such an application it appears to the court that—
    - (a) the child is, will be or (if an order were made under this sub-paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or
    - (b) there are special circumstances which justify the making of an order under this paragraph,the court shall have power by order to revive the order from such date as the court may specify, not being earlier than the date of the making of the application.

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- (7) Any order which is revived by an order under sub-paragraph (5) may be varied or discharged under that provision, on the application of any person by whom or to whom payments are required to be made under the revived order.
- (8) An order for the making or securing of periodical payments made under paragraph 1 may be varied or discharged, after the death of either parent, on the application of a guardian of the child concerned.
- [<sup>F9</sup>(9) Where—
- (a) an order under paragraph 1(2)(a) or (b) for the making or securing of periodical payments in favour of more than one child (“the order”) is in force;
  - (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;
  - (c) a maintenance assessment (“the assessment”) is made with respect to one or more, but not all, of the children with respect to whom those payments are to be made; and
  - (d) an application is made, before the end of the period of 6 months beginning with the date on which the assessment was made, for the variation or discharge of the order,

the court may, in exercise of its powers under paragraph 1 to vary or discharge the order, direct that the variation or discharge shall take effect from the date on which the assessment took effect or any later date.]

#### Textual Amendments

- F8** Words in [Sch. 1 para. 6\(3\)](#) substituted (5.4.1993) by [S.I. 1993/623, art. 2, Sch. 1 para. 12](#)  
**F9** [Sch. 1 para. 6\(9\)](#) inserted (5.4.1993) by [S.I. 1993/623, art. 2, Sch. 1 para.13](#)

#### Commencement Information

- I6** [Sch. 1 para. 6](#) wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828, art. 3\(2\)](#)

*[<sup>F10</sup>Variation of orders for periodical payments etc. made by magistrates’ courts]*

#### Textual Amendments

- F10** [Sch. 1 para. 6A](#) inserted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\), s. 6; S.I. 1992/455, art. 2](#)

- <sup>F11</sup>6A (1) Subject to sub-paragraphs (7) and (8), the power of a magistrates’ court—
- (a) under paragraph 1 or 2 to vary an order for the making of periodical payments, or
  - (b) under paragraph 5(6) to vary an order for the payment of a lump sum by instalments,

shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates’ Courts Act 1980.

- (2) In any case where—



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- (a) a magistrates' court has made an order under this Schedule for the making of periodical payments or for the payment of a lump sum by instalments, and
- (b) payments under the order are required to be made by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.),

any person entitled to make an application under this Schedule for the variation of the order (in this paragraph referred to as "the applicant") may apply to the clerk to the justices for the petty sessions area for which the court is acting for the order to be varied as mentioned in sub-paragraph (3).

- (3) Subject to sub-paragraph (5), where an application is made under sub-paragraph (2), the clerk, after giving written notice (by post or otherwise) of the application to any interested party and allowing that party, within the period of 14 days beginning with the date of the giving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made [<sup>F12</sup>to the justices' chief executive for the court].
- (4) The clerk may proceed with an application under sub-paragraph (2) notwithstanding that any such interested party as is referred to in sub-paragraph (3) has not received written notice of the application.
- (5) Where an application has been made under sub-paragraph (2), the clerk may, if he considers it inappropriate to exercise his power under sub-paragraph (3), refer the matter to the court which, subject to sub-paragraphs (7) and (8), may vary the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the <sup>M3</sup>Magistrates' Courts Act 1980.
- (6) Subsection (4) of section 59 of the Magistrates' Courts Act 1980 (power of court to order that account be opened) shall apply for the purposes of sub-paragraphs (1) and (5) as it applies for the purposes of that section.
- (7) Before varying the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Courts Act 1980, the court shall have regard to any representations made by the parties to the application.
- (8) If the court does not propose to exercise its power [<sup>F13</sup>under paragraph (c), (cc) or (d)] of subsection (3) of section 59 of the Magistrates' Courts Act 1980, the court shall, unless upon representations expressly made in that behalf by the applicant for the order it is satisfied that it is undesirable to do so, exercise its power under paragraph (b) of that subsection.
- (9) None of the powers of the court, or of the clerk to the justices, conferred by this paragraph shall be exercisable in relation to an order under this Schedule for the making of periodical payments, or for the payment of a lump sum by instalments, which is not a qualifying maintenance order (within the meaning of section 59 of the Magistrates' Courts Act 1980).
- (10) In sub-paragraphs (3) and (4) "interested party", in relation to an application made by the applicant under sub-paragraph (2), means a person who would be entitled to be a party to an application for the variation of the order made by the applicant under any other provision of this Schedule if such an application were made.

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#### Textual Amendments

- F11** Sch. 1 para. 6A inserted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\)](#) , [s. 6](#) ; [S.I. 1992/455](#) , [art. 2](#) .
- F12** Words in [Sch. 1 para. 6A\(3\)](#) substituted (1.4.2001) by [1999 c. 22, s. 90](#), [Sch. 13 para. 161](#) (with [s. 107](#), [Sch. 14 para. 7\(2\)](#)); [S.I. 2001/916](#), [art. 2\(a\)\(ii\)](#)
- F13** Words in sub-para. (8) of para. 6A of Sch. 1 substituted (11.4.1994) by [S.I. 1994/731](#), [art. 4](#)

#### Modifications etc. (not altering text)

- C2** Sch. 1 para. 6A excluded by [1972 c. 18](#) , [s. 34A\(1\)](#) (as inserted (1.4.1992) by [1991 c. 17](#) , [Sch. 1 para. 19\(2\)](#) ; [S.I. 1992/455](#) , [art. 2](#) )

#### Marginal Citations

- M3** [1980 c. 43](#).

#### *Variation of orders for secured periodical payments after death of parent*

- 7 (1) Where the parent liable to make payments under a secured periodical payments order has died, the persons who may apply for the variation or discharge of the order shall include the personal representatives of the deceased parent.
- (2) No application for the variation of the order shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that parent is first taken out.
- (3) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the end of the period of six months referred to in sub-paragraph (2) on the ground that they ought to have taken into account the possibility that the court might permit an application for variation to be made after that period by the person entitled to payments under the order.
- (4) Sub-paragraph (3) shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the variation of an order in accordance with this paragraph.
- (5) Where an application to vary a secured periodical payments order is made after the death of the parent liable to make payments under the order, the circumstances to which the court is required to have regard under paragraph 6(1) shall include the changed circumstances resulting from the death of the parent.
- (6) In considering for the purposes of sub-paragraph (2) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.
- (7) In this paragraph “secured periodical payments order” means an order for secured periodical payments under paragraph 1(2)(b).

#### Commencement Information

- I7** [Sch. 1 para. 7](#) wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828](#), [art. 3\(2\)](#)

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### *Financial relief under other enactments*

- 8 (1) This paragraph applies where a residence order is made with respect to a child at a time when there is in force an order (“the financial relief order”) made under any enactment other than this Act and requiring a person to contribute to the child’s maintenance.
- (2) Where this paragraph applies, the court may, on the application of—
- (a) any person required by the financial relief order to contribute to the child’s maintenance; or
  - (b) any person in whose favour a residence order with respect to the child is in force,
- make an order revoking the financial relief order, or varying it by altering the amount of any sum payable under that order or by substituting the applicant for the person to whom any such sum is otherwise payable under that order.

#### **Commencement Information**

**I8** Sch. 1 para. 8 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *Interim orders*

- 9 (1) Where an application is made under paragraph 1 or 2 the court may, at any time before it disposes of the application, make an interim order—
- (a) requiring either or both parents to make such periodical payments, at such times and for such term as the court thinks fit; and
  - (b) giving any direction which the court thinks fit.
- (2) An interim order made under this paragraph may provide for payments to be made from such date as the court may specify [<sup>F14</sup>except that, subject to paragraph 3(5) and (6), the date shall not be] earlier than the date of the making of the application under paragraph 1 or 2.
- (3) An interim order made under this paragraph shall cease to have effect when the application is disposed of or, if earlier, on the date specified for the purposes of this paragraph in the interim order.
- (4) An interim order in which a date has been specified for the purposes of sub-paragraph (3) may be varied by substituting a later date.

#### **Textual Amendments**

**F14** Words in Sch. 1 para. 9(2) substituted (5.4.1993) by S.I. 1993/623, art. 2, Sch. 1 para.14

#### **Commencement Information**

**I9** Sch. 1 para. 9 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Status: Point in time view as at 01/10/2001.*

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### *Alteration of maintenance agreements*

- 10 (1) In this paragraph and in paragraph 11 “maintenance agreement” means any agreement in writing made with respect to a child, whether before or after the commencement of this paragraph, which—
- (a) is or was made between the father and mother of the child; and
  - (b) contains provision with respect to the making or securing of payments, or the disposition or use of any property, for the maintenance or education of the child,
- and any such provisions are in this paragraph, and paragraph 11, referred to as “financial arrangements”.
- (2) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in England and Wales, then, either party may apply to the court for an order under this paragraph.
- (3) If the court to which the application is made is satisfied either—
- (a) that, by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different financial arrangements; or
  - (b) that the agreement does not contain proper financial arrangements with respect to the child,
- then that court may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it as may appear to it to be just having regard to all the circumstances.
- (4) If the maintenance agreement is altered by an order under this paragraph, the agreement shall have effect thereafter as if the alteration had been made by agreement between the parties and for valuable consideration.
- (5) Where a court decides to make an order under this paragraph altering the maintenance agreement—
- (a) by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the child; or
  - (b) by increasing the rate of periodical payments required to be made or secured by one of the parties for the maintenance of the child,
- then, in deciding the term for which under the agreement as altered by the order the payments or (as the case may be) the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of sub-paragraphs (1) and (2) of paragraph 3 as if the order were an order under paragraph 1(2)(a) or (b).
- (6) A magistrates’ court shall not entertain an application under sub-paragraph (2) unless both the parties to the agreement are resident in England and Wales and at least one of the parties is resident in the commission area<sup>F15</sup> . . . for which the court is appointed, and shall not have power to make any order on such an application except—
- (a) in a case where the agreement contains no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the child;

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(b) in a case where the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

(7) For the avoidance of doubt it is hereby declared that nothing in this paragraph affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

#### Textual Amendments

**F15** Words in [Sch. 1 para. 10\(6\)](#) repealed (27.9.1999) by [1999 c. 22, ss. 106, 108\(3\)](#), [Sch. 15 Pt. V\(1\)](#) (with [s. 107, Sch. 14 para. 7\(2\), 36\(9\)](#))

#### Commencement Information

**I10** [Sch. 1 para 10](#) wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828, art. 3\(2\)](#)

- 11 (1) Where a maintenance agreement provides for the continuation, after the death of one of the parties, of payments for the maintenance of a child and that party dies domiciled in England and Wales, the surviving party or the personal representatives of the deceased party may apply to the High Court or a county court for an order under paragraph 10.
- (2) If a maintenance agreement is altered by a court on an application under this paragraph, the agreement shall have effect thereafter as if the alteration had been made, immediately before the death, by agreement between the parties and for valuable consideration.
- (3) An application under this paragraph shall not, except with leave of the High Court or a county court, be made after the end of the period of six months beginning with the day on which representation in regard to the estate of the deceased is first taken out.
- (4) In considering for the purposes of sub-paragraph (3) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.
- (5) A county court shall not entertain an application under this paragraph, or an application for leave to make an application under this paragraph, unless it would have jurisdiction to hear and determine proceedings for an order under section 2 of the <sup>M4</sup>Inheritance (Provision for Family and Dependants) Act 1975 in relation to the deceased's estate by virtue of section 25 of the <sup>M5</sup>County Courts Act 1984 (jurisdiction under the Act of 1975).
- (6) The provisions of this paragraph shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiry of the period of six months referred to in sub-paragraph (3) on the ground that they ought to have taken into account the possibility that a court might grant leave for an application by virtue of this paragraph to be made by the surviving party after that period.

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- (7) Sub-paragraph (6) shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this paragraph.

**Commencement Information**

**I11** Sch. 1 para 11 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M4** 1975 c. 63.

**M5** 1984 c. 28.

*Enforcement of orders for maintenance*

- 12 (1) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made by a magistrates' court under this Act shall give notice of any change of address to such person (if any) as may be specified in the order.
- (2) Any person failing without reasonable excuse to give such a notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) An order for the payment of money made by a magistrates' court under this Act shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the <sup>M6</sup>Magistrates' Courts Act 1980.

**Commencement Information**

**I12** Sch. 1 para. 12 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M6** 1980 c. 43.

*Direction for settlement of instrument by conveyancing counsel*

- 13 Where the High Court or a county court decides to make an order under this Act for the securing of periodical payments or for the transfer or settlement of property, it may direct that the matter be referred to one of the conveyancing counsel of the court to settle a proper instrument to be executed by all necessary parties.

**Commencement Information**

**I13** Sch. 1 para. 13 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Financial provision for child resident in country outside England and Wales*

- 14 (1) Where one parent of a child lives in England and Wales and the child lives outside England and Wales with—

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- (a) another parent of his;
- (b) a guardian of his; or
- (c) a person in whose favour a residence order is in force with respect to the child,

the court shall have power, on an application made by any of the persons mentioned in paragraphs (a) to (c), to make one or both of the orders mentioned in paragraph 1(2)(a) and (b) against the parent living in England and Wales.

- (2) Any reference in this Act to the powers of the court under paragraph 1(2) or to an order made under paragraph 1(2) shall include a reference to the powers which the court has by virtue of sub-paragraph (1) or (as the case may be) to an order made by virtue of sub-paragraph (1).

#### Commencement Information

**I14** Sch. 1 para. 14 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Local authority contribution to child's maintenance*

- 15 (1) Where a child lives, or is to live, with a person as the result of a residence order, a local authority may make contributions to that person towards the cost of the accommodation and maintenance of the child.
- (2) Sub-paragraph (1) does not apply where the person with whom the child lives, or is to live, is a parent of the child or the husband or wife of a parent of the child.

#### Commencement Information

**I15** Sch. 1 para. 15 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Interpretation*

- 16 (1) In this Schedule “child” includes, in any case where an application is made under paragraph 2 or 6 in relation to a person who has reached the age of eighteen, that person.
- (2) In this Schedule, except paragraphs 2 and 15, “parent” includes any party to a marriage (whether or not subsisting) in relation to whom the child concerned is a child of the family; and for this purpose any reference to either parent or both parents shall be construed as references to any parent of his and to all of his parents.
- [<sup>F16</sup>(3) In this Schedule, “maintenance assessment” has the same meaning as it has in the Child Support Act 1991 by virtue of section 54 of that Act as read with any regulations in force under that section.]

#### Textual Amendments

**F16** Sch. 1 para. 16(3) inserted (5.4.1993) by S.I. 1993/623, art. 2, Sch. 1 para. 15

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**Commencement Information**

**I16** Sch. 1 para. 16 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

SCHEDULE 2

Sections 17, 23 and 29.

LOCAL AUTHORITY SUPPORT FOR CHILDREN AND FAMILIES

**Modifications etc. (not altering text)**

**C3** Sch. 2 modified (temp.) (12.2.2009 for E. and 31.3.2010 for W.) by Children and Young Persons Act 2008 (c. 23), ss. 8(3), 44, Sch. 2 para. 2; S.I. 2009/268, art. 3(1)(b); S.I. 2010/749, art. 2(a)

**Commencement Information**

**I17** Sch. 2 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

PART I

PROVISION OF SERVICES FOR FAMILIES

**Commencement Information**

**I18** Sch. 2 Part I wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Identification of children in need and provision of information*

- 1 (1) Every local authority shall take reasonable steps to identify the extent to which there are children in need within their area.
- (2) Every local authority shall—
- (a) publish information—
    - (i) about services provided by them under sections 17, 18, [F1720, 23B to 23D, 24A and 24B]; and
    - (ii) where they consider it appropriate, about the provision by others (including, in particular, voluntary organisations) of services which the authority have power to provide under those sections; and
  - (b) take such steps as are reasonably practicable to ensure that those who might benefit from the services receive the information relevant to them.

**Textual Amendments**

**F17** Words in Sch. 2 Pt. I para. 1(2)(a)(i) substituted (1.10.2001) by 2000 c. 35, s. 7(4); S.I. 2001/2191, art. 2; S.I. 2001/2878, art. 2

**Commencement Information**

**I19** Sch. 2 Pt. I para. 1 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)



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### *[<sup>F18</sup>Children's services plans]*

#### **Textual Amendments**

**F18** Sch. 2 para. 1A and cross heading inserted (1.4.1996) by S.I. 1996/785, art. 2

- <sup>F19</sup>1A (1) Every local authority shall, on or before 31st March 1997—
- (a) review their provision of services under sections 17, 20, 21, 23 and 24; and
  - (b) having regard to that review and to their most recent review under section 19, prepare and publish a plan for the provision of services under Part III.
- (2) Every local authority—
- (a) shall, from time to time review the plan prepared by them under subparagraph (1)(b) (as modified or last substituted under this subparagraph), and
  - (b) may, having regard to that review and to their most recent review under section 19, prepare and publish—
    - (i) modifications (or, as the case may be, further modifications) to the plan reviewed; or
    - (ii) a plan in substitution for that plan.
- (3) In carrying out any review under this paragraph and in preparing any plan or modifications to a plan, a local authority shall consult—
- (a) every [<sup>F20</sup>Health Authority and Primary Care Trust] the whole or any part of whose area lies within the area of the local authority;
  - (b) every National Health Service trust which manages a hospital, establishment or facility (within the meaning of the National Health Service and Community Care Act 1990) <sup>F21</sup> in the authority's area;
  - (c) if the local authority is not itself a local education authority, every local education authority the whole or any part of whose area lies within the area of the local authority;
  - (d) any organisation which represents schools in the authority's area which are grant-maintained schools or grant-maintained special schools (within the meaning of the Education Act 1993) <sup>F22</sup>;
  - (e) the governing body of every such school in the authority's area which is not so represented;
  - (f) such voluntary organisations as appear to the local authority—
    - (i) to represent the interests of persons who use or are likely to use services provided by the local authority under Part III; or
    - (ii) to provide services in the area of the local authority which, were they to be provided by the local authority, might be categorised as services provided under that Part.
  - (g) the chief constable of the police force for the area <sup>F23</sup>;
  - (h) the probation committee for the area <sup>F24</sup>;
  - (i) such other persons as appear to the local authority to be appropriate; and
  - (j) such other persons as the Secretary of State may direct.

*Status: Point in time view as at 01/10/2001.*

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- (4) Every local authority shall, within 28 days of receiving a written request from the Secretary of State, submit to him a copy of—
- (a) the plan prepared by them under sub-paragraph (1); or
  - (b) where that plan has been modified or substituted, the plan as modified or last substituted.

#### Textual Amendments

- F19** Sch. 2 para. 1A inserted (1.4.1996) by S.I. 1996/785, art. 2
- F20** Words in Sch. 2 para. 1A(3)(a) substituted (8.2.2000) by S.I. 2000/90, art. 3(1), Sch. 1 para. 24(11) (with art. 2(5))
- F21** 1990 c.19. See in particular section 5.
- F22** 1993 c.35. “Grant-maintained school” and “grant-maintained special school” are defined in section 306 of the Act.
- F23** The chief constable is appointed by the police authority for the area under section 5A of the Police Act 1964 (c.48), which was inserted by section 5 of the Police and Magistrates' Courts Act 1994 (c.29).
- F24** Probation committees are constituted under section 3 of the Probation Service Act 1993 (c.47).

#### Modifications etc. (not altering text)

- C4** Sch. 2 para. 1A: functions of local authority not to be sole responsibility of an executive of the authority (E.)(16.11.2000) by virtue of S.I. 2000/2853, reg. 4(1), Sch. 3

#### *Maintenance of a register of disabled children*

- 2 (1) Every local authority shall open and maintain a register of disabled children within their area.
- (2) The register may be kept by means of a computer.

#### Commencement Information

- I20** Sch. 2 Pt. I para. 2 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Assessment of children's needs*

- 3 Where it appears to a local authority that a child within their area is in need, the authority may assess his needs for the purposes of this Act at the same time as any assessment of his needs is made under—
- (a) the <sup>M7</sup>Chronically Sick and Disabled Persons Act 1970;
  - (b) [<sup>F25</sup>Part IV of the Education Act 1996];
  - (c) the <sup>M8</sup>Disabled Persons (Services, Consultation and Representation) Act 1986; or
  - (d) any other enactment.

#### Textual Amendments

- F25** Words in Sch. 2 para. 3(b) substituted (1.11.1996) by 1996 c. 56, ss. 1(4), 582(1), 583(2), Sch. 37, para. 92

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**Commencement Information**

**I21** Sch. 2 Pt. I para. 3 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M7** 1970 c. 44.

**M8** 1986 c. 33.

*Prevention of neglect and abuse*

- 4 (1) Every local authority shall take reasonable steps, through the provision of services under Part III of this Act, to prevent children within their area suffering ill-treatment or neglect.
- (2) Where a local authority believe that a child who is at any time within their area—
- (a) is likely to suffer harm; but
  - (b) lives or proposes to live in the area of another local authority
- they shall inform that other local authority.
- (3) When informing that other local authority they shall specify—
- (a) the harm that they believe he is likely to suffer; and
  - (b) (if they can) where the child lives or proposes to live.

**Commencement Information**

**I22** Sch. 2 Pt. I para. 4 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Provision of accommodation in order to protect child*

- 5 (1) Where—
- (a) it appears to a local authority that a child who is living on particular premises is suffering, or is likely to suffer, ill treatment at the hands of another person who is living on those premises; and
  - (b) that other person proposes to move from the premises,
- the authority may assist that other person to obtain alternative accommodation.
- (2) Assistance given under this paragraph may be in cash.
- (3) Subsections (7) to (9) of section 17 shall apply in relation to assistance given under this paragraph as they apply in relation to assistance given under that section.

**Commencement Information**

**I23** Sch. 2 Pt. I para. 5 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Provision for disabled children*

- 6 Every local authority shall provide services designed—

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- (a) to minimise the effect on disabled children within their area of their disabilities; and
- (b) to give such children the opportunity to lead lives which are as normal as possible.

**Commencement Information**

**I24** Sch. 2 Pt. I para. 6 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Provision to reduce need for care proceedings etc.*

- 7 Every local authority shall take reasonable steps designed—
- (a) to reduce the need to bring—
    - (i) proceedings for care or supervision orders with respect to children within their area;
    - (ii) criminal proceedings against such children;
    - (iii) any family or other proceedings with respect to such children which might lead to them being placed in the authority's care; or
    - (iv) proceedings under the inherent jurisdiction of the High Court with respect to children;
  - (b) to encourage children within their area not to commit criminal offences; and
  - (c) to avoid the need for children within their area to be placed in secure accommodation.

**Commencement Information**

**I25** Sch. 2 Pt. I para. 7 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Provision for children living with their families*

- 8 Every local authority shall make such provision as they consider appropriate for the following services to be available with respect to children in need within their area while they are living with their families—
- (a) advice, guidance and counselling;
  - (b) occupational, social, cultural or recreational activities;
  - (c) home help (which may include laundry facilities);
  - (d) facilities for, or assistance with, travelling to and from home for the purpose of taking advantage of any other service provided under this Act or of any similar service;
  - (e) assistance to enable the child concerned and his family to have a holiday.

**Commencement Information**

**I26** Sch. 2 Pt. I para. 8 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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VALID FROM 28/03/2011

*f<sup>26</sup> Provision for accommodated children*

**Textual Amendments**

**F26** Sch. 2 para. 8A and cross-heading inserted (28.3.2011 for W., 1.4.2011 for E.) by Children and Young Persons Act 2008 (c. 23), ss. 19, 44; S.I. 2010/2981, art. 4(f); S.I. 2011/949, art. 3(1)(b)

- 8A (1) Every local authority shall make provision for such services as they consider appropriate to be available with respect to accommodated children.
- (2) “Accommodated children” are those children in respect of whose accommodation the local authority have been notified under section 85 or 86.
- (3) The services shall be provided with a view to promoting contact between each accommodated child and that child's family.
- (4) The services may, in particular, include—
- (a) advice, guidance and counselling;
  - (b) services necessary to enable the child to visit, or to be visited by, members of the family;
  - (c) assistance to enable the child and members of the family to have a holiday together.
- (5) Nothing in this paragraph affects the duty imposed by paragraph 10.]

*Family centres*

- 9 (1) Every local authority shall provide such family centres as they consider appropriate in relation to children within their area.
- (2) “Family centre” means a centre at which any of the persons mentioned in subparagraph (3) may—
- (a) attend for occupational, social, cultural or recreational activities;
  - (b) attend for advice, guidance or counselling; or
  - (c) be provided with accommodation while he is receiving advice, guidance or counselling.
- (3) The persons are—
- (a) a child;
  - (b) his parents;
  - (c) any person who is not a parent of his but who has parental responsibility for him;
  - (d) any other person who is looking after him.

**Commencement Information**

**I27** Sch. 2 Pt. I para. 9 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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### *Maintenance of the family home*

- 10 Every local authority shall take such steps as are reasonably practicable, where any child within their area who is in need and whom they are not looking after is living apart from his family—
- (a) to enable him to live with his family; or
  - (b) to promote contact between him and his family,
- if, in their opinion, it is necessary to do so in order to safeguard or promote his welfare.

#### **Commencement Information**

**I28** Sch. 2 Pt. I para. 10 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *Duty to consider racial groups to which children in need belong*

- 11 Every local authority shall, in making any arrangements—
- (a) for the provision of day care within their area; or
  - (b) designed to encourage persons to act as local authority foster parents,
- have regard to the different racial groups to which children within their area who are in need belong.

#### **Commencement Information**

**I29** Sch. 2 Pt. I para. 11 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## **PART II**

### CHILDREN LOOKED AFTER BY LOCAL AUTHORITIES

#### *Regulations as to placing of children with local authority foster parents*

- <sup>F27</sup>12 Regulations under section 23(2)(a) may, in particular, make provision—
- (a) with regard to the welfare of children placed with local authority foster parents;
  - (b) as to the arrangements to be made by local authorities in connection with the health and education of such children;
  - (c) as to the records to be kept by local authorities;
  - (d) for securing that a child is not placed with a local authority foster parent unless that person is for the time being approved as a local authority foster parent by such local authority as may be prescribed;
  - (e) for securing that where possible the local authority foster parent with whom a child is to be placed is—
    - (i) of the same religious persuasion as the child; or
    - (ii) gives an undertaking that the child will be brought up in that religious persuasion;
  - (f) for securing that children placed with local authority foster parents, and the premises in which they are accommodated, will be supervised and

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- inspected by a local authority and that the children will be removed from those premises if their welfare appears to require it;
- (g) as to the circumstances in which local authorities may make arrangements for duties imposed on them by the regulations to be discharged, on their behalf.

#### Textual Amendments

**F27** Sch. 2 paras. 12A-12G substituted (prosp.) for Sch. 2 paras. 12-14 by [Children and Young Persons Act 2008 \(c. 23\)](#), ss. 8(2), 44, [Sch. 1 para. 4](#)

#### Modifications etc. (not altering text)

**C5** Sch. 2 para. 12 modified (temp.) (12.2.2009 for E. and 31.3.2010 for W.) by [Children and Young Persons Act 2008 \(c. 23\)](#), ss. 8(3), 44, [Sch. 2 para. 1](#); S.I. 2009/268, [art. 3\(1\)\(b\)](#); S.I. 2010/749, [art. 2\(a\)](#)

#### Commencement Information

**I30** Sch. 2 Pt. II para. 12 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828](#), [art. 3\(2\)](#)

#### *Regulations as to arrangements under section 23(2)(f)*

- <sup>F28</sup>13 Regulations under section 23(2)(f) may, in particular, make provision as to—
- (a) the persons to be notified of any proposed arrangements;
  - (b) the opportunities such persons are to have to make representations in relation to the arrangements proposed;
  - (c) the persons to be notified of any proposed changes in arrangements;
  - (d) the records to be kept by local authorities;
  - (e) the supervision by local authorities of any arrangements made.

#### Textual Amendments

**F28** Sch. 2 paras. 12A-12G substituted (prosp.) for Sch. 2 paras. 12-14 by [Children and Young Persons Act 2008 \(c. 23\)](#), ss. 8(2), 44, [Sch. 1 para. 4](#)

#### Commencement Information

**I31** Sch. 2 Pt. II para. 13 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828](#), [art. 3\(2\)](#)

#### *Regulations as to conditions under which child in care is allowed to live with parent, etc.*

- <sup>F29</sup>14 Regulations under section 23(5) may, in particular, impose requirements on a local authority as to—
- (a) the making of any decision by a local authority to allow a child to live with any person falling within section 23(4) (including requirements as to those who must be consulted before the decision is made, and those who must be notified when it has been made);
  - (b) the supervision or medical examination of the child concerned;
  - (c) the removal of the child, in such circumstances as may be prescribed, from the care of the person with whom he has been allowed to live.
  - [<sup>F30</sup>(d) the records to be kept by local authorities.]



*Status: Point in time view as at 01/10/2001.*

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#### Textual Amendments

- F29** Sch. 2 paras. 12A-12G substituted (prosp.) for Sch. 2 paras. 12-14 by [Children and Young Persons Act 2008 \(c. 23\)](#), ss. 8(2), 44, [Sch. 1 para. 4](#)
- F30** Sch. 2 para. 14(d) inserted (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 116, [Sch. 16 para. 26](#); [S.I. 1991/1883](#), [art. 3](#), Sch.

#### Commencement Information

- I32** Sch. 2 Pt. II para. 14 in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828](#), [art. 3\(2\)](#)

VALID FROM 01/09/2009

*[<sup>F31</sup>Regulations as to conditions under which  
 child in care is allowed to live with parent, etc*

#### Textual Amendments

- F31** [Sch. 2 paras. 12A-12G](#) substituted for Sch. 2 paras. 12-14 (1.9.2009 for E., 26.4.2010 for W.) by [Children and Young Persons Act 2008 \(c. 23\)](#), ss. 8(2), 44, [Sch. 1 para. 4](#); [S.I. 2009/2273](#), [art. 2\(2\)\(b\)](#), [S.I. 2010/1329](#), [art. 2\(b\)](#)

- 12A Regulations under section 22C may, in particular, impose requirements on a local authority as to—
- (a) the making of any decision by a local authority to allow a child in their care to live with any person falling within section 22C(3) (including requirements as to those who must be consulted before the decision is made and those who must be notified when it has been made);
  - (b) the supervision or medical examination of the child concerned;
  - (c) the removal of the child, in such circumstances as may be prescribed, from the care of the person with whom the child has been allowed to live;
  - (d) the records to be kept by local authorities.

VALID FROM 01/09/2009

*Regulations as to placements of a kind specified in section 22C(6)(d)*

- 12B Regulations under section 22C as to placements of the kind specified in section 22C(6)(d) may, in particular, make provision as to—
- (a) the persons to be notified of any proposed arrangements;
  - (b) the opportunities such persons are to have to make representations in relation to the arrangements proposed;
  - (c) the persons to be notified of any proposed changes in arrangements;
  - (d) the records to be kept by local authorities;
  - (e) the supervision by local authorities of any arrangements made.



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VALID FROM 01/09/2009

*Placements out of area*

- 12C Regulations under section 22C may, in particular, impose requirements which a local authority must comply with—
- (a) before a child looked after by them is provided with accommodation at a place outside the area of the authority; or
  - (b) if the child's welfare requires the immediate provision of such accommodation, within such period of the accommodation being provided as may be prescribed.

VALID FROM 01/09/2009

*Avoidance of disruption in education*

- 12D (1) Regulations under section 22C may, in particular, impose requirements which a local authority must comply with before making any decision concerning a child's placement if he is in the fourth key stage.
- (2) A child is “in the fourth key stage” if he is a pupil in the fourth key stage for the purposes of Part 6 or 7 of the Education 2002 (see section 82 and 103 of that Act).

VALID FROM 01/09/2009

*Regulations as to placing of children with local authority foster parents*

- 12E Regulations under section 22C may, in particular, make provision—
- (a) with regard to the welfare of children placed with local authority foster parents;
  - (b) as to the arrangements to be made by local authorities in connection with the health and education of such children;
  - (c) as to the records to be kept by local authorities;
  - (d) for securing that where possible the local authority foster parent with whom a child is to be placed is—
    - (i) of the same religious persuasion as the child; or
    - (ii) gives an undertaking that the child will be brought up in that religious persuasion;
  - (e) for securing the children placed with local authority foster parents, and the premises in which they are accommodated, will be supervised and inspected by a local authority and that the children will be removed from those premises if their welfare appears to require it.
- 12F (1) Regulations under section 22C may, in particular, also make provision—
- (a) for securing that a child is not placed with a local authority foster parent unless that person is for the time being approved as a local authority foster parent by such local authority as may be prescribed;

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- (b) establishing a procedure under which any person in respect of whom a qualifying determination has been made may apply to the appropriate national authority for a review of that determination by a panel constituted by that national authority.
- (2) A determination is a qualifying determination if—
- (a) it relates to the issue of whether a person should be approved, or should continue to be approved, as a local authority foster parent; and
  - (b) it is of a prescribed description.
- (3) Regulations made by virtue of sub-paragraph (1)(b) may include provision as to—
- (a) the duties and powers of a panel;
  - (b) the administration and procedures of a panel;
  - (c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for appointment);
  - (d) the payment of fees to members of a panel;
  - (e) the duties of any person in connection with a review conducted under the regulations;
  - (f) the monitoring of any such reviews.
- (4) Regulations made by virtue of sub-paragraph (3)(e) may impose a duty to pay to the appropriate national authority such sum as that national authority may determine; but such a duty may not be imposed upon a person who has applied for a review of a qualifying determination.
- (5) The appropriate national authority must secure that, taking one financial year with another, the aggregate of the sums which become payable to it under regulations made by virtue of sub-paragraph (4) does not exceed the cost to it of performing its independent review functions.
- (6) The appropriate national authority may make an arrangement with an organisation under which independent review functions are performed by the organisation on the national authority's behalf.
- (7) If the appropriate national authority makes such an arrangement with an organisation, the organisation is to perform its functions under the arrangement in accordance with any general or special directions given by that national authority.
- (8) The arrangement may include provision for payments to be made to the organisation by the appropriate national authority.
- (9) Payments made by the appropriate national authority in accordance with such provision shall be taken into account in determining (for the purpose of sub-paragraph (5)) the cost to that national authority of performing its independent review functions.
- (10) Where the Welsh Ministers are the appropriate national authority, sub-paragraphs (6) and (8) also apply as if references to an organisation included references to the Secretary of State.
- (11) In this paragraph—  
“financial year” means a period of twelve months ending with 31st March;

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	<p>“independent review function” means a function conferred or imposed on a national authority by regulations made by virtue of sub-paragraph (1) (b);</p> <p>“organisation” includes a public body and a private or voluntary organisation.</p>
12G	<p>Regulations under section 22C may, in particular, also make provision as to the circumstances in which local authorities may make arrangements for duties imposed on them by the regulations to be discharged on their behalf.]</p>

*Promotion and maintenance of contact between child and family*

- 15 (1) Where a child is being looked after by a local authority, the authority shall, unless it is not reasonably practicable or consistent with his welfare, endeavour to promote contact between the child and—
- (a) his parents;
  - (b) any person who is not a parent of his but who has parental responsibility for him; and
  - (c) any relative, friend or other person connected with him.
- (2) Where a child is being looked after by a local authority—
- (a) the authority shall take such steps as are reasonably practicable to secure that—
    - (i) his parents; and
    - (ii) any person who is not a parent of his but who has parental responsibility for him,are kept informed of where he is being accommodated; and
  - (b) every such person shall secure that the authority are kept informed of his or her address.
- (3) Where a local authority (“the receiving authority”) take over the provision of accommodation for a child from another local authority (“the transferring authority”) under section 20(2)—
- (a) the receiving authority shall (where reasonably practicable) inform—
    - (i) the child’s parents; and
    - (ii) any person who is not a parent of his but who has parental responsibility for him;
  - (b) sub-paragraph (2)(a) shall apply to the transferring authority, as well as the receiving authority, until at least one such person has been informed of the change; and
  - (c) sub-paragraph (2)(b) shall not require any person to inform the receiving authority of his address until he has been so informed.
- (4) Nothing in this paragraph requires a local authority to inform any person of the whereabouts of a child if—
- (a) the child is in the care of the authority; and
  - (b) the authority has reasonable cause to believe that informing the person would prejudice the child’s welfare.

*Status: Point in time view as at 01/10/2001.*

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- (5) Any person who fails (without reasonable excuse) to comply with sub-paragraph (2) (b) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (6) It shall be a defence in any proceedings under sub-paragraph (5) to prove that the defendant was residing at the same address as another person who was the child's parent or had parental responsibility for the child and had reasonable cause to believe that the other person had informed the appropriate authority that both of them were residing at that address.

**Modifications etc. (not altering text)**

- C6** Sch. 2 para. 15: power to apply with modifications or exclude conferred (7.2.2004 (W.) and 7.12.2004 (E.)) by 2002 c. 38, ss. 53(1)(2), 148 (with Sch. 4 paras. 1, 6-8); S.I. 2004/3203, art. 2(1)(h); S.I. 2004/252, art. 2
- C7** Sch. 2 para. 15 excluded (30.12.2005) by: The Adoption Agencies Regulations 2005 (S.I. 2005/389), reg. 45(2)(d); The Adoption Agencies (Wales) Regulations 2005 (S.I. 2005/1313), reg. 46(2)(d)

**Commencement Information**

- I33** Sch. 2 Pt. II para. 15 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Visits to or by children: expenses*

- 16 (1) This paragraph applies where—
- (a) a child is being looked after by a local authority; and
  - (b) the conditions mentioned in sub-paragraph (3) are satisfied.
- (2) The authority may—
- (a) make payments to—
    - (i) a parent of the child;
    - (ii) any person who is not a parent of his but who has parental responsibility for him; or
    - (iii) any relative, friend or other person connected with him,
 in respect of travelling, subsistence or other expenses incurred by that person in visiting the child; or
  - (b) make payments to the child, or to any person on his behalf, in respect of travelling, subsistence or other expenses incurred by or on behalf of the child in his visiting—
    - (i) a parent of his;
    - (ii) any person who is not a parent of his but who has parental responsibility for him; or
    - (iii) any relative, friend or other person connected with him.
- (3) The conditions are that—
- (a) it appears to the authority that the visit in question could not otherwise be made without undue financial hardship; and
  - (b) the circumstances warrant the making of the payments.

*Status: Point in time view as at 01/10/2001.*

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#### Commencement Information

**I34** Sch. 2 Pt. II para. 16 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Appointment of visitor for child who is not being visited*

- 17 (1) Where it appears to a local authority in relation to any child that they are looking after that—
- (a) communication between the child and—
    - (i) a parent of his, or
    - (ii) any person who is not a parent of his but who has parental responsibility for him,has been infrequent; or
  - (b) he has not visited or been visited by (or lived with) any such person during the preceding twelve months,
- and that it would be in the child's best interests for an independent person to be appointed to be his visitor for the purposes of this paragraph, they shall appoint such a visitor.
- (2) A person so appointed shall—
- (a) have the duty of visiting, advising and befriending the child; and
  - (b) be entitled to recover from the authority who appointed him any reasonable expenses incurred by him for the purposes of his functions under this paragraph.
- (3) A person's appointment as a visitor in pursuance of this paragraph shall be determined if—
- (a) he gives notice in writing to the authority who appointed him that he resigns the appointment; or
  - (b) the authority give him notice in writing that they have terminated it.
- (4) The determination of such an appointment shall not prejudice any duty under this paragraph to make a further appointment.
- (5) Where a local authority propose to appoint a visitor for a child under this paragraph, the appointment shall not be made if—
- (a) the child objects to it; and
  - (b) the authority are satisfied that he has sufficient understanding to make an informed decision.
- (6) Where a visitor has been appointed for a child under this paragraph, the local authority shall determine the appointment if—
- (a) the child objects to its continuing; and
  - (b) the authority are satisfied that he has sufficient understanding to make an informed decision.
- (7) The Secretary of State may make regulations as to the circumstances in which a person appointed as a visitor under this paragraph is to be regarded as independent of the local authority appointing him.

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**Commencement Information**

**I35** Sch. 2 Pt. II para. 17 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

*Power to guarantee apprenticeship deeds etc.*

- 18 (1) While a child is being looked after by a local authority, or is a person qualifying for advice and assistance, the authority may undertake any obligation by way of guarantee under any deed of apprenticeship or articles of clerkship which he enters into.
- (2) Where a local authority have undertaken any such obligation under any deed or articles they may at any time (whether or not they are still looking after the person concerned) undertake the like obligation under any supplemental deed or articles.

**Commencement Information**

**I36** Sch. 2 Pt. II para. 18 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

*Arrangements to assist children to live abroad*

- 19 (1) A local authority may only arrange for, or assist in arranging for, any child in their care to live outside England and Wales with the approval of the court.
- (2) A local authority may, with the approval of every person who has parental responsibility for the child arrange for, or assist in arranging for, any other child looked after by them to live outside England and Wales.
- (3) The court shall not give its approval under sub-paragraph (1) unless it is satisfied that—
- (a) living outside England and Wales would be in the child’s best interests;
  - (b) suitable arrangements have been, or will be, made for his reception and welfare in the country in which he will live;
  - (c) the child has consented to living in that country; and
  - (d) every person who has parental responsibility for the child has consented to his living in that country.
- (4) Where the court is satisfied that the child does not have sufficient understanding to give or withhold his consent, it may disregard sub-paragraph (3)(c) and give its approval if the child is to live in the country concerned with a parent, guardian, or other suitable person.
- (5) Where a person whose consent is required by sub-paragraph (3)(d) fails to give his consent, the court may disregard that provision and give its approval if it is satisfied that that person—
- (a) cannot be found;
  - (b) is incapable of consenting; or
  - (c) is withholding his consent unreasonably.

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- (6) Section 56 of the <sup>M9</sup>Adoption Act 1976 (which requires authority for the taking or sending abroad for adoption of a child who is a British subject) shall not apply in the case of any child who is to live outside England and Wales with the approval of the court given under this paragraph.
- (7) Where a court decides to give its approval under this paragraph it may order that its decision is not to have effect during the appeal period.
- (8) In sub-paragraph (7) “the appeal period” means—
- (a) where an appeal is made against the decision, the period between the making of the decision and the determination of the appeal; and
  - (b) otherwise, the period during which an appeal may be made against the decision.

#### Commencement Information

**I37** Sch. 2 Pt. II para. 19 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M9** 1976 c. 36.

### *f<sup>F32</sup> Preparation for ceasing to be looked after*

#### Textual Amendments

**F32** Sch. 2 Pt. II paras. 19A-19C and preceding cross-headings inserted (1.10.2001) by 2000 c. 35, s. 1; S.I. 2001/2191, art. 2; S.I. 2001/2878, art. 2

<sup>F33</sup>19A It is the duty of the local authority looking after a child to advise, assist and befriend him with a view to promoting his welfare when they have ceased to look after him.

#### Textual Amendments

**F33** Sch. 2 Pt. II paras. 19A-19C and preceding cross-headings inserted (1.10.2001) by 2000 c. 35, s. 1; S.I. 2001/2191, art. 2; S.I. 2001/2878, art. 2

<sup>F34</sup>19B(1) A local authority shall have the following additional functions in relation to an eligible child whom they are looking after.

- (2) In sub-paragraph (1) “eligible child” means, subject to sub-paragraph (3), a child who—
- (a) is aged sixteen or seventeen; and
  - (b) has been looked after by a local authority for a prescribed period, or periods amounting in all to a prescribed period, which began after he reached a prescribed age and ended after he reached the age of sixteen.
- (3) The Secretary of State may prescribe—
- (a) additional categories of eligible children; and



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- (b) categories of children who are not to be eligible children despite falling within sub-paragraph (2).
- (4) For each eligible child, the local authority shall carry out an assessment of his needs with a view to determining what advice, assistance and support it would be appropriate for them to provide him under this Act—
  - (a) while they are still looking after him; and
  - (b) after they cease to look after him,
 and shall then prepare a pathway plan for him.
- (5) The local authority shall keep the pathway plan under regular review.
- (6) Any such review may be carried out at the same time as a review of the child’s case carried out by virtue of section 26.
- (7) The Secretary of State may by regulations make provision as to assessments for the purposes of sub-paragraph (4).
- (8) The regulations may in particular provide for the matters set out in section 23B(6).

**Textual Amendments**

**F34** Sch. 2 Pt. II paras. 19A-19C and preceding cross-headings inserted (1.10.2001) by [2000 c. 35, s. 1](#); [S.I. 2001/2191, art. 2](#); [S.I. 2001/2878, art. 2](#)

**Modifications etc. (not altering text)**

**C8** Sch. 2 pt. II para. 19B(2) restricted (W.) (1.10.2001) by [S.I. 2001/2189, reg. 3\(2\)](#)

<sup>F35</sup>19C A local authority shall arrange for each child whom they are looking after who is an eligible child for the purposes of paragraph 19B to have a personal adviser.]

**Textual Amendments**

**F35** Sch. 2 Pt. II paras. 19A-19C and preceding cross-headings inserted (1.10.2001) by [2000 c. 35, s. 1](#); [S.I. 2001/2191, art. 2](#); [S.I. 2001/2878, art. 2](#)

*Death of children being looked after by local authorities*

- 20 (1) If a child who is being looked after by a local authority dies, the authority—
- (a) shall notify the Secretary of State;
  - (b) shall, so far as is reasonably practicable, notify the child’s parents and every person who is not a parent of his but who has parental responsibility for him;
  - (c) may, with the consent (so far as it is reasonably practicable to obtain it) of every person who has parental responsibility for the child, arrange for the child’s body to be buried or cremated; and
  - (d) may, if the conditions mentioned in sub-paragraph (2) are satisfied, make payments to any person who has parental responsibility for the child, or any relative, friend or other person connected with the child, in respect of travelling, subsistence or other expenses incurred by that person in attending the child’s funeral.



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- (2) The conditions are that—
  - (a) it appears to the authority that the person concerned could not otherwise attend the child's funeral without undue financial hardship; and
  - (b) that the circumstances warrant the making of the payments.
- (3) Sub-paragraph (1) does not authorise cremation where it does not accord with the practice of the child's religious persuasion.
- (4) Where a local authority have exercised their power under sub-paragraph (1)(c) with respect to a child who was under sixteen when he died, they may recover from any parent of the child any expenses incurred by them.
- (5) Any sums so recoverable shall, without prejudice to any other method of recovery, be recoverable summarily as a civil debt.
- (6) Nothing in this paragraph affects any enactment regulating or authorising the burial, cremation or anatomical examination of the body of a deceased person.

#### Commencement Information

**I38** Sch. 2 Pt. II para. 20 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### PART III

#### CONTRIBUTIONS TOWARDS MAINTENANCE OF CHILDREN LOOKED AFTER BY LOCAL AUTHORITIES

#### Modifications etc. (not altering text)

**C9** Sch. 2 Pt. III modified (30.12.2005) by 2002 c. 38, ss. 53(4)-(6), 148 (with Sch. 4 paras. 1, 6-8); S.I. 2005/2213, {art. 2(c)}

#### *Liability to contribute*

- 21 (1) Where a local authority are looking after a child (other than in the cases mentioned in sub-paragraph (7)) they shall consider whether they should recover contributions towards the child's maintenance from any person liable to contribute ("a contributor").
- (2) An authority may only recover contributions from a contributor if they consider it reasonable to do so.
- (3) The persons liable to contribute are—
  - (a) where the child is under sixteen, each of his parents;
  - (b) where he has reached the age of sixteen, the child himself.
- (4) A parent is not liable to contribute during any period when he is in receipt of income support [<sup>F36</sup>, [<sup>F37</sup>working families' tax credit] or [<sup>F38</sup>disabled persons's tax

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credit]] under the [<sup>F39</sup>Part VII of the Social Security Contributions and Benefits Act 1992][<sup>F40</sup>or of an income-based jobseeker’s allowance].

- (5) A person is not liable to contribute towards the maintenance of a child in the care of a local authority in respect of any period during which the child is allowed by the authority (under section 23(5)) to live with a parent of his.
- (6) A contributor is not obliged to make any contribution towards a child’s maintenance except as agreed or determined in accordance with this Part of this Schedule.
- (7) The cases are where the child is looked after by a local authority under—
  - (a) section 21;
  - (b) an interim care order;
  - (c) [<sup>F41</sup>section 92 of the Powers of Criminal Courts (Sentencing) Act 2000].

#### Textual Amendments

- F36** Words in [Sch. 2 Pt. III para. 21\(4\)](#) substituted (19.11.1991 for certain purposes, 10.3.1992 for certain purposes and otherwise 6.4.1992) by [Disability Living Allowance and Disability Working Allowance Act 1991 \(c. 21, SIF 113:1\)](#), s. 7, [Sch. 3 Pt. II para. 15](#); S.I. 1991/2617, art. 2(b)(e)(f), [Sch.](#)
- F37** Words in [Sch. 2 para. 21\(4\)](#) substituted (5.10.1999) by 1999 c. 10, s. [1\(2\)](#), 6(d)(iii)
- F38** Words in [Sch. 2 para. 21\(4\)](#) substituted (5.10.1999) by 1999 c. 10, s. [1\(2\)](#), 6(d)(iii)
- F39** Words in [Sch. 2 Pt. III para. 21\(4\)](#) substituted (1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), ss. 4, 7(2), [Sch. 2 para. 108\(c\)](#)
- F40** Words in [Sch. 2 para. 21\(4\)](#) added (7.10.1996) by 1995 c. 18, s. 41(4), [Sch. 2 para. 19\(5\)](#); S.I. 1996/2208, [art. 2](#)
- F41** Words in [Sch. 2 Pt. III para. 21\(7\)\(c\)](#) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), [Sch. 9 para. 130](#)

#### Commencement Information

- I39** [Sch. 2 Pt. III para. 21](#) wholly in force at 14.10.1991 see s. [108\(2\)\(3\)](#) and S.I. 1991/828, [art. 3\(2\)](#)

#### *Agreed contributions*

- 22 (1) Contributions towards a child’s maintenance may only be recovered if the local authority have served a notice (“a contribution notice”) on the contributor specifying—
- (a) the weekly sum which they consider that he should contribute; and
  - (b) arrangements for payment.
- (2) The contribution notice must be in writing and dated.
- (3) Arrangements for payment shall, in particular, include—
- (a) the date on which liability to contribute begins (which must not be earlier than the date of the notice);
  - (b) the date on which liability under the notice will end (if the child has not before that date ceased to be looked after by the authority); and
  - (c) the date on which the first payment is to be made.
- (4) The authority may specify in a contribution notice a weekly sum which is a standard contribution determined by them for all children looked after by them.

*Status: Point in time view as at 01/10/2001.*

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- (5) The authority may not specify in a contribution notice a weekly sum greater than that which they consider—
  - (a) they would normally be prepared to pay if they had placed a similar child with local authority foster parents; and
  - (b) it is reasonably practicable for the contributor to pay (having regard to his means).
- (6) An authority may at any time withdraw a contribution notice (without prejudice to their power to serve another).
- (7) Where the authority and the contributor agree—
  - (a) the sum which the contributor is to contribute; and
  - (b) arrangements for payment,(whether as specified in the contribution notice or otherwise) and the contributor notifies the authority in writing that he so agrees, the authority may recover summarily as a civil debt any contribution which is overdue and unpaid.
- (8) A contributor may, by serving a notice in writing on the authority, withdraw his agreement in relation to any period of liability falling after the date of service of the notice.
- (9) Sub-paragraph (7) is without prejudice to any other method of recovery.

#### **Commencement Information**

**I40** Sch. 2 Pt. III para. 22 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

#### *Contribution orders*

- 23
- (1) Where a contributor has been served with a contribution notice and has—
    - (a) failed to reach any agreement with the local authority as mentioned in paragraph 22(7) within the period of one month beginning with the day on which the contribution notice was served; or
    - (b) served a notice under paragraph 22(8) withdrawing his agreement,the authority may apply to the court for an order under this paragraph.
  - (2) On such an application the court may make an order (“a contribution order”) requiring the contributor to contribute a weekly sum towards the child’s maintenance in accordance with arrangements for payment specified by the court.
  - (3) A contribution order—
    - (a) shall not specify a weekly sum greater than that specified in the contribution notice; and
    - (b) shall be made with due regard to the contributor’s means.
  - (4) A contribution order shall not—
    - (a) take effect before the date specified in the contribution notice; or
    - (b) have effect while the contributor is not liable to contribute (by virtue of paragraph 21); or
    - (c) remain in force after the child has ceased to be looked after by the authority who obtained the order.

*Status: Point in time view as at 01/10/2001.*

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- (5) An authority may not apply to the court under sub-paragraph (1) in relation to a contribution notice which they have withdrawn.
- (6) Where—
- (a) a contribution order is in force;
  - (b) the authority serve another contribution notice; and
  - (c) the contributor and the authority reach an agreement under paragraph 22(7) in respect of that other 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.
- (7) Where an agreement is reached under sub-paragraph (6) the authority shall notify the court—
- (a) of the agreement; and
  - (b) of the date on which it took effect.
- (8) A contribution order may be varied or revoked on the application of the contributor or the authority.
- (9) In proceedings for the variation of a contribution order, the authority shall specify—
- (a) the weekly sum which, having regard to paragraph 22, they propose that the contributor should contribute under the order as varied; and
  - (b) the proposed arrangements for payment.
- (10) Where a contribution order is varied, the order—
- (a) shall not specify a weekly sum greater than that specified by the authority in the proceedings for variation; and
  - (b) shall be made with due regard to the contributor's means.
- (11) An appeal shall lie in accordance with rules of court from any order made under this paragraph.

#### **Commencement Information**

**I41** Sch. 2 Pt. III para. 23 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

#### *Enforcement of contribution orders etc.*

- 24 (1) A contribution order made by a magistrates' court shall be enforceable as a magistrates' court maintenance order (within the meaning of section 150(1) of the <sup>M10</sup>Magistrates' Courts Act 1980).
- (2) Where a contributor has agreed, or has been ordered, to make contributions to a local authority, any other local authority within whose area the contributor is for the time being living may—
- (a) at the request of the local authority who served the contribution notice; and
  - (b) subject to agreement as to any sum to be deducted in respect of services rendered,
- collect from the contributor any contributions due on behalf of the authority who served the notice.

*Status: Point in time view as at 01/10/2001.*

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- (3) In sub-paragraph (2) the reference to any other local authority includes a reference to—
- (a) a local authority within the meaning of section 1(2) of the <sup>M11</sup>Social Work (Scotland) Act 1968; and
  - (b) a Health and Social Services Board established under Article 16 of the <sup>M12</sup>Health and Personal Social Services (Northern Ireland) Order 1972.
- (4) The power to collect sums under sub-paragraph (2) includes the power to—
- (a) receive and give a discharge for any contributions due; and
  - (b) (if necessary) enforce payment of any contributions,
- even though those contributions may have fallen due at a time when the contributor was living elsewhere.
- (5) Any contribution collected under sub-paragraph (2) shall be paid (subject to any agreed deduction) to the local authority who served the contribution notice.
- (6) In any proceedings under this paragraph, a document which purports to be—
- (a) a copy of an order made by a court under or by virtue of paragraph 23; and
  - (b) certified as a true copy by the [<sup>F42</sup>justices' chief executive for] the court,
- shall be evidence of the order.
- (7) In any proceedings under this paragraph, a certificate which—
- (a) purports to be signed by the clerk or some other duly authorised officer of the local authority who obtained the contribution order; and
  - (b) states that any sum due to the authority under the order is overdue and unpaid,
- shall be evidence that the sum is overdue and unpaid.

#### Textual Amendments

**F42** Words in Sch. 2 para. 24(6) substituted (1.4.2001) by 1999 c. 22, s. 90, **Sch. 13 para. 162** (with s. 107, Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)**

#### Commencement Information

**I42** Sch. 2 Pt. III para. 24 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

#### Marginal Citations

**M10** 1980 c. 43.

**M11** 1968 c. 49.

**M12** S.I. 1972/1265 (N.I.14).

### Regulations

- 25 The Secretary of State may make regulations—
- (a) as to the considerations which a local authority must take into account in deciding—
    - (i) whether it is reasonable to recover contributions; and
    - (ii) what the arrangements for payment should be;
  - (b) as to the procedures they must follow in reaching agreements with—

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- (i) contributors (under paragraphs 22 and 23); and
- (ii) any other local authority (under paragraph 23).

**Commencement Information**

**I43** Sch. 2 Pt. III para. 25 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

SCHEDULE 3

Sections 35 and 36.

SUPERVISION ORDERS

PART I

GENERAL

*Meaning of “responsible perso”n*

- 1 In this Schedule, “the responsible person”, in relation to a supervised child, means—
- (a) any person who has parental responsibility for the child; and
  - (b) any other person with whom the child is living.

**Commencement Information**

**I44** Sch. 3 Pt. I para. 1 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Power of supervisor to give directions to supervised child*

- 2 (1) A supervision order may require the supervised child to comply with any directions given from time to time by the supervisor which require him to do all or any of the following things—
- (a) to live at a place or places specified in the directions for a period or periods so specified;
  - (b) to present himself to a person or persons specified in the directions at a place or places and on a day or days so specified;
  - (c) to participate in activities specified in the directions on a day or days so specified.
- (2) It shall be for the supervisor to decide whether, and to what extent, he exercises his power to give directions and to decide the form of any directions which he gives.
- (3) Sub-paragraph (1) does not confer on a supervisor power to give directions in respect of any medical or psychiatric examination or treatment (which are matters dealt with in paragraphs 4 and 5).

*Status: Point in time view as at 01/10/2001.*

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#### Commencement Information

**I45** Sch. 3 Pt. I para. 2 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Imposition of obligations on responsible person*

- 3 (1) With the consent of any responsible person, a supervision order may include a requirement—
- (a) that he take all reasonable steps to ensure that the supervised child complies with any direction given by the supervisor under paragraph 2;
  - (b) that he take all reasonable steps to ensure that the supervised child complies with any requirement included in the order under paragraph 4 or 5;
  - (c) that he comply with any directions given by the supervisor requiring him to attend at a place specified in the directions for the purpose of taking part in activities so specified.
- (2) A direction given under sub-paragraph (1)(c) may specify the time at which the responsible person is to attend and whether or not the supervised child is required to attend with him.
- (3) A supervision order may require any person who is a responsible person in relation to the supervised child to keep the supervisor informed of his address, if it differs from the child's.

#### Commencement Information

**I46** Sch. 3 Pt. I para. 3 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Psychiatric and medical examinations*

- 4 (1) A supervision order may require the supervised child—
- (a) to submit to a medical or psychiatric examination; or
  - (b) to submit to any such examination from time to time as directed by the supervisor.
- (2) Any such examination shall be required to be conducted—
- (a) by, or under the direction of, such registered medical practitioner as may be specified in the order;
  - (b) at a place specified in the order and at which the supervised child is to attend as a non-resident patient; or
  - (c) at—
    - (i) a health service hospital; or
    - (ii) in the case of a psychiatric examination, a hospital or mental nursing home,at which the supervised child is, or is to attend as, a resident patient.
- (3) A requirement of a kind mentioned in sub-paragraph (2)(c) shall not be included unless the court is satisfied, on the evidence of a registered medical practitioner, that—



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- (a) the child may be suffering from a physical or mental condition that requires, and may be susceptible to, treatment; and
  - (b) a period as a resident patient is necessary if the examination is to be carried out properly.
- (4) No court shall include a requirement under this paragraph in a supervision order unless it is satisfied that—
- (a) where the child has sufficient understanding to make an informed decision, he consents to its inclusion; and
  - (b) satisfactory arrangements have been, or can be, made for the examination.

#### Commencement Information

**I47** Sch. 3 Pt. I para. 4 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Psychiatric and medical treatment*

- 5 (1) Where a court which proposes to make or vary a supervision order is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 12 of the <sup>M13</sup>Mental Health Act 1983, that the mental condition of the supervised child—
- (a) is such as requires, and may be susceptible to, treatment; but
  - (b) is not such as to warrant his detention in pursuance of a hospital order under Part III of that Act,
- the court may include in the order a requirement that the supervised child shall, for a period specified in the order, submit to such treatment as is so specified.
- (2) The treatment specified in accordance with sub-paragraph (1) must be—
- (a) by, or under the direction of, such registered medical practitioner as may be specified in the order;
  - (b) as a non-resident patient at such a place as may be so specified; or
  - (c) as a resident patient in a hospital or mental nursing home.
- (3) Where a court which proposes to make or vary a supervision order is satisfied, on the evidence of a registered medical practitioner, that the physical condition of the supervised child is such as requires, and may be susceptible to, treatment, the court may include in the order a requirement that the supervised child shall, for a period specified in the order, submit to such treatment as is so specified.
- (4) The treatment specified in accordance with sub-paragraph (3) must be—
- (a) by, or under the direction of, such registered medical practitioner as may be specified in the order;
  - (b) as a non-resident patient at such place as may be so specified; or
  - (c) as a resident patient in a health service hospital.
- (5) No court shall include a requirement under this paragraph in a supervision order unless it is satisfied—
- (a) where the child has sufficient understanding to make an informed decision, that he consents to its inclusion; and
  - (b) that satisfactory arrangements have been, or can be, made for the treatment.



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- (6) If a medical practitioner by whom or under whose direction a supervised person is being treated in pursuance of a requirement included in a supervision order by virtue of this paragraph is unwilling to continue to treat or direct the treatment of the supervised child or is of the opinion that—
- (a) the treatment should be continued beyond the period specified in the order;
  - (b) the supervised child needs different treatment;
  - (c) he is not susceptible to treatment; or
  - (d) he does not require further treatment,
- the practitioner shall make a report in writing to that effect to the supervisor.
- (7) On receiving a report under this paragraph the supervisor shall refer it to the court, and on such a reference the court may make an order cancelling or varying the requirement.

**Commencement Information**

**I48** Sch. 3 Pt. I para. 5 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M13** 1983 c. 20.

## PART II

### MISCELLANEOUS

**Commencement Information**

**I49** Sch. 3 Pt. II wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Life of supervision order*

- 6 (1) Subject to sub-paragraph (2) and section 91, a supervision order shall cease to have effect at the end of the period of one year beginning with the date on which it was made.
- (2) A supervision order shall also cease to have effect if an event mentioned in section 25(1)(a) or (b) of the <sup>M14</sup>Child Abduction and Custody Act 1985 (termination of existing orders) occurs with respect to the child.
- (3) Where the supervisor applies to the court to extend, or further extend, a supervision order the court may extend the order for such period as it may specify.
- (4) A supervision order may not be extended so as to run beyond the end of the period of three years beginning with the date on which it was made.

**Commencement Information**

**I50** Sch. 3 Pt. II para. 6 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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**Marginal Citations**

**M14** 1985 c. 60.

*Limited life of directions*

F43<sup>7</sup> .....

**Textual Amendments**

**F43** Sch. 3 para. 7 repealed (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 116, 125(7), Sch. 16 para. 27, **Sch. 20**; S.I. 1991/1883, **art. 3**, Sch.

**Commencement Information**

**I51** Sch. 3 Pt. II para. 7 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

*Information to be given to supervisor etc.*

- 8 (1) A supervision order may require the supervised child—
  - (a) to keep the supervisor informed of any change in his address; and
  - (b) to allow the supervisor to visit him at the place where he is living.
- (2) The responsible person in relation to any child with respect to whom a supervision order is made shall—
  - (a) if asked by the supervisor, inform him of the child’s address (if it is known to him); and
  - (b) if he is living with the child, allow the supervisor reasonable contact with the child.

**Commencement Information**

**I52** Sch. 3 Pt. II para. 8 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

*Selection of supervisor*

- 9 (1) A supervision order shall not designate a local authority as the supervisor unless—
  - (a) the authority agree; or
  - (b) the supervised child lives or will live within their area.

F44(2) .....

F44(3) .....

F44(4) .....

F44(5) .....

**Textual Amendments**

**F44** Sch. 3 Pt. II para. 9(2)-(5) repealed (1.4.2001) by 2000 c. 43, ss. 74, 75, Sch. 7 para. 96, **Sch. 8**; S.I. 2001/919, **art. 2(f)(ii)(g)**

*Status: Point in time view as at 01/10/2001.*

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**Commencement Information**

**I53** Sch. 3 Pt. II para. 9 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Effect of supervision order on earlier orders*

- 10 The making of a supervision order with respect to any child brings to an end any earlier care or supervision order which—
- (a) was made with respect to that child; and
  - (b) would otherwise continue in force.

**Commencement Information**

**I54** Sch. 3 Pt. II para. 10 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Local authority functions and expenditure*

- 11 (1) The Secretary of State may make regulations with respect to the exercise by a local authority of their functions where a child has been placed under their supervision by a supervision order.
- (2) Where a supervision order requires compliance with directions given by virtue of this section, any expenditure incurred by the supervisor for the purposes of the directions shall be defrayed by the local authority designated in the order.

**Commencement Information**

**I55** Sch. 3 Pt. II para. 11 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**PART III**

EDUCATION SUPERVISION ORDERS

*Effect of orders*

- 12 (1) Where an education supervision order is in force with respect to a child, it shall be the duty of the supervisor—
- (a) to advise, assist and befriend, and give directions to—
    - (i) the supervised child; and
    - (ii) his parents,in such a way as will, in the opinion of the supervisor, secure that he is properly educated;
  - (b) where any such directions given to—
    - (i) the supervised child; or
    - (ii) a parent of his,have not been complied with, to consider what further steps to take in the exercise of the supervisor's powers under this Act.

*Status: Point in time view as at 01/10/2001.*

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- (2) Before giving any directions under sub-paragraph (1) the supervisor shall, so far as is reasonably practicable, ascertain the wishes and feelings of—
- (a) the child; and
  - (b) his parents,
- including, in particular, their wishes as to the place at which the child should be educated.
- (3) When settling the terms of any such directions, the supervisor shall give due consideration—
- (a) having regard to the child's age and understanding, to such wishes and feelings of his as the supervisor has been able to ascertain; and
  - (b) to such wishes and feelings of the child's parents as he has been able to ascertain.
- (4) Directions may be given under this paragraph at any time while the education supervision order is in force.

#### Commencement Information

**I56** Sch. 3 Pt. III para. 12 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 13 (1) Where an education supervision order is in force with respect to a child, the duties of the child's parents under [F45sections 7 and 444 of the Education Act 1996 (duties to secure education of children and] to secure regular attendance of registered pupils shall be superseded by their duty to comply with any directions in force under the education supervision order.
- (2) Where an education supervision order is made with respect to a child—
- (a) any school attendance order—
    - (i) made under [F46section 437 of the Education Act 1996] with respect to the child; and
    - (ii) in force immediately before the making of the education supervision order,
 shall cease to have effect; and
  - (b) while the education supervision order remains in force, the following provisions shall not apply with respect to the child—
    - (i) [F47section 437] of that Act (school attendance orders);
    - (ii) [F48section 9 of that Act] (pupils to be educated in accordance with wishes of their parents);
    - (iii) [F49sections 411 and 423 of that Act] (parental preference and appeals against admission decisions);
  - (c) a supervision order made with respect to the child in criminal proceedings, while the education supervision order is in force, may not include an education requirement of the kind which could otherwise be included under [F50paragraph 7 of Schedule 6 to the Powers of Criminal Courts (Sentencing) Act 2000];

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- (d) any education requirement of a kind mentioned in paragraph (c), which was in force with respect to the child immediately before the making of the education supervision order, shall cease to have effect.

#### Textual Amendments

- F45** Words in Sch. 3 Pt. III para. 13(1) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37 Pt. I, para. 93(2)(a)(with s. 1(4), Sch. 39 paras. 30, 39)
- F46** Words in Sch. 3 Pt. III para. 13(2)(a)(i) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37, Pt. I para. 93(2)(b)(i)(with s. 1(4), Sch. 39 paras. 30, 39)
- F47** Words in Sch. 3 Pt. III para. 13(2)(b)(i) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37 Pt. I para. 93(2)(b)(ii)(with s. 1(4), Sch. 39 paras. 30, 39)
- F48** Words in Sch. 3 Pt. III para. 13(2)(b)(ii) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37 para. 93(2)(b)(iii)(with s. 1(4), Sch. 39, paras. 30, 39)
- F49** Words in Sch. 3 Pt. III para. 13(2)(b)(iii) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), Sch. 37, para. 93(2)(b)(iv)(with s. 1(4), Sch. 39 paras. 30, 39)
- F50** Words in Sch. 3 Pt. III para. 13(2)(c) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), Sch. 9 para. 131(2)

#### Commencement Information

- I57** Sch. 3 Pt. III para. 13 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Effect where child also subject to supervision order*

- 14 (1) This paragraph applies where an education supervision order and a supervision order, or order under <sup>[F51]</sup>section 63(1) of the Powers of Criminal Courts (Sentencing) Act 2000], are in force at the same time with respect to the same child.
- (2) Any failure to comply with a direction given by the supervisor under the education supervision order shall be disregarded if it would not have been reasonably practicable to comply with it without failing to comply with a direction given under the other order.

#### Textual Amendments

- F51** Words in Sch. 3 Pt. III para. 14(1) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), Sch. 9 para. 131(3)

#### Commencement Information

- I58** Sch. 3 Pt. III para. 14 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Duration of orders*

- 15 (1) An education supervision order shall have effect for a period of one year, beginning with the date on which it is made.
- (2) An education supervision order shall not expire if, before it would otherwise have expired, the court has (on the application of the authority in whose favour the order was made) extended the period during which it is in force.

*Status: Point in time view as at 01/10/2001.*

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- (3) Such an application may not be made earlier than three months before the date on which the order would otherwise expire.
- (4) The period during which an education supervision order is in force may be extended under sub-paragraph (2) on more than one occasion.
- (5) No one extension may be for a period of more than three years.
- (6) An education supervision order shall cease to have effect on—
  - (a) the child's ceasing to be of compulsory school age; or
  - (b) the making of a care order with respect to the child;
 and sub-paragraphs (1) to (4) are subject to this sub-paragraph.

#### Commencement Information

**I59** Sch. 3 Pt. III para. 15 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Information to be given to supervisor etc.*

- 16 (1) An education supervision order may require the child—
  - (a) to keep the supervisor informed of any change in his address; and
  - (b) to allow the supervisor to visit him at the place where he is living.
- (2) A person who is the parent of a child with respect to whom an education supervision order has been made shall—
  - (a) if asked by the supervisor, inform him of the child's address (if it is known to him); and
  - (b) if he is living with the child, allow the supervisor reasonable contact with the child.

#### Commencement Information

**I60** Sch. 3 Pt. III para. 16 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Discharge of orders*

- 17 (1) The court may discharge any education supervision order on the application of—
  - (a) the child concerned;
  - (b) a parent of his; or
  - (c) the local education authority concerned.
- (2) On discharging an education supervision order, the court may direct the local authority within whose area the child lives, or will live, to investigate the circumstances of the child.

#### Commencement Information

**I61** Sch. 3 Pt. III para. 17 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Status: Point in time view as at 01/10/2001.*

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### *Offences*

- 18 (1) If a parent of a child with respect to whom an education supervision order is in force persistently fails to comply with a direction given under the order he shall be guilty of an offence.
- (2) It shall be a defence for any person charged with such an offence to prove that—
- (a) he took all reasonable steps to ensure that the direction was complied with;
  - (b) the direction was unreasonable; or
  - (c) he had complied with—
    - (i) a requirement included in a supervision order made with respect to the child; or
    - (ii) directions given under such a requirement,and that it was not reasonably practicable to comply both with the direction and with the requirement or directions mentioned in this paragraph.
- (3) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Commencement Information**

**I62** Sch. 3 Pt. III para. 18 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *Persistent failure of child to comply with directions*

- 19 (1) Where a child with respect to whom an education supervision order is in force persistently fails to comply with any direction given under the order, the local education authority concerned shall notify the appropriate local authority.
- (2) Where a local authority have been notified under sub-paragraph (1) they shall investigate the circumstances of the child.
- (3) In this paragraph “the appropriate local authority” has the same meaning as in section 36.

#### **Commencement Information**

**I63** Sch. 3 Pt. III para. 19 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *Miscellaneous*

- 20 The Secretary of State may by regulations make provision modifying, or displacing, the provisions of any enactment about education in relation to any child with respect to whom an education supervision order is in force to such extent as appears to the Secretary of State to be necessary or expedient in consequence of the provision made by this Act with respect to such orders.

#### **Commencement Information**

**I64** Sch. 3 Pt. III para. 20 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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### *Interpretation*

- 21 In this Part of this Schedule “parent” has the same meaning as in [<sup>F52</sup>the Education Act 1996.]

#### **Textual Amendments**

**F52** Words in **Sch. 3 Pt. III para. 21** substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37, Pt. I para. 93(3)**(with s. 1(4))

#### **Commencement Information**

**I65** **Sch. 3 Pt. III para. 21** wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

## SCHEDULE 4

Section 53(6).

### MANAGEMENT AND CONDUCT OF COMMUNITY HOMES

#### PART I

##### INSTRUMENTS OF MANAGEMENT

##### *Instruments of management for controlled and assisted community homes*

- 1 (1) The Secretary of State may by order make an instrument of management providing for the constitution of a body of managers for any <sup>F53</sup>. . . home which is designated as a controlled or assisted community home.
- (2) Sub-paragraph (3) applies where two or more <sup>F53</sup>. . . homes are designated as controlled community homes or as assisted community homes.
- (3) If—
- (a) those homes are, or are to be, provided by the same voluntary organisation; and
  - (b) the same local authority is to be represented on the body of managers for those homes,
- a single instrument of management may be made by the Secretary of State under this paragraph constituting one body of managers for those homes or for any two or more of them.
- (4) The number of persons who, in accordance with an instrument of management, constitute the body of managers for a <sup>F53</sup>. . . home shall be such number (which must be a multiple of three) as may be specified in the instrument.
- (5) The instrument shall provide that the local authority specified in the instrument shall appoint—
- (a) in the case of a <sup>F53</sup>. . . home which is designated as a controlled community home, two-thirds of the managers; and
  - (b) in the case of a <sup>F53</sup>. . . home which is designated as an assisted community home, one-third of them.



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- (6) An instrument of management shall provide that the foundation managers shall be appointed, in such manner and by such persons as may be specified in the instrument—
- (a) so as to represent the interests of the voluntary organisation by which the home is, or is to be, provided; and
  - (b) for the purpose of securing that—
    - (i) so far as is practicable, the character of the home <sup>F54</sup> . . . will be preserved; and
    - (ii) subject to paragraph 2(3), the terms of any trust deed relating to the home are observed.
- (7) An instrument of management shall come into force on such date as it may specify.
- (8) If an instrument of management is in force in relation to a <sup>F53</sup> . . . home the home shall be (and be known as) a controlled community home or an assisted community home, according to its designation.
- (9) In this paragraph—
- “foundation managers”, in relation to a <sup>F53</sup> . . . home, means those of the managers of the home who are not appointed by a local authority in accordance with sub-paragraph (5); and
  - “designated” means designated in accordance with section 53.

#### Textual Amendments

**F53** Word in Sch. 4 para. 1(1)(2)(4)(5)(8)(9) repealed (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 116, 125(7), Sch. 16 para. 28(1), Sch. 20; S.I. 1991/1883, art. 3, Sch.

**F54** Words in Sch. 4 para. 1(6)(b)(i) repealed (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 116, 125(7), Sch. 16 para. 28(2), Sch. 20; S.I. 1991/1883, art. 3, Sch.

#### Commencement Information

**I66** Sch. 4 Pt. I para. 1 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 2 (1) An instrument of management shall contain such provisions as the Secretary of State considers appropriate.
- (2) Nothing in the instrument of management shall affect the purposes for which the premises comprising the home are held.
- (3) Without prejudice to the generality of sub-paragraph (1), an instrument of management may contain provisions—
- (a) specifying the nature and purpose of the home (or each of the homes) to which it relates;
  - (b) requiring a specified number or proportion of the places in that home (or those homes) to be made available to local authorities and to any other body specified in the instrument; and
  - (c) relating to the management of that home (or those homes) and the charging of fees with respect to—
    - (i) children placed there; or
    - (ii) places made available to any local authority or other body.

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- (4) Subject to sub-paragraphs (1) and (2), in the event of any inconsistency between the provisions of any trust deed and an instrument of management, the instrument of management shall prevail over the provisions of the trust deed in so far as they relate to the home concerned.
- (5) After consultation with the voluntary organisation concerned and with the local authority specified in its instrument of management, the Secretary of State may by order vary or revoke any provisions of the instrument.

#### Commencement Information

**I67** Sch. 4 Pt. I para. 2 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## PART II

### MANAGEMENT OF CONTROLLED AND ASSISTED COMMUNITY HOMES

- 3 (1) The management, equipment and maintenance of a controlled community home shall be the responsibility of the local authority specified in its instrument of management.
- (2) The management, equipment and maintenance of an assisted community home shall be the responsibility of the voluntary organisation by which the home is provided.
- (3) In this paragraph—
  - “home” means a controlled community home or (as the case may be) assisted community home; and
  - “the managers”, in relation to a home, means the managers constituted by its instrument of management; and
  - “the responsible body”, in relation to a home, means the local authority or (as the case may be) voluntary organisation responsible for its management, equipment and maintenance.
- (4) The functions of a home’s responsible body shall be exercised through the managers [<sup>F55</sup>, except in so far as, under section 53(3B), any of the accommodation is to be managed by another person].
- (5) Anything done, liability incurred or property acquired by a home’s managers shall be done, incurred or acquired by them as agents of the responsible body [<sup>F56</sup>; and similarly, to the extent that a contract so provides, as respects anything done, liability incurred or property acquired by a person by whom, under section 53(3B), any of the accommodation is to be managed].
- (6) In so far as any matter is reserved for the decision of a home’s responsible body by—
  - (a) sub-paragraph (8);
  - (b) the instrument of management;
  - (c) the service by the body on the managers, or any of them, of a notice reserving any matter,
 that matter shall be dealt with by the body and not by the managers.
- (7) In dealing with any matter so reserved, the responsible body shall have regard to any representations made to the body by the managers.

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- (8) The employment of persons at a home shall be a matter reserved for the decision of the responsible body.
- (9) Where the instrument of management of a controlled community home so provides, the responsible body may enter into arrangements with the voluntary organisation by which that home is provided whereby, in accordance with such terms as may be agreed between them and the voluntary organisation, persons who are not in the employment of the responsible body shall undertake duties at that home.
- (10) Subject to sub-paragraph (11)—
  - (a) where the responsible body for an assisted community home proposes to engage any person to work at that home or to terminate without notice the employment of any person at that home, it shall consult the local authority specified in the instrument of management and, if that authority so direct, the responsible body shall not carry out its proposal without their consent; and
  - (b) that local authority may, after consultation with the responsible body, require that body to terminate the employment of any person at that home.
- (11) Paragraphs (a) and (b) of sub-paragraph (10) shall not apply—
  - (a) in such cases or circumstances as may be specified by notice in writing given by the local authority to the responsible body; and
  - (b) in relation to the employment of any persons or class of persons specified in the home's instrument of management.
- (12) The accounting year of the managers of a home shall be such as may be specified by the responsible body.
- (13) Before such date in each accounting year as may be so specified, the managers of a home shall submit to the responsible body estimates, in such form as the body may require, of expenditure and receipts in respect of the next accounting year.
- (14) Any expenses incurred by the managers of a home with the approval of the responsible body shall be defrayed by that body.
- (15) The managers of a home shall keep—
  - (a) proper accounts with respect to the home; and
  - (b) proper records in relation to the accounts.
- (16) Where an instrument of management relates to more than one home, one set of accounts and records may be kept in respect of all the homes to which it relates.

#### Textual Amendments

- F55** Words in Sch. 4 Pt. II para. 3(4) inserted (8.3.1996) by 1994 c. 33, s. 22(3)(a); S.I. 1996/625, art. 2  
**F56** Words in Sch. 4 Pt. II para. 3(5) inserted (8.3.1996) by 1994 c. 33, s. 22(3)(b); S.I. 1996/625, art. 2

#### Commencement Information

- I68** Sch. 4 Pt. II para. 3 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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### PART III

#### REGULATIONS

- 4 (1) The Secretary of State may make regulations—
- (a) as to the placing of children in community homes;
  - (b) as to the conduct of such homes; and
  - (c) for securing the welfare of children in such homes.
- (2) The regulations may, in particular—
- (a) prescribe standards to which the premises used for such homes are to conform;
  - (b) impose requirements as to the accommodation, staff and equipment to be provided in such homes, and as to the arrangements to be made for protecting the health of children in such homes;
  - (c) provide for the control and discipline of children in such homes;
  - (d) impose requirements as to the keeping of records and giving of notices in respect of children in such homes;
  - (e) impose requirements as to the facilities which are to be provided for giving religious instruction to children in such homes;
  - (f) authorise the Secretary of State to give and revoke directions requiring—
    - (i) the local authority by whom a home is provided or who are specified in the instrument of management for a controlled community home, or
    - (ii) the voluntary organisation by which an assisted community home is provided,
 to accommodate in the home a child looked after by a local authority for whom no places are made available in that home or to take such action in relation to a child accommodated in the home as may be specified in the directions;
  - (g) provide for consultation with the Secretary of State as to applicants for appointment to the charge of a home;
  - (h) empower the Secretary of State to prohibit the appointment of any particular applicant except in the cases (if any) in which the regulations dispense with such consultation by reason that the person to be appointed possesses such qualifications as may be prescribed;
  - (i) require the approval of the Secretary of State for the provision and use of accommodation for the purpose of restricting the liberty of children in such homes and impose other requirements (in addition to those imposed by section 25) as to the placing of a child in accommodation provided for that purpose, including a requirement to obtain the permission of any local authority who are looking after the child;
  - (j) provide that, to such extent as may be provided for in the regulations, the Secretary of State may direct that any provision of regulations under this paragraph which is specified in the direction and makes any such provision as is referred to in paragraph (a) or (b) shall not apply in relation to a particular home or the premises used for it, and may provide for the variation or revocation of any such direction by the Secretary of State.

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- (3) Without prejudice to the power to make regulations under this paragraph conferring functions on—
- (a) the local authority or voluntary organisation by which a community home is provided; or
  - (b) the managers of a controlled or assisted community home,
- regulations under this paragraph may confer functions in relation to a controlled or assisted community home on the local authority named in the instrument of management for the home.

#### Commencement Information

**I69** Sch. 4 Pt. III para. 4 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## SCHEDULE 5

Section 60(4).

### VOLUNTARY HOMES AND VOLUNTARY ORGANISATIONS

#### PART I

#### REGISTRATION OF VOLUNTARY HOMES

##### *General*

- 1 (1) An application for registration under this paragraph shall—
- (a) be made by the persons intending to carry on the home to which the application relates; and
  - (b) be made in such manner, and be accompanied by such particulars, as the Secretary of State may prescribe.
- (2) On an application duly made under sub-paragraph (1) the Secretary of State may—
- (a) grant or refuse the application, as he thinks fit; or
  - (b) grant the application subject to such conditions as he considers appropriate.
- (3) The Secretary of State may from time to time—
- (a) vary any condition for the time being in force with respect to a voluntary home by virtue of this paragraph; or
  - (b) impose an additional condition,
- either on the application of the person carrying on the home or without such an application.
- (4) Where at any time it appears to the Secretary of State that the conduct of any voluntary home—
- (a) is not [<sup>F57</sup>, or has not been,] in accordance with regulations made under paragraph 7; or
  - (b) is [<sup>F58</sup>, or has been,] otherwise unsatisfactory,

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he may cancel the registration of the home and remove it from the register.

- (5) Any person who, without reasonable excuse, carries on a voluntary home in contravention of—
- (a) section 60; or
  - (b) a condition to which the registration of the home is for the time being subject by virtue of this Part,
- shall be guilty of an offence.
- (6) Any person guilty of such an offence shall be liable on summary conviction to a fine not exceeding—
- (a) level 5 on the standard scale, if his offence is under sub-paragraph (5)(a); or
  - (b) level 4, if it is under sub-paragraph (5)(b).
- (7) Where the Secretary of State registers a home under this paragraph, or cancels the registration of a home, he shall notify the local authority within whose area the home is situated.

#### **Textual Amendments**

**F57** Words in *Sch. 5 para. 1(4)(a)* inserted (1.1.2001 (E.) and 28.2.2001 (W.)) by 2000 c. 14, s. 41(1)(a); S.I. 2000/2795, art. 2(2)(a); S.I. 2001/139, art. 2(2)(a)

**F58** Words in *Sch. 5 para. 1(4)(b)* inserted (1.1.2001 (E.) and 28.2.2001 (W.)) by 2000 c. 14, ss. 41(1); S.I. 2000/2795, art. 2(2)(a); S.I. 2001/139, art. 2(2)(a)

#### **Commencement Information**

**I70** *Sch. 5 Pt. I para. 1* wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *Procedure*

- 2 (1) Where—
- (a) a person applies for registration of a voluntary home; and
  - (b) the Secretary of State proposes to grant his application,
- the Secretary of State shall give him written notice of his proposal and of the conditions subject to which he proposes to grant the application.
- (2) The Secretary of State need not give notice if he proposes to grant the application subject only to conditions which—
- (a) the applicant specified in the application; or
  - (b) the Secretary of State and the applicant have subsequently agreed.
- (3) Where the Secretary of State proposes to refuse such an application he shall give notice of his proposal to the applicant.
- (4) The Secretary of State shall give any person carrying on a voluntary home notice of a proposal to—
- (a) cancel the registration of the home;
  - (b) vary any condition for the time being in force with respect to the home by virtue of paragraph 1; or
  - (c) impose any additional condition.

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- (5) A notice under this paragraph shall give the Secretary of State's reasons for his proposal.
- [<sup>F59</sup>(6) In relation to a home which has ceased to exist, the reference in sub-paragraph (4) to any person carrying on the home shall be taken to be a reference to each of the persons who carried it on.]

#### Textual Amendments

**F59** Sch. 5 Pt. 1 para. 2(6) inserted (1.1.2001 (E.) and 28.2.2002 (W.)) by 2000 c. 14, ss. 41(2), 122; S.I. 2000/2795, art. 2(2)(a); S.I. 2001/139, art. 2(2)(a)

#### Commencement Information

**I71** Sch. 5 Pt. 1 para. 2 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *Right to make representations*

- 3 (1) A notice under paragraph 2 shall state that within 14 days of service of the notice any person on whom it is served may (in writing) require the Secretary of State to give him an opportunity to make representations to the Secretary of State concerning the matter.
- (2) Where a notice has been served under paragraph 2, the Secretary of State shall not determine the matter until either—
- (a) any person on whom the notice was served has made representations to him concerning the matter; or
  - (b) the period during which any such person could have required the Secretary of State to give him an opportunity to make representations has elapsed without the Secretary of State being required to give such an opportunity; or
  - (c) the conditions specified in sub-paragraph (3) are satisfied.
- (3) The conditions are that—
- (a) a person on whom the notice was served has required the Secretary of State to give him an opportunity to make representations to the Secretary of State;
  - (b) the Secretary of State has allowed him a reasonable period to make his representations; and
  - (c) he has failed to make them within that period.
- (4) The representations may be made, at the option of the person making them, either in writing or orally.
- (5) If he informs the Secretary of State that he desires to make oral representations, the Secretary of State shall give him an opportunity of appearing before, and of being heard by, a person appointed by the Secretary of State.

#### Commencement Information

**I72** Sch. 5 Pt. 1 para. 3 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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### *Decision of Secretary of State*

- 4 (1) If the Secretary of State decides to adopt the proposal, he shall serve notice in writing of his decision on any person on whom he was required to serve notice of his proposal.
- (2) A notice under this paragraph shall be accompanied by a notice explaining the right of appeal conferred by paragraph 5.
- (3) A decision of the Secretary of State, other than a decision to grant an application for registration subject only to such conditions as are mentioned in paragraph 2(2) or to refuse an application for registration, shall not take effect—
- (a) if no appeal is brought, until the end of the period of 28 days referred to in paragraph 5(3); and
  - (b) if an appeal is brought, until it is determined or abandoned.

#### **Commencement Information**

**I73** Sch. 5 Pt. I para. 4 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *Appeals*

- 5 (1) An appeal against a decision of the Secretary of State under Part VII shall lie to a Registered Homes Tribunal.
- (2) An appeal shall be brought by notice in writing given to the Secretary of State.
- (3) No appeal may be brought by a person more than 28 days after service on him of notice of the decision.
- (4) On an appeal, the Tribunal may confirm the Secretary of State's decision or direct that it shall not have effect.
- (5) A Tribunal shall also have power on an appeal to—
- (a) vary any condition for the time being in force by virtue of Part VII with respect to the home to which the appeal relates;
  - (b) direct that any such condition shall cease to have effect; or
  - (c) direct that any such condition as it thinks fit shall have effect with respect to the home.

#### **Commencement Information**

**I74** Sch. 5 Pt. I para. 5 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *Notification of particulars with respect to voluntary homes*

- 6 (1) It shall be the duty of the person in charge of any voluntary home established after the commencement of this Act to send to the Secretary of State within three months



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from the establishment of the home such particulars with respect to the home as the Secretary of State may prescribe.

- (2) It shall be the duty of the person in charge of any voluntary home (whether established before or after the commencement of this Act) to send to the Secretary of State such particulars with respect to the home as may be prescribed.
- (3) The particulars must be sent—
  - (a) in the case of a home established before the commencement of this Act, in every year, or
  - (b) in the case of a home established after the commencement of this Act, in every year subsequent to the year in which particulars are sent under sub-paragraph (1),by such date as the Secretary of State may prescribe.
- (4) Where the Secretary of State by regulations varies the particulars which are to be sent to him under sub-paragraph (1) or (2) by the person in charge of a voluntary home—
  - (a) that person shall send to the Secretary of State the prescribed particulars within three months from the date of the making of the regulations;
  - (b) where any such home was established before, but not more than three months before, the making of the regulations, compliance with paragraph (a) shall be sufficient compliance with the requirement of sub-paragraph (1) to send the prescribed particulars within three months from the establishment of the home;
  - (c) in the year in which the particulars are varied, compliance with paragraph (a) by the person in charge of any voluntary home shall be sufficient compliance with the requirement of sub-paragraph (2) to send the prescribed particulars before the prescribed date in that year.
- (5) If the person in charge of a voluntary home fails, without reasonable excuse, to comply with any of the requirements of this paragraph he shall be guilty of an offence.
- (6) Any person guilty of such an offence shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

#### **Commencement Information**

**I75** Sch. 5 Pt. I para. 6 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## **PART II**

### REGULATIONS AS TO VOLUNTARY HOMES

#### *Regulations as to conduct of voluntary homes*

- 7 (1) The Secretary of State may make regulations—
  - (a) as to the placing of children in voluntary homes;
  - (b) as to the conduct of such homes; and
  - (c) for securing the welfare of children in such homes.

*Status: Point in time view as at 01/10/2001.*

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- (2) The regulations may, in particular—
- (a) prescribe standards to which the premises used for such homes are to conform;
  - (b) impose requirements as to the accommodation, staff and equipment to be provided in such homes, and as to the arrangements to be made for protecting the health of children in such homes;
  - (c) provide for the control and discipline of children in such homes;
  - (d) require the furnishing to the Secretary of State of information as to the facilities provided for—
    - (i) the parents of children in the homes; and
    - (ii) persons who are not parents of such children but who have parental responsibility for them; and
    - (iii) other persons connected with such children,
 to visit and communicate with the children;
  - (e) authorise the Secretary of State to limit the number of children who may be accommodated in any particular voluntary home;
  - <sup>F60</sup>(f) prohibit the use of accommodation for the purpose of restricting the liberty of children in such homes;]
  - [<sup>F61</sup>(ff) require the approval of the Secretary of State for the provision and use of accommodation for the purpose of restricting the liberty of children in such homes and impose other requirements (in addition to those imposed by section 25) as to the placing of a child in accommodation provided for that purpose, including a requirement to obtain the permission of any local authority who are looking after the child;]
  - (g) impose requirements as to the keeping of records and giving of notices with respect to children in such homes;
  - (h) impose requirements as to the facilities which are to be provided for giving religious instruction to children in such homes;
  - (i) require notice to be given to the Secretary of State of any change of the person carrying on or in charge of a voluntary home or of the premises used by such a home.
- (3) The regulations may provide that a contravention of, or failure to comply with, any specified provision of the regulations without reasonable excuse shall be an offence against the regulations.
- (4) Any person guilty of such an offence shall be liable to a fine not exceeding level 4 on the standard scale.

#### Textual Amendments

**F60** Sch. 5 Pt. II para. 7(2)(f) omitted (30.5.1995) by 1994 c. 33, s. 19(2)(a)(i) and repealed(*prosp.*) by ss. 168(3), 172(2)-(4)(6), Sch. 11 of the same 1994 Act; S.I. 1995/1378, art. 2

**F61** Sch. 5 Pt. II para. 7(2)(ff) inserted (30.5.1995) by 1994 c. 33, s. 19(2)(a)(ii); S.I. 1995/1378, art. 2

#### Commencement Information

**I76** Sch. 5 Pt. II para. 7 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Status: Point in time view as at 01/10/2001.*

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### *Disqualification*

- 8 The Secretary of State may by regulation make provision with respect to the disqualification of persons in relation to voluntary homes of a kind similar to that made in relation to children’s homes by section 65.

#### **Commencement Information**

I77 Sch. 5 Pt. II para. 8 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## SCHEDULE 6

Section 63(11).

### REGISTERED CHILDREN’S HOMES

#### PART I

#### REGISTRATION

##### *Application for registration*

- 1 (1) An application for the registration of a children’s home shall be made—
- (a) by the person carrying on, or intending to carry on, the home; and
  - (b) to the local authority for the area in which the home is, or is to be, situated.
- (2) The application shall be made in the prescribed manner and shall be accompanied by—
- (a) such particulars as may be prescribed; and
  - (b) such reasonable fee as the local authority may determine.
- (3) In this Schedule “prescribed” means prescribed by regulations made by the Secretary of State.
- (4) If a local authority are satisfied that a children’s home with respect to which an application has been made in accordance with this Schedule complies or (as the case may be) will comply—
- (a) with such requirements as may be prescribed, and
  - (b) with such other requirements (if any) as appear to them to be appropriate,
- they shall grant the application, either unconditionally or subject to conditions imposed under paragraph 2.
- (5) Before deciding whether or not to grant an application a local authority shall comply with any prescribed requirements.
- (6) Regulations made for the purposes of sub-paragraph (5) may, in particular, make provision as to the inspection of the home in question.

*Status: Point in time view as at 01/10/2001.*

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- (7) Where an application is granted, the authority shall notify the applicant that the home has been registered under this Act as from such date as may be specified in the notice.
- (8) If the authority are not satisfied as mentioned in sub-paragraph (4), they shall refuse the application.
- (9) For the purposes of this Act, an application which has not been granted or refused within the period of twelve months beginning with the date when it is served on the authority shall be deemed to have been refused by them, and the applicant shall be deemed to have been notified of their refusal at the end of that period.
- (10) Where a school to which section 63(1) applies is registered it shall not cease to be a registered children’s home by reason only of a subsequent change in the number of children for whom it provides accommodation.

**Modifications etc. (not altering text)**

**C10** Sch. 6 Pt. I para. 1(9) excluded (*temp.*) by S.I. 2000/2795, art. 3(4)

**Commencement Information**

**I78** Sch. 6 Pt. I para. 1 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Conditions imposed on registration*

- 2 (1) A local authority may grant an application for registration subject to such conditions relating to the conduct of the home as they think fit.
- (2) A local authority may from time to time—
  - (a) vary any condition for the time being in force with respect to a home by virtue of this paragraph; or
  - (b) impose an additional condition,
 either on the application of the person carrying on the home or without such an application.
- (3) If any condition imposed or varied under this paragraph is not complied with, the person carrying on the home shall, if he has no reasonable excuse, be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

**Commencement Information**

**I79** Sch. 6 Pt. I para. 2 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Annual review of registration*

- 3 (1) In this [F62Schedule]“the responsible authority”, in relation to a registered children’s home means the local authority who registered it.

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- (2) The responsible authority for a registered children’s home shall, at the end of the period of twelve months beginning with the date of registration, and annually thereafter, review its registration for the purpose of determining whether the registration should continue in force or be cancelled under paragraph 4(3).
- (3) If on any such annual review the responsible authority are satisfied that the home is being [<sup>F63</sup>and has been] carried on in accordance with the relevant requirements they shall determine that, subject to sub-paragraph (4), the registration should continue in force.
- (4) The responsible authority shall give to the person carrying on the home notice of their determination under sub-paragraph (3) and the notice shall require him to pay to the authority with respect to the review such reasonable fee as the authority may determine.
- (5) It shall be a condition of the home’s continued registration that the fee is so paid before the expiry of the period of twenty-eight days beginning with the date on which the notice is received by the person carrying on the home.
- (6) In this Schedule “the relevant requirements” means any requirements of Part VIII and of any regulations made under paragraph 10, and any conditions imposed under paragraph 2.

#### Textual Amendments

**F62** Word in Sch. 6 para. 3 substituted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, Sch. 16 para. 29; S.I. 1991/1883, art. 3, Sch.

**F63** Words in Sch. 6 Pt. I para. 3(3) inserted (1.1.2001 (E.) and 28.2.2001 (W.)) by 2000 c. 14, ss. 41(3), 122; S.I. 2000/2795, art. 2(2)(a); S.I. 2001/139, art. 2(2)(a)

#### Commencement Information

**I80** Sch. 6 Pt. I para. 3 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *Cancellation of registration*

- 4 (1) The person carrying on a registered children’s home may at any time make an application, in such manner and including such particulars as may be prescribed, for the cancellation by the responsible authority of the registration of the home.
- (2) If the authority are satisfied, in the case of a school registered by virtue of section 63(6), that it is no longer a school to which that provision applies, the authority shall give to the person carrying on the home notice that the registration of the home has been cancelled as from the date of the notice.
- (3) If on any annual review under paragraph 3, or at any other time, it appears to the responsible authority that a registered home is being [<sup>F64</sup>, or has been,] carried on otherwise than in accordance with the relevant requirements, they may determine that the registration of the home should be cancelled.
- (4) The responsible authority may at any time determine that the registration of a home should be cancelled on the ground—

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- (a) that the person carrying on the home has been convicted of an offence under this Part or any regulations made under paragraph 10; or
- (b) that any other person has been convicted of such an offence in relation to the home.

[<sup>F65</sup>(5) In relation to a home which has ceased to exist, references in this paragraph and paragraph 5(4) to the person, or any person, carrying on the home include references to each of the persons who carried it on.]

#### Textual Amendments

- F64** Words in Sch. 6 Pt. I para. 4(3) inserted (1.1.2001 (E.) and 28.2.2001 (W.)) by 2000 c. 14, ss. 41(4)(a), 122; S.I. 2000/2795, art. 2(2)(a); S.I. 2001/139, art. 2(2)(a)
- F65** Words in Sch. 6 Pt. I para. 4(5) inserted (1.1.2001 (E.) and 28.2.2001 (W.)) by 2000 c. 14, ss. 41(4)(b), 122; S.I. 2000/2795, art. 2(2)(a); S.I. 2001/139, art. 2(2)(a)

#### Commencement Information

- I81** Sch. 6 Pt. I para. 4 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *Procedure*

- 5 (1) Where—
- (a) a person applies for the registration of a children’s home; and
  - (b) the local authority propose to grant his application,
- they shall give him written notice of their proposal and of the conditions (if any) subject to which they propose to grant his application.
- (2) The authority need not give notice if they propose to grant the application subject only to conditions which—
- (a) the applicant specified in the application; or
  - (b) the authority and the applicant have subsequently agreed.
- (3) The authority shall give an applicant notice of a proposal to refuse his application.
- (4) The authority shall give any person carrying on a registered children’s home notice of a proposal—
- (a) to cancel the registration;
  - (b) to vary any condition for the time being in force with respect to the home by virtue of Part VIII; or
  - (c) to impose any additional condition.
- (5) A notice under this paragraph shall give the local authority’s reasons for their proposal.

#### Commencement Information

- I82** Sch. 6 Pt. I para. 5 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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### *Right to make representations*

- 6 (1) A notice under paragraph 5 shall state that within 14 days of service of the notice any person on whom it is served may in writing require the local authority to give him an opportunity to make representations to them concerning the matter.
- (2) Where a notice has been served under paragraph 5, the local authority shall not determine the matter until—
- (a) any person on whom the notice was served has made representations to them concerning the matter;
  - (b) the period during which any such person could have required the local authority to give him an opportunity to make representations has elapsed without their being required to give such an opportunity; or
  - (c) the conditions specified in sub-paragraph (3) below are satisfied.
- (3) The conditions are—
- (a) that a person on whom the notice was served has required the local authority to give him an opportunity to make representations to them concerning the matter;
  - (b) that the authority have allowed him a reasonable period to make his representations; and
  - (c) that he has failed to make them within that period.
- (4) The representations may be made, at the option of the person making them, either in writing or orally.
- (5) If he informs the local authority that he desires to make oral representations, the authority shall give him an opportunity of appearing before and of being heard by a committee or sub-committee of theirs.

#### **Modifications etc. (not altering text)**

**C11** Sch. 6 Pt. I para. 6(5) modified (26.10.2000 for E. and 28.7.2001 for W.) by 2000 c. 22, ss. 107(1), 108(4), Sch. 5 para. 23; S.I. 2000/2849, art. 2(f)

#### **Commencement Information**

**I83** Sch. 6 Pt. I para. 6 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *Decision of local authority*

- 7 (1) If the local authority decide to adopt a proposal of theirs to grant an application, they shall serve notice in writing of their decision on any person on whom they were required to serve notice of their proposal.
- (2) A notice under this paragraph shall be accompanied by an explanation of the right of appeal conferred by paragraph 8.
- (3) A decision of a local authority, other than a decision to grant an application for registration subject only to such conditions as are mentioned in paragraph 5(2) or to refuse an application for registration, shall not take effect—



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- (a) if no appeal is brought, until the end of the period of 28 days referred to in paragraph 8(3); and
- (b) if an appeal is brought, until it is determined or abandoned.

**Modifications etc. (not altering text)**

**C12** Sch. 6 Pt. I para. 7(3) excluded (*temp.*) by S.I. 2000/2795, art. 3(4)

**Commencement Information**

**I84** Sch. 6 Pt. I para. 7 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Appeals*

- 8
- (1) An appeal against a decision of a local authority under Part VIII shall lie to a Registered Homes Tribunal.
  - (2) An appeal shall be brought by notice in writing given to the local authority.
  - (3) No appeal shall be brought by a person more than 28 days after service on him of notice of the decision.
  - (4) On an appeal the Tribunal may confirm the local authority’s decision or direct that it shall not have effect.
  - (5) A Tribunal shall also have power on an appeal—
    - (a) to vary any condition in force with respect to the home to which the appeal relates by virtue of paragraph 2;
    - (b) to direct that any such condition shall cease to have effect; or
    - (c) to direct that any such condition as it thinks fit shall have effect with respect to the home.
  - (6) A local authority shall comply with any direction given by a Tribunal under this paragraph.

**Commencement Information**

**I85** Sch. 6 Pt. I para. 8 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Prohibition on further applications*

- 9
- (1) Where an application for the registration of a home is refused, no further application may be made within the period of six months beginning with the date when the applicant is notified of the refusal.
  - (2) Sub-paragraph (1) shall have effect, where an appeal against the refusal of an application is determined or abandoned, as if the reference to the date when the applicant is notified of the refusal were a reference to the date on which the appeal is determined or abandoned.



*Status: Point in time view as at 01/10/2001.*

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- (3) Where the registration of a home is cancelled, no application for the registration of the home shall be made within the period of six months beginning with the date of cancellation.
- (4) Sub-paragraph (3) shall have effect, where an appeal against the cancellation of the registration of a home is determined or abandoned, as if the reference to the date of cancellation were a reference to the date on which the appeal is determined or abandoned.

#### Commencement Information

**186** Sch. 6 Pt. I para. 9 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## PART II

### REGULATIONS

- 10 (1) The Secretary of State may make regulations—
  - (a) as to the placing of children in registered children's homes;
  - (b) as to the conduct of such homes; and
  - (c) for securing the welfare of the children in such homes.
- (2) The regulations may in particular—
  - (a) prescribe standards to which the premises used for such homes are to conform;
  - (b) impose requirements as to the accommodation, staff and equipment to be provided in such homes;
  - (c) impose requirements as to the arrangements to be made for protecting the health of children in such homes;
  - (d) provide for the control and discipline of children in such homes;
  - (e) require the furnishing to the responsible authority of information as to the facilities provided for—
    - (i) the parents of children in such homes;
    - (ii) persons who are not parents of such children but who have parental responsibility for them; and
    - (iii) other persons connected with such children, to visit and communicate with the children;
  - (f) impose requirements as to the keeping of records and giving of notices with respect to children in such homes;
  - (g) impose requirements as to the facilities which are to be provided for giving religious instruction to children in such homes;
  - (h) make provision as to the carrying out of annual reviews under paragraph 3;
  - (i) authorise the responsible authority to limit the number of children who may be accommodated in any particular registered home;
  - <sup>F66</sup>(j) prohibit the use of accommodation for the purpose of restricting the liberty of children in such homes;

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- [<sup>F67</sup>(jj) require the approval of the Secretary of State for the provision and use of accommodation for the purpose of restricting the liberty of children in such homes and impose other requirements (in addition to those imposed by section 25) as to the placing of a child in accommodation provided for that purpose, including a requirement to obtain the permission of any local authority who are looking after the child.]
- (k) require notice to be given to the responsible authority of any change of the person carrying on or in charge of a registered home or of the premises used by such a home;
- (l) make provision similar to that made by regulations under section 26.
- (3) The regulations may provide that a contravention of or failure to comply with any specified provision of the regulations, without reasonable excuse, shall be an offence against the regulations.
- (4) Any person guilty of such an offence shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### Textual Amendments

**F66** Sch. 6 Pt. II para. 10(2)(j) omitted (30.5.1995) by 1994 c. 33, s. 19(2)(b)(i) and repealed(*prosp.*) by ss. 168(3), 172(2)(4)-(6), Sch. 11 of the same 1994 Act; S.I. 1995/1378, art. 2

**F67** Sch. 6 Pt. II para. 10(2)(jj) inserted (30.5.1995) by 1994 c. 33, s. 19(2)(b)(ii); S.I. 1995/1378, art. 2

#### Commencement Information

**I87** Sch. 6 Pt. II para. 10 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## SCHEDULE 7

Section 63(12).

### FOSTER PARENTS: LIMITS ON NUMBER OF FOSTER CHILDREN

#### *Interpretation*

- 1 For the purposes of this Schedule, a person fosters a child if—
- (a) he is a local authority foster parent in relation to the child;
  - (b) he is a foster parent with whom the child has been placed by a voluntary organisation; or
  - (c) he fosters the child privately.

#### Commencement Information

**I88** Sch. 7 para. 1 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *The usual fostering limit*

- 2 Subject to what follows, a person may not foster more than three children (“the usual fostering limit”).

*Status: Point in time view as at 01/10/2001.*

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**Commencement Information**

**I89** Sch. 7 para. 2 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

*Siblings*

- 3 A person may exceed the usual fostering limit if the children concerned are all siblings with respect to each other.

**Commencement Information**

**I90** Sch. 7 para. 3 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

*Exemption by local authority*

- 4 (1) A person may exceed the usual fostering limit if he is exempted from it by the local authority within whose area he lives.
- (2) In considering whether to exempt a person, a local authority shall have regard, in particular, to—
- (a) the number of children whom the person proposes to foster;
  - (b) the arrangements which the person proposes for the care and accommodation of the fostered children;
  - (c) the intended and likely relationship between the person and the fostered children;
  - (d) the period of time for which he proposes to foster the children; and
  - (e) whether the welfare of the fostered children (and of any other children who are or will be living in the accommodation) will be safeguarded and promoted.
- (3) Where a local authority exempt a person, they shall inform him by notice in writing—
- (a) that he is so exempted;
  - (b) of the children, described by name, whom he may foster; and
  - (c) of any condition to which the exemption is subject.
- (4) A local authority may at any time by notice in writing—
- (a) vary or cancel an exemption; or
  - (b) impose, vary or cancel a condition to which the exemption is subject,
- and, in considering whether to do so, they shall have regard in particular to the considerations mentioned in sub-paragraph (2).
- (5) The Secretary of State may make regulations amplifying or modifying the provisions of this paragraph in order to provide for cases where children need to be placed with foster parents as a matter of urgency.

**Commencement Information**

**I91** Sch. 7 para. 4 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

*Status: Point in time view as at 01/10/2001.*

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### *Effect of exceeding fostering limit*

- 5 (1) A person shall cease to be treated as fostering and shall be treated as carrying on a children's home if—
- (a) he exceeds the usual fostering limit; or
  - (b) where he is exempted under paragraph 4,—
    - (i) he fosters any child not named in the exemption; and
    - (ii) in so doing, he exceeds the usual fostering limit.
- (2) Sub-paragraph (1) does not apply if the children concerned are all siblings in respect of each other.

#### **Commencement Information**

**I92** Sch. 7 para. 5 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *Complaints etc.*

- 6 (1) Every local authority shall establish a procedure for considering any representations (including any complaint) made to them about the discharge of their functions under paragraph 4 by a person exempted or seeking to be exempted under that paragraph.
- (2) In carrying out any consideration of representations under sub-paragraph (1), a local authority shall comply with any regulations made by the Secretary of State for the purposes of this paragraph.

#### **Commencement Information**

**I93** Sch. 7 para. 6 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## SCHEDULE 8

Section 66(5).

### PRIVATELY FOSTERED CHILDREN

#### *Exemptions*

- 1 A child is not a privately fostered child while he is being looked after by a local authority.

#### **Commencement Information**

**I94** Sch. 8 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 2 (1) A child is not a privately fostered child while he is in the care of any person—
- (a) in premises in which any—
    - (i) parent of his;

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- (ii) person who is not a parent of his but who has parental responsibility for him; or
  - (iii) person who is a relative of his and who has assumed responsibility for his care,  
is for the time being living;
  - (b) in any children's home;
  - (c) in accommodation provided by or on behalf of any voluntary organisation;
  - (d) in any school in which he is receiving full-time education;
  - (e) in any health service hospital;
  - (f) in any residential care home [<sup>F68</sup>(other than a small home)], nursing home or mental nursing home; or
  - (g) in any home or institution not specified in this paragraph but provided, equipped and maintained by the Secretary of State.
- (2) Sub-paragraph (1)(b) to (g) does not apply where the person caring for the child is doing so in his personal capacity and not in the course of carrying out his duties in relation to the establishment mentioned in the paragraph in question.

#### Textual Amendments

**F68** Words in Sch. 8 para. 2(1)(f) inserted (1.4.1993) by Registered Homes (Amendment) Act 1991 (c. 20, SIF 113:3), s. 2(6); S.I. 1992/2240, art. 2.

#### Commencement Information

**I95** Sch. 8 para. 2 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 3 A child is not a privately fostered child while he is in the care of any person in compliance with—
- (a) an order under [<sup>F69</sup>section 63(1) of the Powers of Criminal Courts (Sentencing) Act 2000]; or
  - (b) a supervision requirement within the meaning of [<sup>F70</sup>Part II of the Children (Scotland) Act 1995].

#### Textual Amendments

**F69** Words in Sch. 8 para. 3(a) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), Sch. 9 para. 132

**F70** Words in Sch. 8 para. 3(b) substituted (1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 48(5)(with ss. 90, 103(1)); S.I. 1996/3201, art. 3(7)

#### Commencement Information

**I96** Sch. 8 para. 3 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 4 A child is not a privately fostered child while he is liable to be detained, or subject to guardianship, under the <sup>M15</sup>Mental Health Act 1983.

#### Commencement Information

**I97** Sch. 8 para. 4 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Status: Point in time view as at 01/10/2001.*

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#### Marginal Citations

**M15** 1983 c. 20.

- 5 A child is not a privately fostered child while—
- (a) he is placed in the care of a person who proposes to adopt him under arrangements made by an adoption agency within the meaning of—
    - (i) section 1 of the <sup>M16</sup>Adoption Act 1976;
    - (ii) section 1 of the <sup>M17</sup>Adoption (Scotland) Act 1978; or
    - (iii) Article 3 of the <sup>M18</sup>Adoption (Northern Ireland) Order 1987; or
  - (b) he is a protected child.

#### Commencement Information

**I98** Sch. 8 para. 5 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M16** 1976 c. 36.

**M17** 1978 c. 28.

**M18** S.I. 1987/2203 (N.I. 22).

#### *Power of local authority to impose requirements*

- 6 (1) Where a person is fostering any child privately, or proposes to foster any child privately, the appropriate local authority may impose on him requirements as to—
- (a) the number, age and sex of the children who may be privately fostered by him;
  - (b) the standard of the accommodation and equipment to be provided for them;
  - (c) the arrangements to be made with respect to their health and safety; and
  - (d) particular arrangements which must be made with respect to the provision of care for them,
- and it shall be his duty to comply with any such requirement before the end of such period as the authority may specify unless, in the case of a proposal, the proposal is not carried out.
- (2) A requirement may be limited to a particular child, or class of child.
  - (3) A requirement (other than one imposed under sub-paragraph (1)(a)) may be limited by the authority so as to apply only when the number of children fostered by the person exceeds a specified number.
  - (4) A requirement shall be imposed by notice in writing addressed to the person on whom it is imposed and informing him of—
    - (a) the reason for imposing the requirement;
    - (b) his right under paragraph 8 to appeal against it; and
    - (c) the time within which he may do so.
  - (5) A local authority may at any time vary any requirement, impose any additional requirement or remove any requirement.

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(6) In this Schedule—

- (a) “the appropriate local authority” means—
  - (i) the local authority within whose area the child is being fostered; or
  - (ii) in the case of a proposal to foster a child, the local authority within whose area it is proposed that he will be fostered; and
- (b) “requirement”, in relation to any person, means a requirement imposed on him under this paragraph.

**Modifications etc. (not altering text)**

**C13** Sch. 8 para. 6: power to amend conferred (15.1.2005) by the [Children Act 2004 \(c. 31\)](#), **ss. 45-47**

**Commencement Information**

**I99** Sch. 8 para. 6 wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828](#), **art. 3(2)**

*Regulations requiring notification of fostering etc.*

- 7 (1) The Secretary of State may by regulations make provision as to—
- (a) the circumstances in which notification is required to be given in connection with children who are, have been or are proposed to be fostered privately; and
  - (b) the manner and form in which such notification is to be given.
- (2) The regulations may, in particular—
- (a) require any person who is, or proposes to be, involved (whether or not directly) in arranging for a child to be fostered privately to notify the appropriate authority;
  - (b) require any person who is—
    - (i) a parent of a child; or
    - (ii) a person who is not a parent of his but who has parental responsibility for a child,and who knows that it is proposed that the child should be fostered privately, to notify the appropriate authority;
  - (c) require any parent of a privately fostered child, or person who is not a parent of such a child but who has parental responsibility for him, to notify the appropriate authority of any change in his address;
  - (d) require any person who proposes to foster a child privately, to notify the appropriate authority of his proposal;
  - (e) require any person who is fostering a child privately, or proposes to do so, to notify the appropriate authority of—
    - (i) any offence of which he has been convicted;
    - (ii) any disqualification imposed on him under section 68; or
    - (iii) any prohibition imposed on him under section 69;
  - (f) require any person who is fostering a child privately, to notify the appropriate authority of any change in his address;
  - (g) require any person who is fostering a child privately to notify the appropriate authority in writing of any person who begins, or ceases, to be part of his household;

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- (h) require any person who has been fostering a child privately, but has ceased to do so, to notify the appropriate authority (indicating, where the child has died, that that is the reason).

**Modifications etc. (not altering text)**

**C14** Sch. 8 para. 7: power to amend conferred (15.1.2005) by the Children Act 2004 (c. 31), ss. 45-47

**Commencement Information**

**I100** Sch. 8 para. 7 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

VALID FROM 01/04/2005

[<sup>F71</sup>7A Every local authority must promote public awareness in their area of requirements as to notification for which provision is made under paragraph 7.]

**Textual Amendments**

**F71** Sch. 8 para. 7A inserted (1.4.2005 for E. and 1.4.2006 for W.) by Children Act 2004 (c. 31), s. 44(7); S.I. 2005/394, art. 2(2)(d); S.I. 2006/885, art. 2(2)(b)

*Appeals*

- 8 (1) A person aggrieved by—
- (a) a requirement imposed under paragraph 6;
  - (b) a refusal of consent under section 68;
  - (c) a prohibition imposed under section 69;
  - (d) a refusal to cancel such a prohibition;
  - (e) a refusal to make an exemption under paragraph 4 of Schedule 7;
  - (f) a condition imposed in such an exemption; or
  - (g) a variation or cancellation of such an exemption,
- may appeal to the court.
- (2) The appeal must be made within fourteen days from the date on which the person appealing is notified of the requirement, refusal, prohibition, condition, variation or cancellation.
- (3) Where the appeal is against—
- (a) a requirement imposed under paragraph 6;
  - (b) a condition of an exemption imposed under paragraph 4 of Schedule 7; or
  - (c) a variation or cancellation of such an exemption,
- the requirement, condition, variation or cancellation shall not have effect while the appeal is pending.
- (4) Where it allows an appeal against a requirement or prohibition, the court may, instead of cancelling the requirement or prohibition—
- (a) vary the requirement, or allow more time for compliance with it; or



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- (b) if an absolute prohibition has been imposed, substitute for it a prohibition on using the premises after such time as the court may specify unless such specified requirements as the local authority had power to impose under paragraph 6 are complied with.
- (5) Any requirement or prohibition specified or substituted by a court under this paragraph shall be deemed for the purposes of Part IX (other than this paragraph) to have been imposed by the local authority under paragraph 6 or (as the case may be) section 69.
- (6) Where it allows an appeal against a refusal to make an exemption, a condition imposed in such an exemption or a variation or cancellation of such an exemption, the court may—
  - (a) make an exemption;
  - (b) impose a condition; or
  - (c) vary the exemption.
- (7) Any exemption made or varied under sub-paragraph (6), or any condition imposed under that sub-paragraph, shall be deemed for the purposes of Schedule 7 (but not for the purposes of this paragraph) to have been made, varied or imposed under that Schedule.
- (8) Nothing in sub-paragraph (1)(e) to (g) confers any right of appeal on—
  - (a) a person who is, or would be if exempted under Schedule 7, a local authority foster parent; or
  - (b) a person who is, or would be if so exempted, a person with whom a child is placed by a voluntary organisation.

**Modifications etc. (not altering text)**

**C15** Sch. 8 para. 8: power to amend conferred (15.1.2005) by the [Children Act 2004 \(c. 31\)](#), **ss. 45-47**

**Commencement Information**

**I101** Sch. 8 para. 8 wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828](#), **art. 3(2)**

*Extension of Part IX to certain school children during holidays*

- 9
- (1) Where a child under sixteen who is a pupil at a school which is not maintained by a local education authority lives at the school during school holidays for a period of more than two weeks, Part IX shall apply in relation to the child as if—
    - (a) while living at the school, he were a privately fostered child; and
    - (b) paragraphs 2(1)(d) and 6 were omitted.
  - (2) Sub-paragraph (3) applies to any person who proposes to care for and accommodate one or more children at a school in circumstances in which some or all of them will be treated as private foster children by virtue of this paragraph.
  - (3) That person shall, not less than two weeks before the first of those children is treated as a private foster child by virtue of this paragraph during the holiday in question, give written notice of his proposal to the local authority within whose area the child

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is ordinarily resident (“the appropriate authority”), stating the estimated number of the children.

- (4) A local authority may exempt any person from the duty of giving notice under subparagraph (3).
- (5) Any such exemption may be granted for a special period or indefinitely and may be revoked at any time by notice in writing given to the person exempted.
- (6) Where a child who is treated as a private foster child by virtue of this paragraph dies, the person caring for him at the school shall, not later than 48 hours after the death, give written notice of it—
  - (a) to the appropriate local authority; and
  - (b) where reasonably practicable, to each parent of the child and to every person who is not a parent of his but who has parental responsibility for him.
- (7) Where a child who is treated as a foster child by virtue of this paragraph ceases for any other reason to be such a child, the person caring for him at the school shall give written notice of the fact to the appropriate local authority.

#### Commencement Information

**I102** Sch. 8 para. 9 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Prohibition of advertisements relating to fostering*

- 10 No advertisement indicating that a person will undertake, or will arrange for, a child to be privately fostered shall be published, unless it states that person’s name and address.

#### Commencement Information

**I103** Sch. 10 para. 10 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *Avoidance of insurances on lives of privately fostered children*

- 11 A person who fosters a child privately and for reward shall be deemed for the purposes of the <sup>M19</sup>Life Assurance Act 1774 to have no interest in the life of the child.

#### Commencement Information

**I104** Sch. 8 para. 11 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M19** 1774 c. 48.

*Status: Point in time view as at 01/10/2001.*

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F72 SCHEDULE 9

Section 71(16).

**Textual Amendments**

**F72** Sch. 9 repealed (S.) (1.4.2002) by 2001 asp 8, s. 80(1), Sch. 4; S.S.I. 2002/162, art. 2(g)(i) (subject to arts. 3-13)

**Modifications etc. (not altering text)**

**C16** Pt. X and Sch. 9: By 2000 c. 14, s. 79(5) it is provided (2.7.2001 (E.) and 1.4.2002 (W.)) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(a)(2)(3) (with transitional provisions and savings in Sch.); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

*Applications for registration*

- 1 (1) An application for registration under section 71 shall be of no effect unless it contains—
- (a) a statement with respect to the applicant which complies with the requirements of regulations made for the purposes of this paragraph by the Secretary of State; and
  - (b) a statement with respect to any person assisting or likely to be assisting in looking after children on the premises in question, or living or likely to be living there, which complies with the requirements of such regulations.
- (2) Where a person provides, or proposes to provide, day care for children under the age of eight on different premises situated within the area of the same local authority, he shall make a separate application with respect to each of those premises.
- (3) An application under section 71 shall be accompanied by such fee as may be prescribed.
- (4) On receipt of an application for registration under section 71 from any person who is acting, or proposes to act, in any way which requires him to be registered under that section, a local authority shall register him if the application is properly made and they are not otherwise entitled to refuse to do so.

**Modifications etc. (not altering text)**

**C17** Pt. X (ss. 71-79) and Sch. 9: By 2000 c. 14, s. 79(5) it is provided (2.7.2001 (E.) and 1.4.2002 (W.)) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the Sch.); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

**Commencement Information**

**I105** Sch. 9 para. 1 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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### *Disqualification from registration*

- 2 (1) A person may not be registered under section 71 if he is disqualified by regulations made by the Secretary of State for the purposes of this paragraph [<sup>F73</sup>unless—
- (a) he has disclosed the fact to the appropriate local authority; and
  - (b) obtained their written consent.]
- (2) The regulations may, in particular, provide for a person to be disqualified where—
- (a) an order of a prescribed kind has been made at any time with respect to him;
  - (b) an order of a prescribed kind has been made at any time with respect to any child who has been in his care;
  - (c) a requirement of a prescribed kind has been imposed at any time with respect to such a child, under or by virtue of any enactment;
  - (d) he has at any time been refused registration under Part X or any other prescribed enactment or had any such registration cancelled;
  - (e) he has been convicted of any offence of a prescribed kind, or has been placed on probation or discharged absolutely or conditionally for any such offence;
  - (f) he has at any time been disqualified from fostering a child privately;
  - (g) a prohibition has been imposed on him at any time under section [<sup>F74</sup>69], section 10 of the <sup>M20</sup>Foster Children (Scotland) Act 1984 or any other prescribed enactment;
  - (h) his rights and powers with respect to a child have at any time been vested in a prescribed authority under a prescribed enactment.
- (3) A person who lives—
- (a) in the same household as a person who is himself disqualified by the regulations; or
  - (b) in a household at which any such person is employed,
- shall be disqualified unless he has disclosed the fact to the appropriate local authority and obtained their written consent.
- (4) A person who is disqualified shall not provide day care, or be concerned in the management of, or have any financial interest in, any provision of day care unless he has—
- (a) disclosed the fact to the appropriate local authority; and
  - (b) obtained their written consent.
- (5) No person shall employ, in connection with the provision of day care, a person who is disqualified, unless he has—
- (a) disclosed to the appropriate local authority the fact that that person is so disqualified; and
  - (b) obtained their written consent.
- (6) In this paragraph “enactment” means any enactment having effect, at any time, in any part of the United Kingdom.

#### **Extent Information**

**E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

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#### Textual Amendments

- F73** Words in Sch. 9 para. 2(1) added (E.W.)(14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 30(2)**; S.I. 1991/1883, art. 3, **Sch.**
- F74** Word in Sch. 9 para. 2(2)(g) substituted (E.W.)(14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 30(3)**; S.I. 1991/1883, art. 3, **Sch.**

#### Modifications etc. (not altering text)

- C18** Pt. X (ss. 71-79) and Sch. 9: By 2000 c. 14, s. 79(5) it is provided (2.7.2001 (E.) and 1.4.2002 (W.) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the **Sch.**); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in **Schs. 1-3**)

#### Commencement Information

- I106** Sch. 9 para. 2 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

- M20** 1984 c. 56.

- 2 (1) A person may not be registered under section 71 if he is disqualified by regulations made by the Secretary of State for the purposes of this paragraph [<sup>F157</sup> unless he has—
- (a) disclosed the fact to the appropriate local authority; and
  - (b) obtained their written consent.]
- (2) The regulations may, in particular, provide for a person to be disqualified where—
- (a) an order of a prescribed kind has been made at any time with respect to him;
  - (b) an order of a prescribed kind has been made at any time with respect to any child who has been in his care;
  - (c) a requirement of a prescribed kind has been imposed at any time with respect to such a child, under or by virtue of any enactment;
  - (d) he has at any time been refused registration under Part X or any other prescribed enactment or had any such registration cancelled;
  - (e) he has been convicted of any offence of a prescribed kind, or has been placed on probation or discharged absolutely or conditionally for any such offence;
  - (f) he has at any time been disqualified from fostering a child privately;
  - (g) a prohibition has been imposed on him at any time under section 61, section 10 of the <sup>M105</sup>Foster Children (Scotland) Act 1984 or any other prescribed enactment;
  - (h) his rights and powers with respect to a child have at any time been vested in a prescribed authority under a prescribed enactment.
- (3) A person who lives—
- (a) in the same household as a person who is himself disqualified by the regulations; or
  - (b) in a household at which any such person is employed,
- shall be disqualified unless he has disclosed the fact to the appropriate local authority and obtained their written consent.

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- (4) A person who is disqualified shall not provide day care, or be concerned in the management of, or have any financial interest in, any provision of day care unless he has—
- (a) disclosed the fact to the appropriate local authority; and
  - (b) obtained their written consent.
- (5) No person shall employ, in connection with the provision of day care, a person who is disqualified, unless he has—
- (a) disclosed to the appropriate local authority the fact that that person is so disqualified; and
  - (b) obtained their written consent.
- (6) In this paragraph “enactment” means any enactment having effect, at any time, in any part of the United Kingdom.

#### Extent Information

**E6** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

**F157** Words in [Sch. 9 para. 2\(1\)](#) added (S.) (1.11.1995) by [1995 c. 36, s.37](#)(with ss. 90, 103(1)); [S.I. 1995/2787, art. 3](#),Sch.

#### Commencement Information

**I309** [Sch. 9 para. 2](#) in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828, art. 3\(2\)](#)

#### Marginal Citations

**M105** [1984 c. 56](#).

### *Exemption of certain schools*

- 3 (1) Section 71 does not apply in relation to any child looked after in any—
- (a) school maintained or assisted by a local education authority;
  - (b) school under the management of an education authority;
  - (c) school in respect of which payments are made by the Secretary of State under [<sup>F75</sup>section 485 of the Education Act 1996];
  - (d) independent school;
  - (e) grant-aided school;
  - <sup>F76</sup>(f) .....
  - (g) self-governing school;
  - (h) play centre maintained or assisted by a local education authority under [<sup>F77</sup>section 508 of that Act], or by an education authority under section 6 of the <sup>M21</sup>Education (Scotland) Act 1980.
- (2) The exemption provided by sub-paragraph (1) only applies where the child concerned is being looked after in accordance with provision for day care made by—

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- (a) the person carrying on the establishment in question as part of the establishment's activities; or
- (b) a person employed to work at that establishment and authorised to make that provision as part of the establishment's activities.

(3) In sub-paragraph (1)—

[<sup>F78</sup> “assisted” has the same meaning as in the <sup>M22</sup>Education Act 1996; “maintained” has the same meaning as in the School Standards and Framework Act 1998; and]

<sup>F79</sup>  
. . . .

#### Textual Amendments

- F75** Words in **Sch. 9, para. 3(1)** substituted (1.11.1996) by 1996 c. 56, **ss. 582(1), 583(2)**, **Sch. 37 Pt. I para. 94(2)(a)(with s. 1(4))**
- F76** **Sch. 9 para. 3(1)(f)** repealed (1.9.1999) by 1998 c. 31, s. 140(3), **Sch.31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
- F77** Words in **Sch. 9 para. 3(1)** substituted (1.11.1996) by 1996 c. 56, s. 582(1), 583(2), **Sch. 37 Pt. I para. 94(2)(b)(with s. 1(4))**
- F78** Definitions of “assisted” and “maintained” in **Sch. 9 para. 3(3)** substituted (1.9.1999) by 1998 c. 31, ss. 140(1), **Sch. 30 para.21** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**
- F79** Definition of “grant maintained” in **Sch. 9 para. 3(3)** repealed (1.9.1999) by 1998 c. 31, ss. 140(3), **Sch.31** (with ss. 138(9), 144(6)); S.I. 1999/2323, art. 2(1), **Sch. 1**

#### Modifications etc. (not altering text)

- C19** **Sch. 9 para. 3** applied (1.4.1994) by S.I. 1994/653, reg. 42(1), **Sch. Pt. I**
- C20** **Pt. X** (ss. 71-79) and **Sch. 9**: By 2000 c. 14, s. 79(5) it is provided (2.7.2001 (E.) and 1.4.2002 (W.) that **Pt. X** and **Sch. 9** shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the **Sch.**); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in **Schs. 1-3**)

#### Commencement Information

- I107** **Sch. 9 para. 3** wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

- M21** 1980 c. 44.
- M22** 1996 c. 56

### *Exemption for other establishments*

- 4 (1) Section 71(1)(b) does not apply in relation to any child looked after in—
- (a) a registered children's home;
  - (b) a voluntary home;
  - (c) a community home;
  - (d) a residential care home, nursing home or mental nursing home required to be registered under the <sup>M23</sup>Registered Homes Act 1984;
  - (e) a health service hospital;
  - (f) a home provided, equipped and maintained by the Secretary of State; or

*Status: Point in time view as at 01/10/2001.*

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- (g) an establishment which is required to be registered under section 61 of the <sup>M24</sup>Social Work (Scotland) Act 1968.
- (2) The exemption provided by sub-paragraph (1) only applies where the child concerned is being looked after in accordance with provision for day care made by—
- the department, authority or other person carrying on the establishment in question as part of the establishment’s activities; or
  - a person employed to work at that establishment and authorised to make that provision as part of the establishment’s activities.
- (3) In this paragraph “a health service hospital” includes a health service hospital within the meaning of the <sup>M25</sup>National Health Service (Scotland) Act 1978.

#### Modifications etc. (not altering text)

**C21** Pt. X (ss. 71-79) and Sch. 9: By 2000 c. 14, s. 79(5) it is provided (2.7.2001 (E.) and 1.4.2002 (W.) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the Sch.); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

#### Commencement Information

**I108** Sch. 9 para. 4 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M23** 1984 c. 23.  
**M24** 1968 c. 49.  
**M25** 1978 c. 29.

### *Exemption for occasional facilities*

- 5 (1) Where day care for children under the age of eight is provided in particular premises on less than six days in any year, that provision shall be disregarded for the purposes of section 71 if the person making it has notified the appropriate local authority in writing before the first occasion on which the premises concerned are so used in that year.
- (2) In sub-paragraph (1) “year” means the year beginning with the day on which the day care in question is (after the commencement of this paragraph) first provided in the premises concerned and any subsequent year.

#### Modifications etc. (not altering text)

**C22** Pt. X (ss. 71-79) and Sch. 9: By 2000 c. 14, s. 79(5) it is provided (2.7.2001 (E.) and 1.4.2002 (W.) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the Sch.); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

#### Commencement Information

**I109** Sch. 9 para. 5 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)



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### *Certificates of registration*

- 6 (1) Where a local authority register a person under section 71 they shall issue him with a certificate of registration.
- (2) The certificate shall specify—
- (a) the registered person's name and address;
  - (b) in a case falling within section 71(1)(b), the address or situation of the premises concerned; and
  - (c) any requirements imposed under section 72 or 73.
- (3) Where, due to a change of circumstances, any part of the certificate requires to be amended, the authority shall issue an amended certificate.
- (4) Where the authority are satisfied that the certificate has been lost or destroyed, they shall issue a copy, on payment by the registered person of such fee as may be prescribed.

#### **Modifications etc. (not altering text)**

**C23** Pt. X (ss. 71-79) and Sch. 9: By 2000 c. 14, s. 79(5) it is provided (2.7.2001 (E.) and 1.4.2002 (W.) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the Sch.); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

#### **Commencement Information**

**I110** Sch. 9 para. 6 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *Fees for annual inspection of premises*

- 7 (1) Where—
- (a) a person is registered under section 71, and
  - (b) the local authority concerned make an annual inspection of the premises in question under section 76,
- they shall serve on that person a notice informing him that the inspection is to be carried out and requiring him to pay to them such fee as may be prescribed.
- (2) It shall be a condition of the continued registration of that person under section 71 that the fee is so paid before the expiry of the period of twenty-eight days beginning with the date on which the inspection is carried out.

#### **Modifications etc. (not altering text)**

**C24** Pt. X (ss. 71-79) and Sch. 9: By 2000 c. 14, s. 79(5) it is provided (2.7.2001 (E.) and 1.4.2002 (W.) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the Sch.); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

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**Commencement Information**

**I111** Sch. 9 para. 7 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Co-operation between authorities*

- 8 (1) Where it appears to a local authority that any local education authority or, in Scotland, education authority could, by taking any specified action, help in the exercise of any of their functions under Part X, they may request the help of that local education authority, or education authority, specifying the action in question.
- (2) An authority whose help is so requested shall comply with the request if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any of their functions.

**Modifications etc. (not altering text)**

**C25** Pt. X (ss. 71-79) and Sch. 9: By 2000 c. 14, s. 79(5) it is provided (2.7.2001 (E.) and 1.4.2002 (W.) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the Sch.); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

**Commencement Information**

**I112** Sch. 9 para. 8 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

[<sup>F80</sup>SCHEDULE 9A

CHILD MINDING AND DAY CARE FOR YOUNG CHILDREN]

**Textual Amendments**

**F80** Sch. 9A (paras. 1-8) inserted ((E.) 16.3.2001 for specified purposes otherwise 2.7.2001 and (W.) 1.7.2001 for specified purposes otherwise 1.4.2002) by 2000 c. 14, s. 79(2), Sch. 3; S.I. 2001/1210, art. 2(b); S.I. 2001/2041, art. 2(1)(b)(with transitional provisions and savings in art. 3); S.I. 2001/2190, art. 2, Sch.; S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

*Exemption of certain schools*

- <sup>F81</sup>1 (1) Except in prescribed circumstances, Part XA does not apply to provision of day care within sub-paragraph (2) for any child looked after in—
- (a) a maintained school;
  - (b) a school assisted by a local education authority;
  - (c) a school in respect of which payments are made by the Secretary of State or the Assembly under section 485 of the <sup>M26</sup>Education Act 1996;
  - (d) an independent school.

*Status: Point in time view as at 01/10/2001.*

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- (2) The provision mentioned in sub-paragraph (1) is provision of day care made by—
- (a) the person carrying on the establishment in question as part of the establishment’s activities; or
  - (b) a person employed to work at that establishment and authorised to make that provision as part of the establishment’s activities.
- (3) In sub-paragraph (1)—
- “assisted” has the same meaning as in the <sup>M27</sup>Education Act 1996;
- “maintained school” has the meaning given by section 20(7) of the <sup>M28</sup>School Standards and Framework Act 1998.

#### Textual Amendments

**F81** Sch. 9A para. 1 inserted ((E.) 16.3.2001 for specified purposes otherwise 2.7.2001 and (W.) 1.7.2001 for specified purposes otherwise 1.4.2002) by 2000 c. 14, s. 79(2), **Sch. 3**; S.I. 2001/1210, **art. 2**; S.I. 2001/2041, **art. 2(1)(b)** (with transitional provisions and savings in **art. 3**); S.I. 2001/2190, **art. 2**, **Sch.**; S.I. 2002/920, **art. 3(3)(b)** (subject to transitional provisions in **Schs. 1-3**)

#### Marginal Citations

**M26** 1996 c. 56.  
**M27** 1996 c. 56.  
**M28** 1998 c. 31.

#### *Exemption for other establishments*

- <sup>F82</sup> (1) Part XA does not apply to provision of day care within sub-paragraph (2) for any child looked after—
- (a) in an appropriate children’s home;
  - (b) in a care home;
  - (c) as a patient in a hospital (within the meaning of the Care Standards Act 2000);
  - (d) in a residential family centre.
- (2) The provision mentioned in sub-paragraph (1) is provision of day care made by—
- (a) the department, authority or other person carrying on the establishment in question as part of the establishment’s activities; or
  - (b) a person employed to work at that establishment and authorised to make that provision as part of the establishment’s activities.

#### Textual Amendments

**F82** Sch. 9A para. 2 inserted ((W.) 1.7.2001 for certain purposes otherwise 1.4.2002 and (E.) 2.7.2001) by 2000 c. 14, s. 79(2), **Sch. 3**; S.I. 2001/2041, **art. 2(1)(b)** (with transitional provisions and savings in **art. 3**); S.I. 2001/2190, **art. 2**; S.I. 2002/920, **art. 3(3)(b)** (subject to transitional provisions in **Schs. 1-3**)

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VALID FROM 01/03/2005

- 2A (1) Part XA does not apply to provision of day care in a hotel, guest house or other similar establishment for children staying in that establishment where—
- (a) the provision takes place only between 6 pm and 2 am; and
  - (b) the person providing the care is doing so for no more than two different clients at the same time.
- (2) For the purposes of sub-paragraph (1)(b), a “client” is a person at whose request (or persons at whose joint request) day care is provided for a child.

*Exemption for occasional facilities*

- <sup>F83</sup> (1) Where day care is provided on particular premises on less than six days in any year, that provision shall be disregarded for the purposes of Part XA if the person making it has notified the registration authority in writing before the first occasion on which the premises concerned are so used in that year.
- (2) In sub-paragraph (1) “year” means the year beginning with the day (after the commencement of paragraph 5 of Schedule 9) on which the day care in question was or is first provided on the premises concerned and any subsequent year.

**Textual Amendments**

**F83** Sch. 9A para. 3 inserted ((W.) 1.7.2001 for certain purposes otherwise 1.4.2002 and (E.) 2.7.2001) by 2000 c. 14, s. 79(2), **Sch. 3**; S.I. 2001/2041, **art. 2(1)(b)** (with transitional provisions and savings in **art. 3**); S.I. 2001/2190, **art. 2**; S.I. 2002/920, **art. 3(3)(b)** (subject to transitional provisions in **Schs. 1-3**)

*Disqualification for registration*

- <sup>F84</sup> (1) Regulations may provide for a person to be disqualified for registration for child minding or providing day care.
- (2) The regulations may, in particular, provide for a person to be disqualified where—
- (a) he is included in the list kept under section 1 of the <sup>M29</sup>Protection of Children Act 1999;
  - (b) he is included on the grounds mentioned in subsection (6ZA)(c) of section 218 of the <sup>M30</sup>Education Reform Act 1988 in the list kept for the purposes of regulations made under subsection (6) of that section;
  - (c) an order of a prescribed kind has been made at any time with respect to him;
  - (d) an order of a prescribed kind has been made at any time with respect to any child who has been in his care;
  - (e) a requirement of a prescribed kind has been imposed at any time with respect to such a child, under or by virtue of any enactment;
  - (f) he has at any time been refused registration under Part X or Part XA or any prescribed enactment or had any such registration cancelled;

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- (g) he has been convicted of any offence of a prescribed kind, or has been placed on probation or discharged absolutely or conditionally for any such offence;
  - (h) he has at any time been disqualified from fostering a child privately;
  - (j) a prohibition has been imposed on him at any time under section 69, section 10 of the <sup>M31</sup>Foster Children (Scotland) Act 1984 or any prescribed enactment;
  - (k) his rights and powers with respect to a child have at any time been vested in a prescribed authority under a prescribed enactment.
- (3) Regulations may provide for a person who lives—
- (a) in the same household as a person who is himself disqualified for registration for child minding or providing day care; or
  - (b) in a household at which any such person is employed,
- to be disqualified for registration for child minding or providing day care.
- (4) A person who is disqualified for registration for providing day care shall not provide day care, or be concerned in the management of, or have any financial interest in, any provision of day care.
- (5) No person shall employ, in connection with the provision of day care, a person who is disqualified for registration for providing day care.
- (6) In this paragraph “enactment” means any enactment having effect, at any time, in any part of the United Kingdom.

#### Textual Amendments

**F84** Sch. 9A para. 4 inserted (16.3.2001 (E.) for specified purposes and 1.7.2001 (W.) for specified purposes and 1.4.2002 (W.) otherwise and 2.7.2001 (E.) in so far as not already in force) by 2000 c. 14, s. 79(2), Sch. 3; S.I. 2001/1210, art. 2(b); S.I. 2001/2041, art. 2(1)(b) (with transitional provisions and savings in art. 3); S.I. 2001/2190, art. 2, Sch.; S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

#### Marginal Citations

**M29** 1999 c. 14.  
**M30** 1988 c. 40.  
**M31** 1984 c. 56.

- <sup>F85</sup> (1) If any person—
- (a) acts as a child minder at any time when he is disqualified for registration for child minding; or
  - (b) contravenes any of sub-paragraphs (3) to (5) of paragraph 4,
- he shall be guilty of an offence.
- (2) Where a person contravenes sub-paragraph (3) of paragraph 4, he shall not be guilty of an offence under this paragraph if he proves that he did not know, and had no reasonable grounds for believing, that the person in question was living or employed in the household.
- (3) Where a person contravenes sub-paragraph (5) of paragraph 4, he shall not be guilty of an offence under this paragraph if he proves that he did not know, and had no

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reasonable grounds for believing, that the person whom he was employing was disqualified.

- (4) A person guilty of an offence under this paragraph shall be liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both.

#### Textual Amendments

**F85** Sch. 9A para. 5 inserted ((W.) 1.7.2001 for certain purposes otherwise 1.4.2002 and (E.) 2.7.2001) by 2000 c. 14, s. 79(2), **Sch. 3**; S.I. 2001/2041, **art. 2(1)(b)** (with transitional provisions and savings in **art. 3**); S.I. 2001/2190, **art. 2**; S.I. 2002/920, **art. 3(3)(b)** (subject to transitional provisions in **Schs. 1-3**)

VALID FROM 01/03/2005

#### *Provision of day care: unincorporated associations*

- 5A (1) References in Part XA to a person, so far as relating to the provision of day care, include an unincorporated association.
- (2) Proceedings for an offence under Part XA which is alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).
- (3) For the purpose of any such proceedings, rules of court relating to the service of documents are to have effect as if the association were a body corporate.
- (4) In proceedings for an offence under Part XA brought against an unincorporated association, section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980 (procedure) apply as they do in relation to a body corporate.
- (5) A fine imposed on an unincorporated association on its conviction of an offence under Part XA is to be paid out of the funds of the association.
- (6) If an offence under Part XA committed by an unincorporated association is shown—
- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
  - (b) to be attributable to any neglect on the part of such an officer or member, the officer or member as well as the association is guilty of the offence and liable to proceeded against and punished accordingly.

#### *Certificates of registration*

- <sup>F86</sup>6 (1) If an application for registration is granted, the registration authority shall give the applicant a certificate of registration.

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- (2) A certificate of registration shall give prescribed information about prescribed matters.
- (3) Where, due to a change of circumstances, any part of the certificate requires to be amended, the registration authority shall issue an amended certificate.
- (4) Where the registration authority is satisfied that the certificate has been lost or destroyed, the authority shall issue a copy, on payment by the registered person of any prescribed fee.
- (5) For the purposes of Part XA, a person is—
  - (a) registered for providing child minding (in England or in Wales); or
  - (b) registered for providing day care on any premises,if a certificate of registration to that effect is in force in respect of him.

#### Textual Amendments

**F86** Sch. 9A para. 6 inserted ((E.) 16.3.2001 for specified purposes otherwise 2.7.2001 and (W.) 1.7.2001 for specified purposes otherwise 1.4.2002) by 2000 c. 14, s. 79(2), **Sch. 3**; S.I. 2001/1210, **art. 2(b)**; S.I. 2001/2041, **art. 2(1)(b)** (with transitional provisions and savings in **art. 3**); S.I. 2001/2190, **art. 2**, **Sch.**; S.I. 2002/920, **art. 3(3)(b)** (subject to transitional provisions in **Schs. 1-3**)

#### *Annual fees*

- F877** Regulations may require registered persons to pay to the registration authority at prescribed times an annual fee of a prescribed amount.

#### Textual Amendments

**F87** Sch. 9A para. 7 inserted ((E.) 16.3.2001 for specified purposes otherwise 2.7.2001 and (W.) 1.7.2001 for specified purposes otherwise 1.4.2002) by 2000 c. 14, s. 79(2), **Sch. 3**; S.I. 2001/1210, **art. 2(b)**; S.I. 2001/2041, **art. 2(1)(b)** (with transitional provisions and savings in **art. 3**); S.I. 2001/2190, **art. 2**, **Sch.**; S.I. 2002/920, **art. 3(3)(b)** (subject to transitional provisions in **Schs. 1-3**)

#### *Co-operation between authorities*

- F888** (1) Where it appears to the Chief Inspector that any local authority in England could, by taking any specified action, help in the exercise of any of his functions under Part XA, he may request the help of that authority specifying the action in question.
- (2) Where it appears to the Assembly that any local authority in Wales could, by taking any specified action, help in the exercise of any of its functions under Part XA, the Assembly may request the help of that authority specifying the action in question.
- (3) An authority whose help is so requested shall comply with the request if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any of their functions.]



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### Textual Amendments

**F88** Sch. 9A para. 8 inserted ((W.) 1.7.2001 for certain purposes otherwise 1.4.2002 and (E.) 2.7.2001) by 2000 c. 14, s. 79(2), **Sch. 3**; S.I. 2001/2041, **art. 2(1)(b)** (with transitional provisions and savings in **art. 3**); S.I. 2001/2190, **art. 2**; S.I. 2002/920, **art. 3(3)(b)** (subject to transitional provisions in **Schs. 1-3**)

## SCHEDULE 10

Section 88.

### AMENDMENTS OF ADOPTION LEGISLATION

#### PART I

#### AMENDMENTS OF ADOPTION ACT 1976 (C. 36)

- 1 In section 2 (local authorities' social services) for the words from "relating to" to the end there shall be substituted—
- “(a) under the Children Act 1989, relating to family assistance orders, local authority support for children and families, care and supervision and emergency protection of children, community homes, voluntary homes and organisations, registered children's homes, private arrangements for fostering children, child minding and day care for young children and children accommodated by health authorities [<sup>F89</sup>National Health Service trusts] and local education authorities or in residential care, nursing or mental nursing homes or in independent schools; and
  - (b) under the National Health Service Act 1977, relating to the provision of care for expectant and nursing mothers.”

### Textual Amendments

**F89** Words in **Sch. 10** para. 1 inserted by **National Health Service and Community Care Act 1990** (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 17**

### Commencement Information

**I113** **Sch. 10 Pt. I** para. 1 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

- 2 In section 11 (restrictions on arranging adoptions and placing of children) for subsection (2) there shall be substituted—
- “(2) An adoption society which is—
    - (a) approved as respects Scotland under section 3 of the Adoption (Scotland) Act 1978; or
    - (b) registered as respects Northern Ireland under Article 4 of the Adoption (Northern Ireland) Order 1987,



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but which is not approved under section 3 of this Act, shall not act as an adoption society in England and Wales except to the extent that the society considers it necessary to do so in the interests of a person mentioned in section 1 of the Act of 1978 or Article 3 of the Order of 1987.”

**Commencement Information**

**I114** Sch. 10 Pt. I para. 2 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 3
- (1) In section 12 (adoption orders), in subsection (1) for the words “vesting the parental rights and duties relating to a child in” there shall be substituted “ giving parental responsibility for a child to” ”.
  - (2) In subsection (2) of that section for the words “the parental rights and duties so far as they relate” there shall be substituted “ parental responsibility so far as it relates” ”.
  - (3) In subsection (3) of that section for paragraph (a) there shall be substituted—
    - “(a) the parental responsibility which any person has for the child immediately before the making of the order;
    - (aa) any order under the Children Act 1989”; and in paragraph (b) for the words from “for any period” to the end there shall be substituted “ or upbringing for any period after the making of the order.” ”

**Commencement Information**

**I115** Sch. 10 Pt. I para. 3 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 4
- For section 14(1) (adoption by married couple) there shall be substituted—
- “(1) An adoption order shall not be made on the application of more than one person except in the circumstances specified in subsections (1A) and (1B).
  - (1A) An adoption order may be made on the application of a married couple where both the husband and the wife have attained the age of 21 years.
  - (1B) An adoption order may be made on the application of a married couple where—
    - (a) the husband or the wife—
      - (i) is the father or mother of the child; and
      - (ii) has attained the age of 18 years:
    - and
    - (b) his or her spouse has attained the age of 21 years.”

**Commencement Information**

**I116** Sch. 10 Pt. I para. 4 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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- 5 (1) In section 16 (parental agreement), in subsection (1) for the words from “in England” to “Scotland)” there shall be substituted—
- “(i) in England and Wales, under section 18;
  - (ii) in Scotland, under section 18 of the Adoption (Scotland) Act 1978; or
  - (iii) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987.”
- (2) In subsection (2)(c) of that section for the words “the parental duties in relation to” there shall be substituted “ his parental responsibility for” ”.

**Commencement Information**

**I117** Sch. 10 Pt. I para. 5 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 6 (1) In section 18 (freeing child for adoption), after subsection (2) there shall be inserted—
- “(2A) For the purposes of subsection (2) a child is in the care of an adoption agency if the adoption agency is a local authority and he is in their care.”
- (2) In subsection (5) of that section, for the words from “the parental rights” to “vest in” there shall be substituted “ parental responsibility for the child is given to” ”, and for the words “and (3)” there shall be substituted “ to (4)” ”.
- (3) For subsections (7) and (8) of that section there shall be substituted—
- “(7) Before making an order under this section in the case of a child whose father does not have parental responsibility for him, the court shall satisfy itself in relation to any person claiming to be the father that—
- (a) he has no intention of applying for—
    - (i) an order under section 4(1) of the Children Act 1989, or
    - (ii) a residence order under section 10 of that Act, or
  - (b) if he did make any such application, it would be likely to be refused.
- (8) Subsections (5) and (7) of section 12 apply in relation to the making of an order under this section as they apply in relation to the making of an order under that section.”

**Commencement Information**

**I118** Sch. 10 Pt. I para. 6 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 7 In section 19(2) (progress reports to former parents) for the words “in which the parental rights and duties were vested” there shall be substituted “ to which parental responsibility was given” ”.

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#### Commencement Information

**I119** Sch. 10 Pt. I para. 7 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 8 (1) In section 20 (revocation of section 18 order), in subsections (1) and (2) for the words “the parental rights and duties”, in both places where they occur, there shall be substituted “parental responsibility”.
- (2) For subsection (3) of that section there shall be substituted—
- “(3) The revocation of an order under section 18 (“a section 18 order”) operates—
- (a) to extinguish the parental responsibility given to the adoption agency under the section 18 order;
  - (b) to give parental responsibility for the child to—
    - (i) the child’s mother; and
    - (ii) where the child’s father and mother were married to each other at the time of his birth, the father; and
  - (c) to revive—
    - (i) any parental responsibility agreement,
    - (ii) any order under section 4(1) of the Children Act 1989, and
    - (iii) any appointment of a guardian in respect of the child (whether made by a court or otherwise),extinguished by the making of the section 18 order.
- (3A) Subject to subsection (3)(c), the revocation does not—
- (a) operate to revive—
    - (i) any order under the Children Act 1989, or
    - (ii) any duty referred to in section 12(3)(b),extinguished by the making of the section 18 order; or
  - (b) affect any person’s parental responsibility so far as it relates to the period between the making of the section 18 order and the date of revocation of that order.”

#### Commencement Information

**I120** Sch. 10 Pt. I para. 8 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 9 For section 21 (transfer of parental rights and duties between adoption agencies) there shall be substituted—
- “21 Variation of section 18 order so as to substitute one adoption agency for another.**
- (1) On an application to which this section applies, an authorised court may vary an order under section 18 so as to give parental responsibility for the child to another adoption agency (“the substitute agency”) in place of the agency for

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the time being having parental responsibility for the child under the order (“the existing agency”).

- (2) This section applies to any application made jointly by—
- (a) the existing agency; and
  - (b) the would-be substitute agency.
- (3) Where an order under section 18 is varied under this section, section 19 shall apply as if the substitute agency had been given responsibility for the child on the making of the order.”

**Commencement Information**

**I121** Sch. 10 Pt. I para. 9 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 10 (1) In section 22 (notification to local authority of adoption application), after subsection (1) there shall be inserted the following subsections—

“(1A) An application for such an adoption order shall not be made unless the person wishing to make the application has, within the period of two years preceding the making of the application, given notice as mentioned in subsection (1).

(1B) In subsections (1) and (1A) the references to the area in which the applicant or person has his home are references to the area in which he has his home at the time of giving the notice.”

- (2) In subsection (4) of that section for the word “receives” there shall be substituted “receive” and for the words “in the care of” there shall be substituted “looked after by”.

**Commencement Information**

**I122** Sch. 10 Pt. I para. 10 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 11 In section 25(1) (interim orders) for the words “vesting the legal custody of the child in” there shall be substituted “giving parental responsibility for the child to”.

**Commencement Information**

**I123** Sch. 10 Pt. I para. 11 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 12 In—
- (a) section 27(1) and (2) (restrictions on removal where adoption agreed or application made under section 18); and
  - (b) section 28(1) and (2) (restrictions on removal where applicant has provided home for 5 years),
- for the words “actual custody”, in each place where they occur, there shall be substituted “home”.

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**Commencement Information**

**I124** Sch. 10 Pt. I para. 12 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

13 After section 27(2) there shall be inserted—

“(2A) For the purposes of subsection (2) a child is in the care of an adoption agency if the adoption agency is a local authority and he is in their care.”

**Commencement Information**

**I125** Sch. 10 Pt. I para. 13 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

14 (1) After section 28(2) there shall be inserted—

“(2A) The reference in subsections (1) and (2) to any enactment does not include a reference to section 20(8) of the Children Act 1989”.

(2) For subsection (3) of that section there shall be substituted—

“(3) In any case where subsection (1) or (2) applies and—

(a) the child was being looked after by a local authority before he began to have his home with the applicant or, as the case may be, the prospective adopter, and

(b) the child is still being looked after by a local authority,

the authority which are looking after the child shall not remove him from the home of the applicant or the prospective adopter except in accordance with section 30 or 31 or with the leave of a court.”

(3) In subsection (5) of that section—

(a) for the word “receives” there shall be substituted “receive”;

(b) for the words “in the care of another local authority or of a voluntary organisation” there shall be substituted “looked after by another local authority”.

**Commencement Information**

**I126** Sch. 10 Pt. I para. 14 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

15 In section 29 (return of child taken away in breach of section 27 or 28) for subsections (1) and (2) there shall be substituted—

“(1) An authorised court may, on the application of a person from whose home a child has been removed in breach of—

(a) section 27 or 28,

(b) section 27 or 28 of the Adoption (Scotland) Act 1978, or

(c) Article 28 or 29 of the Adoption (Northern Ireland) Order 1987,

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order the person who has so removed the child to return the child to the applicant.

- (2) An authorised court may, on the application of a person who has reasonable grounds for believing that another person is intending to remove a child from his home in breach of—
- (a) section 27 or 28,
  - (b) section 27 or 28 of the Adoption (Scotland) Act 1978, or
  - (c) Article 28 or 29 of the Adoption (Northern Ireland) Order 1987,
- by order direct that other person not to remove the child from the applicant’s home in breach of any of those provisions.”

**Commencement Information**

**I127** Sch. 10 Pt. I para. 15 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 16 (1) In section 30 (return of children placed for adoption by adoption agencies), in subsection (1) there shall be substituted—
- (a) for the words “delivered into the actual custody of” the words “placed with”;
  - (b) in paragraph (a) for the words “retain the actual custody of the child” the words “give the child a home”; and
  - (c) in paragraph (b) for the words “actual custody” the word “home”.
- (2) In subsection (3) of that section for the words “in his actual custody” there shall be substituted “with him”.

**Commencement Information**

**I128** Sch. 10 Pt. I para. 16 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 17 (1) In section 31 (application of section 30 where child not placed for adoption), in subsection (1) for the words from “child”, where it first occurs, to “except” there shall be substituted “child—
- (a) who is (when the notice is given) being looked after by a local authority; but
  - (b) who was placed with that person otherwise than in pursuance of such arrangements as are mentioned in section 30(1),

that section shall apply as if the child had been placed in pursuance of such arrangements”.

- (2) In subsection (2) of that section for the words “for the time being in the care of” there shall be substituted “(when the notice is given) being looked after by”.
- (3) In subsection (3) of that section—
- (a) for the words “remains in the actual custody of” there shall be substituted “has his home with”;

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(b) for the words “section 45 of the Child Care Act 1980” there shall be substituted “ Part III of Schedule 2 to the Children Act 1989” .

(4) At the end of that section there shall be added—

“(4) Nothing in this section affects the right of any person who has parental responsibility for a child to remove him under section 20(8) of the Children Act 1989”.

#### Commencement Information

**1129** Sch. 10 Pt. I para. 17 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

18 (1) In section 32 (meaning of “protected child”), in subsection (2) for the words “section 37 of the Adoption Act 1958” there shall be substituted—

- “(a) section 32 of the Adoption (Scotland) Act 1978; or
- (b) Article 33 of the Adoption (Northern Ireland) Order 1987.”

(2) In subsection (3) of that section for paragraph (a) there shall be substituted—

- “(a) he is in the care of any person—
  - (i) in any community home, voluntary home or registered children’s home;
  - (ii) in any school in which he is receiving full-time education;
  - (iii) in any health service hospital”;

and at the end of that subsection there shall be added—

- “(d) he is in the care of any person in any home or institution not specified in this subsection but provided, equipped and maintained by the Secretary of State.”

(3) After that subsection there shall be inserted—

“(3A) In subsection (3) “community home”, “voluntary home”, “registered children’s home”, “school” and “health service hospital” have the same meaning as in the Children Act 1989.”

(4) For subsection (4) of that section there shall be substituted—

- “(4) A protected child ceases to be a protected child—
  - (a) on the grant or refusal of the application for an adoption order;
  - (b) on the notification to the local authority for the area where the child has his home that the application for an adoption order has been withdrawn;
  - (c) in a case where no application is made for an adoption order, on the expiry of the period of two years from the giving of the notice;
  - (d) on the making of a residence order, a care order or a supervision order under the Children Act 1989 in respect of the child;
  - (e) on the appointment of a guardian for him under that Act;
  - (f) on his attaining the age of 18 years; or
  - (g) on his marriage,whichever first occurs.

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- (5) In subsection (4)(d) the references to a care order and a supervision order do not include references to an interim care order or interim supervision order.”

**Commencement Information**

**I130** Sch. 10 Pt. I para. 18 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 19 (1) In section 35 (notices and information to be given to local authorities), in subsection (1) for the words “who has a protected child in his actual custody” there shall be substituted “ with whom a protected child has his home” ”.

- (2) In subsection (2) of that section for the words “in whose actual custody he was” there shall be substituted “ with whom he had his home” ”.

**Commencement Information**

**I131** Sch. 10 Pt. I para. 19 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 20 (1) In section 51 (disclosure of birth records of adopted children), in subsection (1) for the words “subsections (4) and (6)” there shall be substituted “ what follows” ”.

- (2) For subsections (3) to (7) of that section there shall be substituted—

“(3) Before supplying any information to an applicant under subsection (1), the Registrar General shall inform the applicant that counselling services are available to him—

- (a) if he is in England and Wales—

- (i) at the General Register Office;
- (ii) from the local authority in whose area he is living;
- (iii) where the adoption order relating to him was made in England and Wales, from the local authority in whose area the court which made the order sat; or
- (iv) from any other local authority;

- (b) if he is in Scotland—

- (i) from the regional or islands council in whose area he is living;
- (ii) where the adoption order relating to him was made in Scotland, from the council in whose area the court which made the order sat; or
- (iii) from any other regional or islands council;

- (c) if he is in Northern Ireland—

- (i) from the Board in whose area he is living;
- (ii) where the adoption order relating to him was made in Northern Ireland, from the Board in whose area the court which made the order sat; or
- (iii) from any other Board;



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- (d) if he is in the United Kingdom and his adoption was arranged by an adoption society—
  - (i) approved under section 3,
  - (ii) approved under section 3 of the Adoption (Scotland) Act 1978,
  - (iii) registered under Article 4 of the Adoption (Northern Ireland) Order 1987,from that society.
- (4) Where an adopted person who is in England and Wales—
  - (a) applies for information under —
    - (i) subsection (1), or
    - (ii) Article 54 of the Adoption (Northern Ireland) Order 1987, or
  - (b) is supplied with information under section 45 of the Adoption (Scotland) Act 1978,it shall be the duty of the persons and bodies mentioned in subsection (5) to provide counselling for him if asked by him to do so.
- (5) The persons and bodies are—
  - (a) the Registrar General;
  - (b) any local authority falling within subsection (3)(a)(ii) to (iv);
  - (c) any adoption society falling within subsection (3)(d) in so far as it is acting as an adoption society in England and Wales.
- (6) If the applicant chooses to receive counselling from a person or body falling within subsection (3), the Registrar General shall send to the person or body the information to which the applicant is entitled under subsection (1).
- (7) Where a person—
  - (a) was adopted before 12th November 1975, and
  - (b) applies for information under subsection (1),the Registrar General shall not supply the information to him unless he has attended an interview with a counsellor arranged by a person or body from whom counselling services are available as mentioned in subsection (3).
- (8) Where the Registrar General is prevented by subsection (7) from supplying information to a person who is not living in the United Kingdom, he may supply the information to any body which—
  - (a) the Registrar General is satisfied is suitable to provide counselling to that person, and
  - (b) has notified the Registrar General that it is prepared to provide such counselling.
- (9) In this section—
  - “a Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972; and
  - “prescribed” means prescribed by regulations made by the Registrar General.”

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**Commencement Information**

**I132** Sch. 10 Pt. I para. 20 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

21 After section 51 there shall be inserted—

**“51A Adoption Contact Register.**

- (1) The Registrar General shall maintain at the General Register Office a register to be called the Adoption Contact Register.
- (2) The register shall be in two parts—
  - (a) Part I: Adopted Persons; and
  - (b) Part II: Relatives.
- (3) The Registrar General shall, on payment of such fee as may be prescribed, enter in Part I of the register the name and address of any adopted person who fulfils the conditions in subsection (4) and who gives notice that he wishes to contact any relative of his.
- (4) The conditions are that—
  - (a) a record of the adopted person’s birth is kept by the Registrar General; and
  - (b) the adopted person has attained the age of 18 years and—
    - (i) has been supplied by the Registrar General with information under section 51; or
    - (ii) has satisfied the Registrar General that he has such information as is necessary to enable him to obtain a certified copy of the record of his birth.
- (5) The Registrar General shall, on payment of such fee as may be prescribed, enter in Part II of the register the name and address of any person who fulfils the conditions in subsection (6) and who gives notice that he wishes to contact an adopted person.
- (6) The conditions are that—
  - (a) a record of the adopted person’s birth is kept by the Registrar General; and
  - (b) the person giving notice under subsection (5) has attained the age of 18 years and has satisfied the Registrar General that—
    - (i) he is a relative of the adopted person; and
    - (ii) he has such information as is necessary to enable him to obtain a certified copy of the record of the adopted person’s birth.
- (7) The Registrar General shall, on receiving notice from any person named in an entry in the register that he wishes the entry to be cancelled, cancel the entry.
- (8) Any notice given under this section must be in such form as may be determined by the Registrar General.

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- (9) The Registrar General shall transmit to an adopted person whose name is entered in Part I of the register the name and address of any relative in respect of whom there is an entry in Part II of the register.
- (10) Any entry cancelled under subsection (7) ceases from the time of cancellation to be an entry for the purposes of subsection (9).
- (11) The register shall not be open to public inspection or search and the Registrar General shall not supply any person with information entered in the register (whether in an uncancelled or a cancelled entry) except in accordance with this section.
- (12) The register may be kept by means of a computer.
- (13) In this section—
  - (a) “relative” means any person (other than an adoptive relative) who is related to the adopted person by blood (including half-blood) or marriage;
  - (b) “address” includes any address at or through which the person concerned may be contacted; and
  - (c) “prescribed” means prescribed by the Secretary of State.”

#### Commencement Information

**I133** Sch. 10 Pt. I para. 21 wholly in force at 1.5.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(1)

- 22 (1) In section 55 (adoption of children abroad), in subsection (1) after the word “Scotland” there shall be inserted “ or Northern Ireland” ” and for the words “vesting in him the parental rights and duties relating to the child” there shall be substituted “ giving him parental responsibility for the child” ”.
- (2) In subsection (3) of that section for the words “word “(Scotland)”” there shall be substituted “ words “(Scotland)” or “(Northern Ireland)”.” ”

#### Commencement Information

**I134** Sch. 10 Pt. I para. 22 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 23 (1) In section 56 (restriction on removal of children for adoption outside Great Britain),
  - (a) in subsections (1) and (3) for the words “transferring the actual custody of a child to”, in both places where they occur, there shall be substituted “ placing a child with” ”; and
  - (b) in subsection (3)(a) for the words “in the actual custody of” there shall be substituted “ with” ”.
- (2) In subsection (1) of that section—

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- (a) for the words from “or under” to “abroad)” there shall be substituted “section 49 of the <sup>M32</sup>Adoption (Scotland) Act 1978 or Article 57 of the <sup>M33</sup>Adoption (Northern Ireland) Order 1987” ”; and
- (b) for the words “British Islands” there shall be substituted “ United Kingdom, the Channel Islands and the Isle of Man ” ”.

**Commencement Information**

**I135** Sch. 10 Pt. I para. 23 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M32** 1978 c. 28.

**M33** S.I. 1987/2203 (N.I. 22).

- 24 (1) In section 57 (prohibition on certain payments) in subsection (1)(c), for the words “transfer by that person of the actual custody of a child” there shall be substituted “handing over of a child by that person” ”.
- (2) In subsection (3A)(b) of that section, for the words “in the actual custody of” there shall be substituted “ with ” ”.

**Commencement Information**

**I136** Sch. 10 Pt. I para. 24 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 25 After section 57 there shall be inserted—

**“57A Permitted allowances.**

- (1) The Secretary of State may make regulations for the purpose of enabling adoption agencies to pay allowances to persons who have adopted, or intend to adopt, children in pursuance of arrangements made by the agencies.
- (2) Section 57(1) shall not apply to any payment made by an adoption agency in accordance with the regulations.
- (3) The regulations may, in particular, make provision as to—
  - (a) the procedure to be followed by any agency in determining whether a person should be paid an allowance;
  - (b) the circumstances in which an allowance may be paid;
  - (c) the factors to be taken into account in determining the amount of an allowance;
  - (d) the procedure for review, variation and termination of allowances; and
  - (e) the information about allowances to be supplied by any agency to any person who is intending to adopt a child.
- (4) Any scheme approved under section 57(4) shall be revoked as from the coming into force of this section.

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- (5) Section 57(1) shall not apply in relation to any payment made—
- (a) in accordance with a scheme revoked under subsection (4) or section 57(5)(b); and
  - (b) to a person to whom such payments were made before the revocation of the scheme.
- (6) Subsection (5) shall not apply where any person to whom any payments may lawfully be made by virtue of subsection (5) agrees to receive (instead of such payments) payments complying with regulations made under this section.”

**Commencement Information**

**I137** Sch. 10 Pt. I para. 25 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 26 (1) In section 59 (effect of determination and orders made in Scotland and overseas in adoption proceedings), in subsection (1) for the words “Great Britain” there shall be substituted “ the United Kingdom ”.
- (2) For subsection (2) of that section there shall be substituted—
- “(2) Subsections (2) to (4) of section 12 shall apply in relation to an order freeing a child for adoption (other than an order under section 18) as if it were an adoption order; and, on the revocation in Scotland or Northern Ireland of an order freeing a child for adoption, subsections (3) and (3A) of section 20 shall apply as if the order had been revoked under that section.”

**Commencement Information**

**I138** Sch. 10 Pt. I para. 26 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 27 In section 60 (evidence of adoption in Scotland and Northern Ireland), in paragraph (a) for the words “section 22(2) of the Adoption Act 1958” there shall be substituted “ section 45(2) of the Adoption (Scotland) Act 1978 ” and in paragraph (b) for the words from “section 23(4)” to “in force” there shall be substituted “ Article 63(1) of the Adoption (Northern Ireland) Order 1987 ”.

**Commencement Information**

**I139** Sch. 10 Pt. I para. 27 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 28 In section 62(5)(b) (courts), for the words from “section 8” to “child)” there shall be substituted—
- (i) section 12 or 18 of the Adoption (Scotland) Act 1978; or
  - (ii) Article 12, 17 or 18 of the Adoption (Northern Ireland) Order 1987”.

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### Commencement Information

**I140** Sch. 10 Pt. I para. 28 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

<sup>F90</sup>29 . . . . .

### Textual Amendments

**F90** Sch. 10 para. 29 repealed (1.4.2001) by 2000 c. 43, ss. 74, 75, Sch. 7 para. 97, **Sch. 8**; S.I. 2001/919, **art. 2(f)(ii)(g)**

- 30 (1) Section 72(1) (interpretation) shall be amended as follows.
- (2) In the definition of “adoption agency” for the words from “section 1” to the end there shall be substituted “—
- (a) section 1 of the Adoption (Scotland) Act 1978; and
  - (b) Article 3 of the Adoption (Northern Ireland) Order 1987.”
- (3) For the definition of “adoption order” there shall be substituted—
- ““adoption order”—
- (a) means an order under section 12(1); and
  - (b) in sections 12(3) and (4), 18 to 20, 27, 28 and 30 to 32 and in the definition of “British adoption order” in this subsection includes an order under section 12 of the Adoption (Scotland) Act 1978 and Article 12 of the Adoption (Northern Ireland) Order 1987 (adoption orders in Scotland and Northern Ireland respectively); and
  - (c) in sections 27, 28 and 30 to 32 includes an order under section 55, section 49 of the Adoption (Scotland) Act 1978 and Article 57 of the Adoption (Northern Ireland) Order 1987 (orders in relation to children being adopted abroad).”
- (4) For the definition of “British adoption order” there shall be substituted—
- ““British adoption order” means—
- (a) an adoption order as defined in this subsection, and
  - (b) an order under any provision for the adoption of a child effected under the law of any British territory outside the United Kingdom.”
- (5) For the definition of “guardian” there shall be substituted—
- ““guardian” has the same meaning as in the Children Act 1989.”
- (6) In the definition of “order freeing a child for adoption” for the words from “section 27(2)” to the end there shall be substituted “sections 27(2) and 59 includes an order under—
- (a) section 18 of the Adoption (Scotland) Act 1978; and
  - (b) Article 17 or 18 of the Adoption (Northern Ireland) Order 1987”.
- (7) After the definition of “overseas adoption” there shall be inserted—

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“parent” means, in relation to a child, any parent who has parental responsibility for the child under the Children Act 1989;

“parental responsibility” and “parental responsibility agreement” have the same meaning as in the Children Act 1989.

(8) After the definition of “United Kingdom national” there shall be inserted—

““upbringing” has the same meaning as in the Children Act 1989.”

(9) For section 72(1A) there shall be substituted the following subsections—

“(1A) In this Act, in determining with what person, or where, a child has his home, any absence of the child at a hospital or boarding school and any other temporary absence shall be disregarded.

(1B) In this Act, references to a child who is in the care of or looked after by a local authority have the same meaning as in the Children Act 1989.”

**Commencement Information**

**I141** Sch.10 Pt. I para. 30 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

31 For section 74(3) and (4) (extent) there shall be substituted—

“(3) This Act extends to England and Wales only.”

**Commencement Information**

**I142** Sch. 10 Pt. I para. 31 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**PART II**

AMENDMENTS OF ADOPTION (SCOTLAND) ACT 1978 (C. 28)

32 In section 11 (restrictions on arranging of adoptions and placing of children) for subsection (2) there shall be substituted—

“(2) An adoption society which is—

(a) approved as respects England and Wales under section 3 of the Adoption Act 1976; or

(b) registered as respects Northern Ireland under Article 4 of the Adoption (Northern Ireland) Order 1987,

but which is not approved under section 3 of this Act, shall not act as an adoption society in Scotland except to the extent that the society considers it necessary to do so in the interests of a person mentioned in section 1 of that Act or, as the case may be, Article 3 of that Order.”

*Status: Point in time view as at 01/10/2001.*

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**Commencement Information**

**I143** Sch. 10 Pt. II para. 32 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 33 For section 14(1) (adoption by married couple) there shall be substituted—
- “(1) Subject to section 53(1) of the Children Act 1975 (which provides for the making of a custody order instead of an adoption order in certain cases), an adoption order shall not be made on the application of more than one person except in the circumstances specified in subsections (1A) and (1B).
- (1A) An adoption order may be made on the application of a married couple where both the husband and the wife have attained the age of 21 years.
- (1B) An adoption order may be made on the application of a married couple where—
- (a) the husband or the wife—
- (i) is the father or mother of the child; and
- (ii) has attained the age of 18 years; and
- (b) his or her spouse has attained the age of 21 years.”

**Commencement Information**

**I144** Sch. 10 Pt. II para. 33 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 34 In section 16(1)(a) (parental agreement) for the words from “in England” to “revoked”, in the second place where it occurs, there shall be substituted—
- “(i) in Scotland under section 18;
- (ii) in England and Wales under section 18 of the Adoption Act 1976; or
- (iii) in Northern Ireland under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987,
- and not revoked”.

**Commencement Information**

**I145** Sch. 10 Pt. II para. 34 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 35 In section 18(5) (effect of order freeing child for adoption) for the words “and (3)” there shall be substituted “to (4)”.

**Commencement Information**

**I146** Sch. 10 Pt. II para. 35 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)



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- 36 In section 20(3)(c) (revocation of section 18 order) the words “section 12(3)(b) of the Adoption Act 1976 or of” shall cease to have effect.

**Commencement Information**

**I147** Sch. 10 Pt. II para. 36 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 37 For section 21 (transfer of parental rights and duties between adoption agencies) there shall be substituted—

**“21 Variation of section 18 order so as to substitute one adoption agency for another.**

- (1) On an application to which this section applies an authorised court may vary an order under section 18 so as to transfer the parental rights and duties relating to the child from the adoption agency in which they are vested under the order (“the existing agency”) to another adoption agency (“the substitute agency”).
- (2) This section applies to any application made jointly by the existing agency and the would-be substitute agency.
- (3) Where an order under section 18 is varied under this section, section 19 shall apply as if the parental rights and duties relating to the child had vested in the substitute agency on the making of the order.”

**Commencement Information**

**I148** Sch. 10 Pt. II para. 37 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 38 In section 22(4) (notification to local authority of adoption application) for the word “receives” there shall be substituted “receive”.

**Commencement Information**

**I149** Sch. 10 Pt. II para. 38 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 39 In section 29 (return of child taken away in breach of section 27 or 28) after the word “1976” in each place where it occurs there shall be inserted “or Article 28 or 29 of the Adoption (Northern Ireland) Order 1987<sup>M34</sup>”.

**Commencement Information**

**I150** Sch. 10 Pt. II para. 39 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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#### **Marginal Citations**

**M34** [S.I. 1987/2203 \(N.I. 22\)](#).

- 40 In section 32 (meaning of “protected child”), at the end of subsection (2) there shall be added “or Article 33 of the Adoption (Northern Ireland) Order 1987”.

#### **Commencement Information**

**I151** [Sch. 10 Pt. II para. 40](#) wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828, art. 3\(2\)](#)

- 41 In section 45 (adopted children register)—
- (a) for the words from “or an approved” in subsection (5) to the end of subsection (6) there shall be substituted—
- “Board or adoption society falling within subsection (6) which is providing counselling for that adopted person.
- (6) Where the Registrar General for Scotland furnishes an adopted person with information under subsection (5), he shall advise that person that counselling services are available—
- (a) if the person is in Scotland—
- (i) from the local authority in whose area he is living;
- (ii) where the adoption order relating to him was made in Scotland, from the local authority in whose area the court which made the order sat; or
- (iii) from any other local authority in Scotland;
- (b) if the person is in England and Wales—
- (i) from the local authority in whose area he is living;
- (ii) where the adoption order relating to him was made in England and Wales, from the local authority in whose area the court which made the order sat; or
- (iii) from any other local authority in England and Wales;
- (c) if the person is in Northern Ireland—
- (i) from the Board in whose area he is living;
- (ii) where the adoption order relating to him was made in Northern Ireland, from the Board in whose area the court which made the order sat; or
- (iii) from any other Board;
- (d) if the person is in the United Kingdom and his adoption was arranged by an adoption society—
- (i) approved under section 3;
- (ii) approved under section 3 of the Adoption Act 1976; or
- (iii) registered under Article 4 of the Adoption (Northern Ireland) Order 1987,

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from that society.

(6A) Where an adopted person who is in Scotland—

- (a) is furnished with information under subsection (5); or
- (b) applies for information under—

- (i) section 51(1) of the Adoption Act 1976; or
- (ii) Article 54 of the Adoption (Northern Ireland) Order 1987,

any body mentioned in subsection (6B) to which the adopted person applies for counselling shall have a duty to provide counselling for him.

(6B) The bodies referred to in subsection (6A) are—

- (a) any local authority falling within subsection (6)(a); and
- (b) any adoption society falling within subsection (6)(d) so far as it is acting as an adoption society in Scotland.”;

(b) in subsection (7)—

- (i) for the word “under” there shall be substituted “from a local authority, Board or adoption society falling within”;
- (ii) for the words “or adoption society which is providing that counselling” there shall be substituted “, Board or adoption society”;
- (iii) after the word “authority” where it second occurs there shall be inserted “, Board”;

(c) after subsection (9) there shall be inserted the following subsection—

“(10) In this section—

“Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972; and

“local authority”, in relation to England and Wales, means the council of a county (other than a metropolitan county), a metropolitan district, a London borough or the Common Council of the City of London.”

#### Commencement Information

**I152** Sch. 10 Pt. II para. 41 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

42 In section 49 (adoption of children abroad)—

- (a) in subsection (1) after the word “Scotland” there shall be inserted “or Northern Ireland”; and
- (b) in subsection (3) for the words “word “England”” there shall be substituted “words “(England)” or “(Northern Ireland)””.

#### Commencement Information

**I153** Sch. 10 Pt. II para. 42 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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- 43 In section 50(1) (restriction on removal of children for adoption outside Great Britain) after the word “1976” there shall be inserted “or Article 57 of the Adoption (Northern Ireland) Order 1987”.

**Commencement Information**

**I154** Sch. 10 Pt. II para. 43 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 44 In section 53(1) (effect of determination and orders made in England and Wales and overseas in adoption proceedings)—

- (a) in subsection (1) for the words “Great Britain” there shall be substituted “the United Kingdom”; and  
 (b) for subsection (2) there shall be substituted—

“(2) Subsections (2) to (4) of section 12 shall apply in relation to an order freeing a child for adoption (other than an order under section 18) as if it were an adoption order; and on the revocation in England and Wales or Northern Ireland of an order freeing a child for adoption subsection (3) of section 20 shall apply as if the order had been revoked under that section.”

**Commencement Information**

**I155** Sch. 10 Pt. II para. 44 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 45 In section 54(b) (evidence of adoption in Northern Ireland) for the words from “section 23(4)” to “in force” there shall be substituted “Article 63(1) of the Adoption (Northern Ireland) Order 1987”.

**Commencement Information**

**I156** Sch. 10 Pt. II para. 45 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 46 In section 65(1) (interpretation)—

- (a) in the definition of “adoption agency”, at the end there shall be added “and an adoption agency within the meaning of Article 3 of the Adoption (Northern Ireland) Order 1987 (adoption agencies in Northern Ireland)”;  
 (b) for the definition of “adoption order” there shall be substituted—

““adoption order”—

- (a) means an order under section 12(1); and  
 (b) in sections 12(3) and (4), 18 to 20, 27, 28 and 30 to 32 and in the definition of “British adoption order” in this subsection includes an order under section 12 of the Adoption Act 1976 and Article 12 of the Adoption (Northern Ireland) Order 1987 (adoption orders

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- in England and Wales and Northern Ireland respectively);  
and
- (c) in sections 27, 28 and 30 to 32 includes an order under section 49, section 55 of the Adoption Act 1976 and Article 57 of the Adoption (Northern Ireland) Order 1987 (orders in relation to children being adopted abroad);”;
- (c) for the definition of “British adoption order” there shall be substituted—
- ““British adoption order” means—
- (a) an adoption order as defined in this subsection; and
- (b) an order under any provision for the adoption of a child effected under the law of any British territory outside the United Kingdom;”;
- (d) in the definition of “order freeing a child for adoption” for the words from “section 27(2)” to the end there shall be substituted “sections 27(2) and 53 includes an order under—
- (a) section 18 of the Adoption Act 1976; and
- (b) Article 17 or 18 of the Adoption (Northern Ireland) Order 1987;”.

#### Commencement Information

**1157** Sch. 10 Pt. II para. 46 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## SCHEDULE 11

Section 92.

### JURISDICTION

#### Modifications etc. (not altering text)

- C26** Sch. 11 applied (6.4.2007) by [Childcare Act 2006 \(c. 21\)](#), [ss. 79\(4\)](#), 109; S.I. 2007/1019, [art. 4](#)
- C27** Sch. 11 applied by [Childcare Act 2006 \(c. 21\)](#), s. 98F(5) (as inserted (12.1.2010) by 2009 c. 22, [ss. 199](#), 269(2)(b))
- C28** Sch. 11 applied (W.) (1.4.2011) by Children and Families (Wales) Measure 2010 (nawm 1), [ss. 43\(4\)](#), 75; S.I. 2010/2582, [art. 2](#), Sch. 1 (subject to [arts. 3](#), 4, 5) (as amended by S.I. 2011/577, art. 2)

## PART I

### GENERAL

#### Modifications etc. (not altering text)

- C29** Sch. 11 Pt. I applied (1.8.1991) by [Human Fertilisation and Embryology Act 1990 \(c. 37, SIF 83:1\)](#), [ss. 39\(3\)](#), 43(2); S.I. 1991/1400, [art. 2\(2\)](#)
- Sch. 11 Pt. I applied (1.1.1994) by [Human Fertilisation and Embryology Act 1990 \(c. 37, SIF 83:1\)](#), [s. 30\(8\)\(a\)](#); S.I. 1994/1776, [art. 2\(1\)](#)

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**C30** Sch. 11 Pt. I applied by Human Fertilisation and Embryology Act 1990 (c. 37, SIF 83:1), **ss. 30(8)(a), 39(3), 43(2)**

### *Commencement of proceedings*

- 1 (1) The Lord Chancellor may by order specify proceedings under this Act or the Adoption Act 1976 which may only be commenced in—
- (a) a specified level of court;
  - (b) a court which falls within a specified class of court; or
  - (c) a particular court determined in accordance with, or specified in, the order.
- (2) The Lord Chancellor may by order specify circumstances in which specified proceedings under this Act or the Adoption Act 1976 (which might otherwise be commenced elsewhere) may only be commenced in—
- (a) a specified level of court;
  - (b) a court which falls within a specified class of court; or
  - (c) a particular court determined in accordance with, or specified in, the order.
- [<sup>F91</sup>(2A) Sub-paragraphs (1) and (2) shall also apply in relation to proceedings—
- [ under section 55A of the <sup>M35</sup>Family Law Act 1986 (declarations of parentage); or]]
  - (b) which are to be dealt with in accordance with an order made under section 45 [<sup>F93</sup> of the <sup>M36</sup>Child Support Act 1991] (jurisdiction of courts in certain proceedings under that Act)
- (3) The Lord Chancellor may by order make provision by virtue of which, where specified proceedings with respect to a child under—
- (a) this Act;
  - (b) the Adoption Act 1976;
  - (bb) section 20 (appeals) <sup>F94</sup> . . . of the Child Support Act 1991; or
  - (c) the High Court’s inherent jurisdiction with respect to children,
- have been commenced in or transferred to any court (whether or not by virtue of an order under this Schedule), any other specified family proceedings which may affect, or are otherwise connected with, the child may, in specified circumstances, only be commenced in that court.
- (4) A class of court specified in an order under this Schedule may be described by reference to a description of proceedings and may include different levels of court.

#### **Textual Amendments**

- F91** Sch. 11 para. 1(2A) inserted (17.6.1992) by Child Support Act 1991 (c. 48, SIF 20), **s. 45(4)** (with saving in s. 9(2)); S.I. 1992/1431, **art. 2, Sch.**
- F92** Sch. 11 Pt. I para. 1(2A)(a) substituted (1.4.2001) by 2000 c. 19, s. 83(5), **Sch. 8 para. 10(2)(a)** (with s. 83(6)); S.I. 2001/774, **art. 2(c)**
- F93** Words in Sch. 11 Pt. I para. 1(2A)(b) substituted (1.4.2001) by 2000 c. 19, s. 83(5), **Sch. 8 para. 10(2)(b)**; S.I. 2001/774, **art. 2(c)**
- F94** Words in Sch. 11 Pt. I para. 1(3)(bb) repealed (1.4.2001) by 2000 c. 19, s. 85, **Sch. 9 Pt. IX** (with s. 83(6)); S.I. 2001/774, **art. 2(d)**

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#### Commencement Information

**I158** Sch. 11 Pt. I para. 1 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

#### Marginal Citations

**M35** 1986 c. 55.

**M36** 1991 c. 48

### *Transfer of proceedings*

- 2 (1) The Lord Chancellor may by order provide that in specified circumstances the whole, or any specified part of, specified proceedings to which this paragraph applies shall be transferred to—
- (a) a specified level of court;
  - (b) a court which falls within a specified class of court; or
  - (c) a particular court determined in accordance with, or specified in, the order.
- (2) Any order under this paragraph may provide for the transfer to be made at any stage, or specified stage, of the proceedings and whether or not the proceedings, or any part of them, have already been transferred.
- (3) The proceedings to which this paragraph applies are—
- (a) any proceedings under this Act;
  - (b) any proceedings under the <sup>M37</sup>Adoption Act 1976;
  - <sup>F95</sup>(ba) any proceedings under section 55A of the <sup>M38</sup>Family Law Act 1986]
  - (bb) [<sup>F96</sup>any proceedings under] section 20 (appeals) <sup>F97</sup>. . . of the Child Support Act 1991;
  - (c) any other proceedings which—
    - (i) are family proceedings for the purposes of this Act, other than proceedings under the inherent jurisdiction of the High Court; and
    - (ii) may affect, or are otherwise connected with, the child concerned.
- (4) Proceedings to which this paragraph applies by virtue of sub-paragraph (3)(c) may only be transferred in accordance with the provisions of an order made under this paragraph for the purpose of consolidating them with proceedings under—
- (a) this Act;
  - (b) the Adoption Act 1976; or
  - (c) the High Court’s inherent jurisdiction with respect to children.
- (5) An order under this paragraph may make such provision as the Lord Chancellor thinks appropriate for excluding proceedings to which this paragraph applies from the operation of any enactment which would otherwise govern the transfer of those proceedings, or any part of them.

#### Textual Amendments

**F95** Sch. 11 Pt. I para. 2(3)(ba) inserted (1.4.2001) by 2000 c. 19, s. 83(5), **Sch. 8 para. 10(3)(a)** (with s. 83(6)); S.I. 2001/774, **art. 2(c)**

**F96** Words in Sch. 11 Pt. I para. 2(3)(bb) inserted (1.4.2001) by 2000 c. 19, s. 83(5), **Sch. 8 para. 10(3)(b)** (with s. 83(6)); S.I. 2001/774, **art. 2(c)**



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**F97** Words in Sch. 11 Pt. I para. 2(3)(bb) repealed (1.4.2001) by 2000 c. 19, s. 85, Sch. 9 Pt. IX (with s. 83(6)); S.I. 2001/774, art. 2(d)

#### Commencement Information

**I159** Sch. 11 Pt. I para. 2 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M37** 1976 c. 36.

**M38** 1986 c. 55.

### *Hearings by single justice*

- 3 (1) In such circumstances as the Lord Chancellor may by order specify—
- (a) the jurisdiction of a magistrates' court to make an emergency protection order;
  - (b) any specified question with respect to the transfer of specified proceedings to or from a magistrates' court in accordance with the provisions of an order under paragraph 2,
- may be exercised by a single justice.
- (2) Any provision made under this paragraph shall be without prejudice to any other enactment or rule of law relating to the functions which may be performed by a single justice of the peace.

#### Commencement Information

**I160** Sch. 11 Pt. I para. 3 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *General*

- 4 (1) For the purposes of this Schedule—
- (a) the commencement of proceedings under this Act includes the making of any application under this Act in the course of proceedings (whether or not those proceedings are proceedings under this Act); and
  - (b) there are three levels of court, that is to say the High Court, any county court and any magistrates' court.
- (2) In this Schedule “specified” means specified by an order made under this Schedule.
- (3) Any order under paragraph 1 may make provision as to the effect of commencing proceedings in contravention of any of the provisions of the order.
- (4) An order under paragraph 2 may make provision as to the effect of a failure to comply with any of the provisions of the order.
- (5) An order under this Schedule may—
- (a) make such consequential, incidental or transitional provision as the Lord Chancellor considers expedient, including provision amending any other



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enactment so far as it concerns the jurisdiction of any court or justice of the peace;

- (b) make provision for treating proceedings which are—
- (i) in part proceedings of a kind mentioned in paragraph (a) or (b) of paragraph 2(3); and
  - (ii) in part proceedings of a kind mentioned in paragraph (c) of paragraph 2(3),
- as consisting entirely of proceedings of one or other of those kinds, for the purposes of the application of any order made under paragraph 2.

**Commencement Information**

**I161** Sch. 11 Pt. I para. 4 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**PART II**

CONSEQUENTIAL AMENDMENTS

*The Administration of Justice Act 1964 (c. 42)*

- 5 In section 38 of the Administration of Justice Act 1964 (interpretation), the definition of “domestic court”, which is spent, shall be omitted.

**Commencement Information**

**I162** Sch. 11 Pt. II para. 5 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Domestic Proceedings and Magistrates’ Courts Act 1978 (c. 22)*

- 6 In the Domestic Proceedings and Magistrates’ Courts Act 1978—
- (a) for the words “domestic proceedings”, wherever they occur in [F98section] 88(1), there shall be substituted “family proceedings”;
  - (b) for the words “domestic court panel”, wherever they occur in section 16(5) (b), there shall be substituted “family panel”.

**Textual Amendments**

**F98** Word in Sch. 11 para. 6(a) substituted (1.10.1997) by 1996 c. 27, s. 66(1), Sch. 8 Pt. III para. 60(2)(with Sch. 9 paras. 8, 9, 10); S.I. 1997/1892, art. 3(1)(a)

**Commencement Information**

**I163** Sch. 11 Pt. II para. 6 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Justices of the Peace Act 1979 (c. 55)*

*Status: Point in time view as at 01/10/2001.*

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#### Textual Amendments

**F99** Sch. 11 Pt. II para. 7 repealed (19.6.1997) by 1997 c. 25, ss. 73(1)(3), 74(1), Sch. 4 Pt. II, para. 7(2)(f)(ii), Sch. 6, Pt. I

#### *The Magistrates' Courts Act 1980 (c. 43)*

- 8 In the Magistrates' Courts Act 1980—
- (a) in section 65(1) (meaning of family proceedings), the following paragraph shall be inserted after paragraph (m)—
 

“(n) the Children Act 1989”;
  - (b) in section 65(2)(a) for the words “and (m)” there shall be substituted “(m) and (n)”;
  - (c) for the words “domestic proceedings”, wherever they occur in sections 65(1), (2) and (3), <sup>F100</sup> . . . , 67(1), (2) and (7), 69(1), (2), (3) and (4), 70(2) and (3), 71(1) and (2), 72(1), 73, 74(1), 121(8) and 150(1), there shall be substituted “family proceedings”;
  - (d) for the words “domestic court panel”, wherever they occur in sections <sup>F101</sup> . . . , 67(2), (4), (5), <sup>F102</sup> . . . and (8) and 68(1), (2) and (3), there shall be substituted “family panel”;
  - (e) for the words “domestic court panels”, wherever they occur in section 67(3), (4), (5) and (6), there shall be substituted “family panels”;
  - (f) for the words “domestic courts”, wherever they occur in sections 67(1) and (3) and 68(1), there shall be substituted “family proceedings courts”;
  - (g) for the words “domestic court”, wherever they occur in section 67(2) and (5), there shall be substituted “family proceedings court”.

#### Textual Amendments

**F100** Words in Sch. 11 para. 8(c) repealed (31.8.2000) by 1999 c. 22, s. 106, Sch. 15 Pt. V(3) (with s. 107, Sch. 14 para. 7(2), 36(9)); S.I. 2000/1920, art. 3(c)

**F101** Words in Sch. 11 para. 8(d) repealed (31.8.2000) by 1999 c. 22, s. 106, Sch. 15 Pt. V(3) (with s. 107, Sch. 14 para. 7(2), 36(9)); S.I. 2000/1920, art. 3(c)

**F102** Words in Sch. 11 para. 8(d) repealed (31.8.2000) by virtue of 1999 c. 22, s. 106, Sch. 15 Pt. V(3) (with s. 107, Sch. 14 para. 7(2), 36(9)); S.I. 2000/1920, art. 3(c)

#### Commencement Information

**I164** Sch. 11 Pt. II para. 8 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *The Supreme Court Act 1981 (c. 54)*

- 9 In paragraph 3 of Schedule 1 to the Supreme Court Act 1981 (distribution of business to the Family Division of the High Court), the following sub-paragraph shall be added at the end—
- “(e) proceedings under the Children Act 1989”.

*Status: Point in time view as at 01/10/2001.*

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**Commencement Information**

**I165** Sch. 11 Pt. II para. 9 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Matrimonial and Family Proceedings Act 1984 (c. 42)*

- 10 In section 44 of the Matrimonial and Family Proceedings Act 1984 (domestic proceedings in magistrates' courts to include applications to alter maintenance agreements) for the words "domestic proceedings", wherever they occur, there shall be substituted "family proceedings".

**Commencement Information**

**I166** Sch. 11 Pt. II para. 10 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828 art. 3(2)

*The Insolvency Act 1986 (c. 45)*

- 11 (1) In section 281(5)(b) of the Insolvency Act 1986 (discharge not to release bankrupt from bankruptcy debt arising under any order made in family proceedings or in domestic proceedings), the words "or in domestic proceedings" shall be omitted.
- (2) In section 281(8) of that Act (interpretation), for the definitions of "domestic proceedings" and "family proceedings" there shall be substituted—
- "family proceedings" means—
- (a) family proceedings within the meaning of the Magistrates' Courts Act 1980 and any proceedings which would be such proceedings but for section 65(1)(ii) of that Act (proceedings for variation of order for periodical payments); and
  - (b) family proceedings within the meaning of Part V of the Matrimonial and Family Proceedings Act 1984.

**Commencement Information**

**I167** Sch. 11 Pt. II para. 11 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

SCHEDULE 12

Section 108(4).

MINOR AMENDMENTS

*The Custody of Children Act 1891 (c. 3)*

- 1 The Custody of Children Act 1891 (which contains miscellaneous obsolete provisions with respect to the custody of children) shall cease to have effect.

**Commencement Information**

**I168** Sch. Pt. para. 1 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Status: Point in time view as at 01/10/2001.*

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*The Children and Young Persons Act 1933 (c. 12)*

- 2 In section 1(2)(a) of the Children and Young Persons Act 1933 (cruelty to persons under sixteen), after the words “young person” there shall be inserted “, or the legal guardian of a child or young person,” ”.

**Commencement Information**

**I169** Sch. 12 para. 2 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 3 Section 40 of that Act shall cease to have effect.

**Commencement Information**

**I170** Sch. 12 para. 3 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Education Act 1944 (c. 31)*

- 4 <sup>F103</sup> .....

**Textual Amendments**

**F103** Sch. 12 para. 4 omitted (1.10.1993) by virtue of 1993 c. 35, s. 307(1), Sch. 19 para. 154 and repealed (1.4.1994) by s. 307(3), Sch. 21 Pt.I of the same 1993 Act; S.I. 1993/1975, art. 9, Sch. 1; S.I. 1993/3106, art. 4, Sch.1

*The Marriage Act 1949 (c. 76)*

- 5 (1) In section 3 of the Marriage Act 1949 (consent required to the marriage of a child by common licence or superintendent registrar’s certificate), in subsection (1) for the words “the Second Schedule to this Act” there shall be substituted “ subsection (1A) of this section” ”.

- (2) After that subsection there shall be inserted—

“(1A) The consents are—

- (a) subject to paragraphs (b) to (d) of this subsection, the consent of—
  - (i) each parent (if any) of the child who has parental responsibility for him; and
  - (ii) each guardian (if any) of the child;
- (b) where a residence order is in force with respect to the child, the consent of the person or persons with whom he lives, or is to live, as a result of the order (in substitution for the consents mentioned in paragraph (a) of this subsection);
- (c) where a care order is in force with respect to the child, the consent of the local authority designated in the order (in addition to the consents mentioned in paragraph (a) of this subsection);
- (d) where neither paragraph (b) nor (c) of this subsection applies but a residence order was in force with respect to the child immediately before he reached the age of sixteen, the consent of the person or persons with whom he lived, or was to live, as a result of the order

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(in substitution for the consents mentioned in paragraph (a) of this subsection).

(1B) In this section “guardian of a child”, “parental responsibility”, “residence order” and “care order” have the same meaning as in the Children Act 1989.”

**Commencement Information**

**I171** Sch. 12 para. 5 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Births and Deaths Registration Act 1953 (c. 20)*

- 6 (1) Sections 10 and 10A of the Births and Deaths Registration Act 1953 (registration of father, and re-registration, where parents not married) shall be amended as follows.
- (2) In sections 10(1) and 10A(1) for paragraph (d) there shall be substituted—
- “(d) at the request of the mother or that person on production of—
    - (i) a copy of a parental responsibility agreement made between them in relation to the child; and
    - (ii) a declaration in the prescribed form by the person making the request stating that the agreement was made in compliance with section 4 of the Children Act 1989 and has not been brought to an end by an order of a court; or
  - (e) at the request of the mother or that person on production of—
    - (i) a certified copy of an order under section 4 of the Children Act 1989 giving that person parental responsibility for the child; and
    - (ii) a declaration in the prescribed form by the person making the request stating that the order has not been brought to an end by an order of a court; or
  - (f) at the request of the mother or that person on production of—
    - (i) a certified copy of an order under paragraph 1 of Schedule 1 to the Children Act 1989 which requires that person to make any financial provision for the child and which is not an order falling within paragraph 4(3) of that Schedule; and
    - (ii) a declaration in the prescribed form by the person making the request stating that the order has not been discharged by an order of a court; or
  - (g) at the request of the mother or that person on production of—
    - (i) a certified copy of any of the orders which are mentioned in subsection (1A) of this section which has been made in relation to the child; and
    - (ii) a declaration in the prescribed form by the person making the request stating that the order has not been brought to an end or discharged by an order of a court.”
- (3) After sections 10(1) and 10A(1) there shall be inserted—
- “(1A) The orders are—

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- (a) an order under section 4 of the Family Law Reform Act 1987 that that person shall have all the parental rights and duties with respect to the child;
  - (b) an order that that person shall have custody or care and control or legal custody of the child made under section 9 of the Guardianship of Minors Act 1971 at a time when such an order could only be made in favour of a parent;
  - (c) an order under section 9 or 11B of that Act which requires that person to make any financial provision in relation to the child;
  - (d) an order under section 4 of the Affiliation Proceedings Act 1957 naming that person as putative father of the child.”
- (4) In section 10(2) for the words “or (d)” there shall be substituted “to (g)” ”.
- (5) In section 10(3) for the words from “ “relevant order”” to the end there shall be substituted
- ““parental responsibility agreement” has the same meaning as in the Children Act 1989”.
- (6) In section 10A(2) in paragraphs (b) and (c) for the words “paragraph (d)” in both places where they occur there shall be substituted “any of paragraphs (d) to (g)” ”.

#### Commencement Information

**I172** Sch. 12 para. 6 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *The Army Act 1955 (c. 18)*

- 7 In section 151 of the Army Act 1955 (deductions from pay for maintenance of wife or child), in subsection (1A)(a) for the words “in the care of a local authority in England or Wales” there shall be substituted “being looked after by a local authority in England or Wales (within the meaning of the Children Act 1989)” ”.

#### Commencement Information

**I173** Sch. 12 para. 7 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

F104g .....

#### Textual Amendments

**F104** Sch. 12 para. 8 repealed (1. 1. 1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(2), Sch.3; S.I. 1991/2719, art. 2, Sch. (with art. 3(1))

#### *The Air Force Act 1955 (c. 19)*

- 9 Section 151(1A) of the Air Force Act 1955 (deductions from pay for maintenance of wife or child) shall have effect subject to the amendment that is set out in paragraph 7 in relation to section 151(1A) of the Army Act 1955.

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**Commencement Information**

**I174** Sch. 12 para. 9 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

<sup>F105</sup>10 .....

**Textual Amendments**

**F105** Sch. 12 para. 10 repealed (1. 1. 1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(2), Sch.3; S. I. 1991/2719, art. 2, Sch (with art. 3(1))

*The Sexual Offences Act 1956 (c. 69)*

- 11 In section 19(3) of the Sexual Offences Act 1956 (abduction of unmarried girl under eighteen from parent or guardian) for the words “the lawful care or charge of” there shall be substituted “ parental responsibility for or care of” .

**Commencement Information**

**I175** Sch. 12 para. 11 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 12 In section 20(2) of that Act (abduction of unmarried girl under sixteen from parent or guardian) for the words “the lawful care or charge of” there shall be substituted “ parental responsibility for or care of” .

**Commencement Information**

**I176** Sch. 12 para. 12 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 13 In section 21(3) of that Act (abduction of defective from parent or guardian) for the words “the lawful care or charge of” there shall be substituted “ parental responsibility for or care of” .

**Commencement Information**

**I177** Sch. 12 para. 13 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 14 In section 28 of that Act (causing or encouraging prostitution of, intercourse with, or indecent assault on, girl under sixteen) for subsections (3) and (4) there shall be substituted—

“(3) The persons who are to be treated for the purposes of this section as responsible for a girl are (subject to subsection (4) of this section)—

- (a) her parents;

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- (b) any person who is not a parent of hers but who has parental responsibility for her; and
  - (c) any person who has care of her.
- (4) An individual falling within subsection (3)(a) or (b) of this section is not to be treated as responsible for a girl if—
- (a) a residence order under the Children Act 1989 is in force with respect to her and he is not named in the order as the person with whom she is to live; or
  - (b) a care order under that Act is in force with respect to her.”

**Commencement Information**

**I178** Sch. 12 para. 14 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 15 Section 38 of that Act (power of court to divest person of authority over girl or boy in case of incest) shall cease to have effect.

**Commencement Information**

**I179** Sch. 12 para. 15 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 16 (1) In section 43 of that Act (power to search for and recover woman detained for immoral purposes), in subsection (5) for the words “the lawful care or charge of” there shall be substituted “ parental responsibility for or care of” ”.
- (2) In subsection (6) of that section, for the words “section forty of the Children and Young Persons Act 1933” there shall be substituted “ Part V of the Children Act 1989” ”.

**Commencement Information**

**I180** Sch. 12 para. 16 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 17 After section 46 of that Act there shall be inserted—

**“46A Meaning of “parental responsibility”.**

In this Act “parental responsibility” has the same meaning as in the Children Act 1989.”

**Commencement Information**

**I181** Sch. 12 para. 17 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Naval Discipline Act 1957 (c. 53)*



*Status: Point in time view as at 01/10/2001.*

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**Textual Amendments**

**F106** Sch. 12 para. 18 repealed (1. 1. 1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), s. 26(2), [Sch.3](#); [S.I. 1991/2719](#), [art. 2](#), Sch. (with art. 3(1))

*The Children and Young Persons Act 1963 (c. 37)*

19 Section 3 of the Children and Young Persons Act 1963 (children and young persons beyond control) shall cease to have effect.

**Commencement Information**

**I182** Sch. 12 para. 19 wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828](#), [art. 3\(2\)](#)

*The Children and Young Persons Act 1969 (c. 54)*

20 In section 5 of the Children and Young Persons Act 1969 (restrictions on criminal proceedings for offences by young persons), in subsection (2), for the words “section 1 of this Act” there shall be substituted “Part IV of the Children Act 1989”.

**Commencement Information**

**I183** Sch. 12 para. 20 wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828](#), [art. 3\(2\)](#)

F107<sup>21</sup> .....

**Textual Amendments**

**F107** Sch. 12 para. 21 repealed (1.10.1992) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), s. 101(2), [Sch.13](#); [S.I. 1992/333](#), [art. 2\(2\)](#), [Sch.2](#).

F108<sup>22</sup> .....

**Textual Amendments**

**F108** Sch. 12 para. 22 repealed (25.8.2000) by [2000 c. 6](#), ss. 165(4), 168(1), [Sch. 12 Pt. I](#) (with [Sch. 11 paras. 1, 2](#))

F109<sup>23</sup> .....

**Textual Amendments**

**F109** Sch. 12 para. 23 repealed (25.8.2000) by [2000 c. 6](#), ss. 165(4), 168(1), [Sch. 12 Pt. I](#) (with [Sch. 11 paras. 1, 2](#))

F110<sup>24</sup> .....

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**Textual Amendments**

**F110** Sch. 12 para. 24 repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), **Sch.13**; S.I. 1992/333, art. 2(2), **Sch.2**.

**F111**<sup>25</sup> .....

**Textual Amendments**

**F111** Sch. 12 para. 25 repealed (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 116, 125(7), Sch. 16 para. 31, **Sch. 20**; S.I. 1991/1883, art. 3, **Sch.**

**Commencement Information**

**I184** Sch. 12 para. 25 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

26 For section 23 of that Act (remand to care of local authorities etc.) there shall be substituted—

**“23 Remand to local authority accommodation, committal of young persons of unruly character, etc.**

- (1) Where a court—
  - (a) remands or commits for trial a child charged with homicide or remands a child convicted of homicide; or
  - (b) remands a young person charged with or convicted of one or more offences or commits him for trial or sentence,
 and he is not released on bail, then, unless he is a young person who is certified by the court to be of unruly character, the court shall remand him to local authority accommodation.
- (2) A court remanding a person to local authority accommodation shall designate the authority who are to receive him and that authority shall be the authority in whose area it appears to the court that—
  - (a) he resides; or
  - (b) the offence or one of the offences was committed.
- (3) Where a person is remanded to local authority accommodation, it shall be lawful for any person acting on behalf of the designated authority to detain him.
- (4) The court shall not certify a young person as being of unruly character unless—
  - (a) he cannot safely be remanded to local authority accommodation; and
  - (b) the conditions prescribed by order made by the Secretary of State under this subsection are satisfied in relation to him.
- (5) Where the court certifies that a young person is of unruly character, it shall commit him—
  - (a) to a remand centre, if it has been notified that such a centre is available for the reception from the court of such persons; and
  - (b) to a prison, if it has not been so notified.

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- (6) Where a young person is remanded to local authority accommodation, a court may, on the application of the designated authority, certify him to be of unruly character in accordance with subsection (4) of this section (and on so doing he shall cease to be remanded to local authority accommodation and subsection (5) of this section shall apply).
- (7) For the purposes of subsection (6) of this section,  
“a court” means—
- (a) the court which remanded the young person; or
  - (b) any magistrates’ court having jurisdiction in the place where that person is for the time being,
- and in this section “court” and “magistrates’ court” include a justice.
- (8) This section has effect subject to—
- (a) section 37 of the Magistrates’ Courts Act 1980 (committal to the Crown Court with a view to a sentence of detention in a young offender institution); and
  - (b) section 128(7) of that Act (remands to the custody of a constable for periods of not more than three days),
- but section 128(7) shall have effect in relation to a child or young person as if for the reference to three clear days there were substituted a reference to twenty-four hours.”

#### Commencement Information

**I185** Sch. 12 para. 26 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 27 (1) In section 32 of that Act (detention of absentees), for subsection (1A) there shall be substituted the following subsections—
- “(1A) If a child or young person is absent, without the consent of the responsible person—
- (a) from a place of safety to which he has been taken under section 16(3) of this Act; or
  - (b) from local authority accommodation—
    - (i) in which he is required to live under section 12AA of this Act; or
    - (ii) to which he has been remanded under section 23(1) of this Act,he may be arrested by a constable anywhere in the United Kingdom or Channel Islands without a warrant.
- (1B) A person so arrested shall be conducted to—
- (a) the place of safety;
  - (b) the local authority accommodation; or
  - (c) such other place as the responsible person may direct, at the responsible person’s expense.

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(1C) In this section “the responsible person” means the person who made the arrangements under section 16(3) of this Act or, as the case may be, the authority designated under section 12AA or 23 of this Act.”

(2) In subsection (2B) of that section for the words “person referred to in subsection (1A) (a) or (b) (as the case may be) of this section” there shall be substituted “responsible person”.

**Commencement Information**

**I186** Sch. 12 para. 27 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

28 In section 34(1) of that Act (transitional modifications of Part I for persons of specified ages)—

- (a) in paragraph (a), for the words “13(2) or 28(4) or (5)” there shall be substituted “or 13(2)”;
- (b) in paragraph (e), for the words “section 23(2) or (3)” there shall be substituted “section 23(4) to (6)”.

**Commencement Information**

**I187** Sch. 12 para. 28 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

29 In section 70(1) of that Act (interpretation)—

- (a) after the definition of “local authority” there shall be inserted—

““local authority accommodation” means accommodation provided by or on behalf of a local authority (within the meaning of the Children Act 1989);

F112

...

- (b) .....

**Textual Amendments**

**F112** Sch. 12 para. 29(b) and the preceding “and” repealed (25.8.2000) by 2000 c. 6, ss. 165(4), 168(1), Sch. 12 Pt. I (with Sch. 11 paras. 1, 2)

**Commencement Information**

**I188** Sch. 12 para. 29 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

30 In section 73 of that Act (extent, etc.)—

- (a) in subsection (4)(a) for “32(1), (3) and (4)” there shall be substituted “32(1) to (1C) and (2A) to (4)”;
- (b) in subsection (6) for “32(1), (1A)” there shall be substituted “32(1) to (1C)”.

**Extent Information**

**E2** Sch. 12 para. 30(a) extends to Scotland see s. 108(11)

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**Commencement Information**

**I189** Sch. 12 para. 30 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Matrimonial Causes Act 1973 (c. 18)*

31 For section 41 of the Matrimonial Causes Act 1973 (restrictions on decrees for dissolution, annulment or separation affecting children) there shall be substituted—

**“41 Restrictions on decrees for dissolution, annulment or separation affecting children.**

(1) In any proceedings for a decree of divorce or nullity of marriage, or a decree of judicial separation, the court shall consider—

- (a) whether there are any children of the family to whom this section applies; and
- (b) where there are any such children, whether (in the light of the arrangements which have been, or are proposed to be, made for their upbringing and welfare) it should exercise any of its powers under the Children Act 1989 with respect to any of them.

(2) Where, in any case to which this section applies, it appears to the court that—

- (a) the circumstances of the case require it, or are likely to require it, to exercise any of its powers under the Act of 1989 with respect to any such child;
- (b) it is not in a position to exercise that power or (as the case may be) those powers without giving further consideration to the case; and
- (c) there are exceptional circumstances which make it desirable in the interests of the child that the court should give a direction under this section,

it may direct that the decree of divorce or nullity is not to be made absolute, or that the decree of judicial separation is not to be granted, until the court orders otherwise.

(3) This section applies to—

- (a) any child of the family who has not reached the age of sixteen at the date when the court considers the case in accordance with the requirements of this section; and
- (b) any child of the family who has reached that age at that date and in relation to whom the court directs that this section shall apply.”

**Commencement Information**

**I190** Sch. 12 para. 31 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

32 In section 42 of that Act, subsection (3) (declaration by court that party to marriage unfit to have custody of children of family) shall cease to have effect.

**Commencement Information**

**I191** Sch. 12 para. 32 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Status: Point in time view as at 01/10/2001.*

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- 33 In section 52(1) of that Act (interpretation), in the definition of “child of the family”, for the words “has been boarded-out with those parties” there shall be substituted “is placed with those parties as foster parents”.

**Commencement Information**  
**I192** Sch. 12 para. 33 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The National Health Service Act 1977 (c. 49)*

- 34 In Schedule 8 to the National Health Service Act 1977 (functions of local social services authorities), the following sub-paragraph shall be added at the end of paragraph 2—

“(4A) This paragraph does not apply in relation to persons under the age of 18.”

**Commencement Information**  
**I193** Sch. 12 para. 34 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2))

*The Child Care Act 1980 (c. 5)*

- 35 Until the repeal of the Child Care Act 1980 by this Act takes effect, the definition of “parent” in section 87 of that Act shall have effect as if it applied only in relation to Part I and sections 13, 24, 64 and 65 of that Act (provisions excluded by section 2(1)(f) of the <sup>M39</sup>Family Law Reform Act 1987 from the application of the general rule in that Act governing the meaning of references to relationships between persons).

**Marginal Citations**  
**M39** 1987 c. 42.

*The Education Act 1981 (c. 60)*

<sup>F113</sup>36 .....

**Textual Amendments**  
**F113** Sch. 12 para. 36 repealed(1.9.1994) by 1993 c. 35, ss. 303(4), 307(1)(3), Sch. 19 para. 154, Sch. 21 Pt. I; S.I. 1994/2038, art. 3, Sch. 2, Appendix

*The Child Abduction Act 1984 (c. 37)*

- 37 (1) Section 1 of the Child Abduction Act 1984 (offence of abduction by parent, etc.) shall be amended as follows.

(2) For subsections (2) to (4) there shall be substituted—

“(2) A person is connected with a child for the purposes of this section if—

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- (a) he is a parent of the child; or
  - (b) in the case of a child whose parents were not married to each other at the time of his birth, there are reasonable grounds for believing that he is the father of the child; or
  - (c) he is a guardian of the child; or
  - (d) he is a person in whose favour a residence order is in force with respect to the child; or
  - (e) he has custody of the child.
- (3) In this section “the appropriate consent”, in relation to a child, means—
- (a) the consent of each of the following—
    - (i) the child’s mother;
    - (ii) the child’s father, if he has parental responsibility for him;
    - (iii) any guardian of the child;
    - (iv) any person in whose favour a residence order is in force with respect to the child;
    - (v) any person who has custody of the child; or
  - (b) the leave of the court granted under or by virtue of any provision of Part II of the Children Act 1989; or
  - (c) if any person has custody of the child, the leave of the court which awarded custody to him.
- (4) A person does not commit an offence under this section by taking or sending a child out of the United Kingdom without obtaining the appropriate consent if—
- (a) he is a person in whose favour there is a residence order in force with respect to the child, and
  - (b) he takes or sends him out of the United Kingdom for a period of less than one month.
- (4A) Subsection (4) above does not apply if the person taking or sending the child out of the United Kingdom does so in breach of an order under Part II of the Children Act 1989.”
- (3) In subsection (5) for the words from “but” to the end there shall be substituted—
- “(5A) Subsection (5)(c) above does not apply if—
- (a) the person who refused to consent is a person—
    - (i) in whose favour there is a residence order in force with respect to the child; or
    - (ii) who has custody of the child; or
  - (b) the person taking or sending the child out of the United Kingdom is, by so acting, in breach of an order made by a court in the United Kingdom.”
- (4) For subsection (7) there shall be substituted—
- “(7) For the purposes of this section—
- (a) “guardian of a child”, “residence order” and “parental responsibility” have the same meaning as in the Children Act 1989; and

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- (b) a person shall be treated as having custody of a child if there is in force an order of a court in the United Kingdom awarding him (whether solely or jointly with another person) custody, legal custody or care and control of the child.”
- (5) In subsection (8) for the words from “or voluntary organisation” to “custodianship proceedings or” there shall be substituted “detained in a place of safety, remanded to a local authority accommodation or the subject of” ”.

#### Commencement Information

**I194** Sch. 12 para. 37 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 38 (1) In section 2 of that Act (offence of abduction of child by other persons), in subsection (1) for the words from “Subject” to “above” there shall be substituted “Subject to subsection (3) below, a person, other than one mentioned in subsection (2) below.” ”
- (2) For subsection (2) of that section there shall be substituted—
- “(2) The persons are—
- (a) where the father and mother of the child in question were married to each other at the time of his birth, the child’s father and mother;
- (b) where the father and mother of the child in question were not married to each other at the time of his birth, the child’s mother; and
- (c) any other person mentioned in section 1(2)(c) to (e) above.
- (3) In proceedings against any person for an offence under this section, it shall be a defence for that person to prove—
- (a) where the father and mother of the child in question were not married to each other at the time of his birth—
- (i) that he is the child’s father; or
- (ii) that, at the time of the alleged offence, he believed, on reasonable grounds, that he was the child’s father; or
- (b) that, at the time of the alleged offence, he believed that the child had attained the age of sixteen.”

#### Commencement Information

**I195** Sch. 12 para. 38 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 39 At the end of section 3 of that Act (construction of references to taking, sending and detaining) there shall be added “and
- (d) references to a child’s parents and to a child whose parents were (or were not) married to each other at the time of his birth shall be construed in accordance with section 1 of the Family Law Reform Act 1987 (which extends their meaning).”

#### Commencement Information

**I196** Sch. 12 para. 39 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)



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- 40 (1) The Schedule to that Act (modifications of section 1 for children in certain cases) shall be amended as follows.
- (2) In paragraph 1(1) for the words “or voluntary organisation” there shall be substituted “within the meaning of the Children Act 1989”.
- (3) For paragraph 2(1) there shall be substituted—
- “(1) This paragraph applies in the case of a child who is—
- (a) detained in a place of safety under section 16(3) of the Children and Young Persons Act 1969; or
- (b) remanded to local authority accommodation under section 23 of that Act.”
- (4) In paragraph 3(1)—
- (a) in paragraph (a) for the words “section 14 of the Children Act 1975” there shall be substituted “section 18 of the Adoption Act 1976”; and
- (b) in paragraph (d) for the words “section 25 of the Children Act 1975 or section 53 of the Adoption Act 1958” there shall be substituted “section 55 of the Adoption Act 1976”.
- (5) In paragraph 3(2)(a)—
- (a) in sub-paragraph (i), for the words from “order or,” to “Children Act 1975” there shall be substituted “section 18 order or, if the section 18 order has been varied under section 21 of that Act so as to give parental responsibility to another agency” , and
- (b) in sub-paragraph (ii), for the words “(c) or (e)” there shall be substituted “or (c)”.
- (6) At the end of paragraph 3 there shall be added—
- “(3) Sub-paragraph (2) above shall be construed as if the references to the court included, in any case where the court is a magistrates’ court, a reference to any magistrates’ court acting for the same area as that court”.
- (7) For paragraph 5 there shall be substituted—
- “5 In this Schedule—
- (a) “adoption agency” and “adoption order” have the same meaning as in the Adoption Act 1976; and
- (b) “area”, in relation to a magistrates’ court, means the petty sessions area (within the meaning of the Justices of the Peace Act 1979) for which the court is appointed.”

**Commencement Information**

**I197** Sch. 12 para. 40 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Foster Children (Scotland) Act 1984 (c. 56)*

- 41 In section 1 of the Foster Children (Scotland) Act 1984 (definition of foster child)—
- (a) for the words “he is— (a)” there shall be substituted “(a) he is”; and

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- (b) the words “for a period of more than 6 days” and the words from “The period” to the end shall cease to have effect..

**Commencement Information**

**I198** Sch. 12 para. 41 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 42 In section 2(2) of that Act (exceptions to section 1), for paragraph (f) there shall be substituted—
- “(f) if he has been in that person’s care for a period of less than 28 days and that person does not intend to undertake his care for any longer period.”

**Commencement Information**

**I199** Sch. 12 para. 42 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 43 In section 7(1) of that Act (persons disqualified from keeping foster children)—
- (a) the word “or” at the end of paragraph (e) shall be omitted; and
- (b) after paragraph (f) there shall be inserted “or
- (g) he is disqualified from fostering a child privately (within the meaning of the Children Act 1989) by regulations made under section 68 of that Act.”.

**Commencement Information**

**I200** Sch. 12 para. 43 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)*

- 44 In section 2(5) of the Disabled Persons (Services, Consultation and Representation) Act 1986 (circumstances in which authorised representative has right to visit etc. disabled person), after paragraph (d) there shall be inserted—
- “(dd) in accommodation provided by any educational establishment.”

**Commencement Information**

**I201** Sch. 12 para. 44 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Legal Aid Act 1988 (c. 34)*

<sup>F114</sup>45 .....

**Textual Amendments**

**F114** Sch. 12 para. 45 repealed (1.4.2000) by 1999 c. 22, s. 106, Sch. 15 Pt. I (with s. 107, Sch. 14 para. 7(2), 36(9)); S.I. 2000/774, art. 2(c)(i), Sch.

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SCHEDULE 13

Section 108(5).

CONSEQUENTIAL AMENDMENTS

*The Wills Act 1837 (c. 26)*

- 1 In section 1 of the Wills Act 1837 (interpretation), in the definition of “will”, for the words “and also to a disposition by will and testament or devise of the custody and tuition of any child” there shall be substituted “ and also to an appointment by will of a guardian of a child” ”.

**Commencement Information**

**I202** Sch. 13 para. 1 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Children and Young Persons Act 1933 (c. 12)*

- 2 In section 1(1) of the Children and Young Persons Act 1933 (cruelty to persons under sixteen) for the words “has the custody, charge or care of” there shall be substituted “ has responsibility for” ”.

**Commencement Information**

**I203** Sch. 13 para. 2 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 3 In the following sections of that Act—
- (a) 3(1) (allowing persons under sixteen to be in brothels);
  - (b) 4(1) and (2) (causing or allowing persons under sixteen to be used for begging);
  - (c) 11 (exposing children under twelve to risk of burning); and
  - (d) 25(1) (restrictions on persons under eighteen going abroad for the purpose of performing for profit),
- for the words “the custody, charge or care of” there shall, in each case, be substituted “ responsibility for” ”.

**Commencement Information**

**I204** Sch. 13 para. 3 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

F115<sup>4</sup> .....

**Textual Amendments**

**F115** Sch. 13 para. 4 repealed (1.10.1993) by 1993 c. 35, ss. 303(4), 307(1)(3), Sch. 19 para. 155, Sch. 21 Pt. I; S.I. 1993/1975, art. 9, Sch.1

- 5 For section 17 of that Act (interpretation of Part I) there shall be substituted the following section—

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### “17 Interpretation of Part I.

- (1) For the purposes of this Part of this Act, the following shall be presumed to have responsibility for a child or young person—
- (a) any person who—
    - (i) has parental responsibility for him (within the meaning of the Children Act 1989); or
    - (ii) is otherwise legally liable to maintain him; and
  - (b) any person who has care of him.
- (2) A person who is presumed to be responsible for a child or young person by virtue of subsection (1)(a) shall not be taken to have ceased to be responsible for him by reason only that he does not have care of him.”

#### Commencement Information

**I205** Sch. 13 para. 5 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 6 (1) In section 34 of that Act (attendance at court of parent of child or young person charged with an offence etc.), in subsection (1) after the word “offence” there shall be inserted “ is the subject of an application for a care or supervision order under Part IV of the Children Act 1989” ”.
- (2) In subsection (7) of that section after the words “Children and Young Persons Act 1969” there shall be inserted “ or Part IV of the Children Act 1989” ”.
- (3) After subsection (7) of that section there shall be inserted—
- “(7A) If it appears that at the time of his arrest the child or young person is being provided with accommodation by or on behalf of a local authority under section 20 of the Children Act 1989, the local authority shall also be informed as described in subsection (3) above as soon as it is reasonably practicable to do so.”

#### Commencement Information

**I206** Sch. 13 para. 6 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 7 In section 107(1) of that Act (interpretation)—
- (a) in the definition of “guardian”, for the words “charge of or control over” there shall be substituted “ care of” ”;
  - (b) for the definition of legal guardian there shall be substituted—
 

““legal guardian”, in relation to a child or young person, means a guardian of a child as defined in the Children Act 1989”.

#### Commencement Information

**I207** Sch. 13 para. 7 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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*The Education Act 1944 (c. 31)*

F1168 .....

**Textual Amendments**

**F116** Sch. 13 para. 8 repealed (1.10.1993) by 1993 c. 35, ss. 303(4), 307(1)(3), Sch. 19 para. 155, **Sch. 21 Pt. I**; S.I. 1993/1975, art. 3, **Sch.1**

F1179 .....

**Textual Amendments**

**F117** Sch. 13 paras. 9-10 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583(2)(3), Sch. 38 Pt. I, **Sch. 39** (with s. 1(4)).

F11810 .....

**Textual Amendments**

**F118** Sch. 13, paras. 9, 10 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583(2)(3), **Sch. 38 Pt.I**, (with s. 1(4), Sch. 39, paras. 5, 6, 8)

*The National Assistance Act 1948 (c. 29)*

- 11 (1) In section 21(1)(a) of the National Assistance Act 1948 (persons for whom local authority is to provide residential accommodation) after the word “persons” there shall be inserted “aged eighteen or over”.
- (2) In section 29(1) of that Act (welfare arrangements for blind, deaf, dumb and crippled persons) after the words “that is to say persons” and after the words “and other persons” there shall, in each case, be inserted “aged eighteen or over”.

**Commencement Information**

**I208** Sch. 13 para. 11 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65)*

- 12 For section 2(1)(d) of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (cases in which leave of the appropriate court is required before enforcing certain orders for the payment of money), there shall be substituted—
- “(d) an order for alimony, maintenance or other payment made under sections 21 to 33 of the Matrimonial Causes Act 1973 or made, or having effect as if made, under Schedule 1 to the Children Act 1989.”

**Commencement Information**

**I209** Sch. 13 para. 12 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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*The Mines and Quarries Act 1954 (c. 70)*

F119 13 .....

**Textual Amendments**

**F119** Sch. 13 para. 13 repealed (1.11.1996) by 1996 c. 36, s. 105(5), Sch. 5, Table (with s. 103(1)); S.I. 1996/2203, art. 3, Sch. Table

*The Administration of Justice Act 1960 (c. 65)*

14 In section 12 of the Administration of Justice Act 1960 (publication of information relating to proceedings in private), in subsection (1) for paragraph (a) there shall be substituted—

“(a) where the proceedings—

- (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;
- (ii) are brought under the Children Act 1989; or
- (iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor;”.

**Commencement Information**

**I210** Sch. 13 para. 14 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Factories Act 1961 (c. 34)*

15 In section 176(1) of the Factories Act 1961 (interpretation), in the definition of “parent”, for the words from “or guardian” to first “young person” there shall be substituted “ of a child or young person or any person who is not a parent of his but who has parental responsibility for him (within the meaning of the Children Act 1989) ”.

**Commencement Information**

**I211** Sch. 13 para. 15 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Criminal Justice Act 1967 (c. 80)*

16 In section 67(1A)(c) of the Criminal Justice Act 1967 (computation of sentences of imprisonment passed in England and Wales) for the words “in the care of a local authority” there shall be substituted “ remanded to local authority accommodation.”

**Commencement Information**

**I212** Sch. 13 para. 16 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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*The Health Services and Public Health Act 1968 (c. 46)*

- 17 (1) In section 64(3)(a) of the Health Services and Public Health Act 1968 (meaning of “relevant enactments” in relation to power of Minister of Health or Secretary of State to provide financial assistance), for sub-paragraph (xix) inserted by paragraph 19 of Schedule 5 to the <sup>M40</sup>Child Care Act 1980 there shall be substituted—  
“(xx) the Children Act 1989.”
- (2) In section 65(3)(b) of that Act (meaning of “relevant enactments” in relation to power of local authority to provide financial and other assistance), for sub-paragraph (xx) inserted by paragraph 20 of Schedule 5 to the Child Care Act 1980 there shall be substituted—  
“(xxi) the Children Act 1989.”

**Commencement Information**

**I213** Sch. 13 para. 17 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M40** 1980 c. 5.

*The Social Work (Scotland) Act 1968 (c. 49)*

- 18 In section 2(2) of the Social Work (Scotland) Act 1968 (matters referred to social work committee) after paragraph (j) there shall be inserted—  
“(k) section 19 and Part X of the Children Act 1989.”.

**Commencement Information**

**I214** Sch. 13 para. 18 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 19 In section 5(2)(c) of that Act (power of Secretary of State to make regulations) for the words “and (j)” there shall be substituted “to (k)”.

**Commencement Information**

**I215** Sch. 13 para. 19 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 20 In section 21(3) of that Act (mode of provision of accommodation and maintenance) for the words “section 21 of the Child Care Act 1980” there shall be substituted “section 23 of the Children Act 1989”.

**Commencement Information**

**I216** Sch. 13 para. 20 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 21 In section 74(6) of that Act (parent of child in residential establishment moving to England or Wales) for the words from “Children and Young Persons Act 1969” to the end there shall be substituted “Children Act 1989, but as if section 31(8) were omitted”.

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**Commencement Information**

**I217** Sch. 13 para. 21 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

22 In section 75(2) of that Act (parent of child subject to care order etc. moving to Scotland), for the words “Children and Young Persons Act 1969” there shall be substituted “Children Act 1989”.

**Commencement Information**

**I218** Sch. 13 para. 22 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

23 In section 86(3) of that Act (meaning of ordinary residence for purpose of adjustments between authority providing accommodation and authority of area of residence), the words “the Child Care Act 1980 or” shall be omitted and after the words “education authority” there shall be inserted “ or placed with local authority foster parents under the Children Act 1989”.

**Commencement Information**

**I219** Sch. 13 para. 23 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Civil Evidence Act 1968 (c. 64)*

F120<sup>24</sup> .....

**Textual Amendments**

**F120** Sch. 13 para. 24 repealed (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 116, 125(7), Sch. 16 para. 2(2), **Sch. 20**; S.I. 1991/1883, art. 3, **Sch.**

**Commencement Information**

**I220** Sch. 13 para. 24 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Administration of Justice Act 1970 (c. 31)*

F121<sup>25</sup> .....

**Textual Amendments**

**F121** Sch. 13 para. 25 repealed (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 116, 125(7), Sch. 16 para. 6(2), **Sch. 20**; S.I. 1991/1883, art. 3, **Sch.**

**Commencement Information**

**I221** Sch. 13 para. 25 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)



*Status: Point in time view as at 01/10/2001.*

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*The Local Authority Social Services Act 1970 (c. 42)*

- 26 (1) In Schedule 1 to the Local Authority Social Services Act 1970 (enactments conferring functions assigned to social service committee)—
- (a) in the entry relating to the Mental Health Act 1959, for the words “sections 8 and 9” there shall be substituted “ section 8” ”; and
  - (b) in the entry relating to the Children and Young Persons Act 1969, for the words “sections 1, 2 and 9” there shall be substituted “ section 9” ”.
- (2) At the end of that Schedule there shall be added—

“Children Act 1989.

The whole Act, in so far as it confers functions on a local authority within the meaning of that Act.

Welfare reports.

Consent to application for residence order in respect of child in care.

Family assistance orders.

Functions under Part III of the Act (local authority support for children and families).

Care and supervision.

Protection of children.

Functions in relation to community homes, voluntary homes and voluntary organisations, registered children’s homes, private arrangements for fostering children, child minding and day care for young children.

Inspection of children’s homes on behalf of Secretary of State.

Research and returns of information.

Functions in relation to children accommodated by health authorities and local education authorities or in residential care, nursing or mental nursing homes or in independent schools.”

**Commencement Information**

**I222** Sch. 13 para. 26 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Chronically Sick and Disabled Persons Act 1970 (c. 44)*

- 27 After section 28 of the Chronically Sick and Disabled Persons Act 1970 there shall be inserted—

*Status: Point in time view as at 01/10/2001.*

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**“28A Application of Act to authorities having functions under the Children Act 1989.**

This Act applies with respect to disabled children in relation to whom a local authority have functions under Part III of the Children Act 1989 as it applies in relation to persons to whom section 29 of the National Assistance Act 1948 applies.”

**Commencement Information**

**I223** Sch. 13 para. 27 wholly in force at 14.10.1991 see s. 108(2)and(3) and (S.I. 1991/828 art. 3(2))

*The Courts Act 1971 (c. 23)*

- 28 In Part I of Schedule 9 to the Courts Act 1971 (substitution of references to Crown Court), in the entry relating to the Children and Young Persons Act 1969, for the words “Sections 2(12), 3(8), 16(8), 21(4)(5)” there shall be substituted “ Section 16(8).” ”.

**Commencement Information**

**I224** Sch. 13 para. 28 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Attachment of Earnings Act 1971 (c. 32)*

- 29 In Schedule 1 to the Attachment of Earnings Act 1971 (maintenance orders to which that Act applies), in paragraph 7, for the words “section 47 or 51 of the Child Care Act 1980” there shall be substituted “ paragraph 23 of Schedule 2 to the Children Act 1989” ”.

**Commencement Information**

**I225** Sch. 13 para. 29 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Tribunals and Inquiries Act 1971 (c. 62)*

- F122<sup>30</sup> .....

**Textual Amendments**

**F122** Sch. 13 para. 30 repealed (1.10.1992) by Tribunals and Inquiries Act 1992 (c. 53), ss. 18(2), 19(2), Sch. 4 Pt. I

*The Local Government Act 1972 (c. 70)*

- 31 (1) In section 102(1) of the Local Government Act 1972 (appointment of committees) for the words “section 31 of the Child Care Act 1980” there shall be substituted “ section 53 of the Children Act 1989” ”.

*Status: Point in time view as at 01/10/2001.*

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- (2) In Schedule 12A to that Act (access to information: exempt information), in Part III (interpretation), in paragraph 1(1)(b) for the words “section 20 of the Children and Young Persons Act 1969” there shall be substituted “section 31 of the Children Act 1989”.

**Commencement Information**

**I226** Sch. 13 para. 31 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Employment of Children Act 1973 (c. 24)*

- 32 (1) In section 2 of the Employment of Children Act 1973 (supervision by education authorities), in subsection (2)(a) for the words “guardian or a person who has actual custody of” there shall be substituted “any person responsible for”.
- (2) After that subsection there shall be inserted—
- “(2A) For the purposes of subsection (2)(a) above a person is responsible for a child—
- (a) in England and Wales, if he has parental responsibility for the child or care of him; and
- (b) in Scotland, if he is his guardian or has actual custody of him.”.

**Commencement Information**

**I227** Sch. 13 para. 32 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Domicile and Matrimonial Proceedings Act 1973 (c. 45)*

- 33 (1) In Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 (proceedings in divorce etc. stayed by reference to proceedings in other jurisdiction), paragraph 11(1) shall be amended as follows—
- (a) at the end of the definition of “lump sum” there shall be added “or an order made in equivalent circumstances under Schedule 1 to the Children Act 1989 and of a kind mentioned in paragraph 1(2)(c) of that Schedule”;
- (b) in the definition of “relevant order”, at the end of paragraph (b), there shall be added “or an order made in equivalent circumstances under Schedule 1 to the Children Act 1989 and of a kind mentioned in paragraph 1(2)(a) or (b) of that Schedule”;
- (c) in paragraph (c) of that definition, after the word “children” there shall be inserted “or a section 8 order under the Children Act 1989”; and
- (d) in paragraph (d) of that definition for the words “the custody, care or control” there shall be substituted “care”.
- (2) In paragraph 11(3) of that Schedule—
- (a) the word “four” shall be omitted; and
- (b) for the words “the custody of a child and the education of a child” there shall be substituted “or any provision which could be made by a section 8 order under the Children Act 1989”.

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#### Commencement Information

**I228** Sch. 13 para. 33 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *The Powers of Criminal Courts Act 1973 (c. 62)*

<sup>F123</sup>34 .....

#### Textual Amendments

**F123** Sch. 13 para. 34 repealed (5.2.1994) by 1993 c. 47, ss. 32(3), 33(2), Sch. 4

#### *The Rehabilitation of Offenders Act 1974 (c. 53)*

- 35 (1) Section 7(2) of the Rehabilitation of Offenders Act 1974 (limitations on rehabilitation under the Act) shall be amended as follows.
- (2) For paragraph (c) there shall be substituted—
- “(c) in any proceedings relating to adoption, the marriage of any minor, the exercise of the inherent jurisdiction of the High Court with respect to minors or the provision by any person of accommodation, care or schooling for minors;
- (cc) in any proceedings brought under the Children Act 1989;”
- (3) For paragraph (d) there shall be substituted—
- “(d) in any proceedings relating to the variation or discharge of a supervision order under the Children and Young Persons Act 1969, or on appeal from any such proceedings”.

#### Commencement Information

**I229** Sch. 13 para. 35 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *The Domestic Proceedings and Magistrates’ Courts Act 1978 (c. 22)*

- 36 For section 8 of the Domestic Proceedings and Magistrates’ Courts Act 1978 (orders for the custody of children) there shall be substituted—

#### **“8 Restrictions on making of orders under this Act: welfare of children.**

Where an application is made by a party to a marriage for an order under section 2, 6 or 7 of this Act, then, if there is a child of the family who is under the age of eighteen, the court shall not dismiss or make a final order on the application until it has decided whether to exercise any of its powers under the Children Act 1989 with respect to the child.”

#### Commencement Information

**I230** Sch. 13 para. 36 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Status: Point in time view as at 01/10/2001.*

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- 37 In section 19(3A)(b) (interim orders) for the words “subsections (2) and” there shall be substituted “ subsection” ”.

**Commencement Information**

**I231** Sch. 13 para. 37 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 38 For section 20(12) of that Act (variation and revocation of orders for periodical payments) there shall be substituted—

“(12) An application under this section may be made—

- (a) where it is for the variation or revocation of an order under section 2, 6, 7 or 19 of this Act for periodical payments, by either party to the marriage in question; and
- (b) where it is for the variation of an order under section 2(1)(c), 6 or 7 of this Act for periodical payments to or in respect of a child, also by the child himself, if he has attained the age of sixteen.”

**Commencement Information**

**I232** Sch. 13 para. 38 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 39 (1) For section 20A of that Act (revival of orders for periodical payments) there shall be substituted—

**“20A Revival of orders for periodical payments.**

- (1) Where an order made by a magistrates’ court under this Part of this Act for the making of periodical payments to or in respect of a child (other than an interim maintenance order) ceases to have effect—

- (a) on the date on which the child attains the age of sixteen, or
- (b) at any time after that date but before or on the date on which he attains the age of eighteen,

the child may apply to the court which made the order for an order for its revival.

- (2) If on such an application it appears to the court that—

- (a) the child is, will be or (if an order were made under this subsection) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment, or
- (b) there are special circumstances which justify the making of an order under this subsection,

the court shall have power by order to revive the order from such date as the court may specify, not being earlier than the date of the making of the application.

- (3) Any order revived under this section may be varied or revoked under section 20 in the same way as it could have been varied or revoked had it continued in being.”

*Status: Point in time view as at 01/10/2001.*

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**Commencement Information**

**I233** Sch. 13 para. 39 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

<sup>F124</sup>40 .....

**Textual Amendments**

**F124** Sch. 13 para. 40 repealed (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 116, 125(7), Sch. 16 para. 32, Sch. 20; S.I. 1991/1883, art. 3, Sch.

**Commencement Information**

**I234** Sch. 13 para. 40 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 41 (1) In section 25 of that Act (effect on certain orders of parties living together), in subsection (1)(a) for the words “6 or 11(2)” there shall be substituted “or 6”.
- (2) In subsection (2) of that section—
  - (a) in paragraph (a) for the words “6 or 11(2)” there shall be substituted “or 6”;
  - (b) after paragraph (a) there shall be inserted “or”.

**Commencement Information**

**I235** Sch. 13 para. 41 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 42 In section 29(5) of that Act (appeals) for the words “sections 14(3), 20 and 21” there shall be substituted “section 20”.

**Commencement Information**

**I236** Sch. 13 para. 42 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 43 In section 88(1) of that Act (interpretation)—
  - (a) in the definition of “child”, for the words from “an illegitimate” to the end there shall be substituted “a child whose father and mother were not married to each other at the time of his birth”;
  - (b) in the definition of “child of the family”, for the words “being boarded-out with those parties” there shall be substituted “placed with those parties as foster parents”.

**Commencement Information**

**I237** Sch. 13 para. 43 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Magistrates’ Courts Act 1980 (c. 43)*

44 <sup>F125</sup>(1) .....

- (2) For section 62(5) of that Act (payments to children) there shall be substituted—

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- “(5) In this section references to the person with whom a child has his home—
- (a) in the case of any child who is being looked after by a local authority (within the meaning of section 22 of the Children Act 1989), are references to that local authority; and
  - (b) in any other case, are references to the person who, disregarding any absence of the child at a hospital or boarding school and any other temporary absence, has care of the child.”.

#### Textual Amendments

**F125** Sch. 13 para. 44(1) repealed (1.4.1992) by Maintenance Enforcement Act 1991 (c. 17, SIF 49:3), s. 11(2), Sch.3; S.I. 1992/455, art.2.

#### Commencement Information

**I238** Sch. 13 para. 44 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *The Supreme Court Act 1981 (c. 54)*

- 45 (1) In section 18 of the Supreme Court Act 1981 (restrictions on appeals to Court of Appeal)—
- (a) in subsection (1)(h)(i), for the word “custody” there shall be substituted “residence” ; and
  - (b) in subsection (1)(h)(ii) for the words “access to”, in both places, there shall be substituted “ contact with” .
- (2) In section 41 of that Act (wards of court), the following subsection shall be inserted after subsection (2)—
- “(2A) Subsection (2) does not apply with respect to a child who is the subject of a care order (as defined by section 105 of the Children Act 1989).”
- (3) In Schedule 1 to that Act (distribution of business in High Court), for paragraph 3(b) (ii) there shall be substituted—
- “(ii) the exercise of the inherent jurisdiction of the High Court with respect to minors, the maintenance of minors and any proceedings under the Children Act 1989, except proceedings solely for the appointment of a guardian of a minor’s estate;”.

#### Commencement Information

**I239** Sch. 13 para. 45 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *The Armed Forces Act 1981 (c. 55)*

- 46 In section 14 of the Armed Forces Act 1981 (temporary removal to, and detention in, place of safety abroad or in the United Kingdom of service children in need of care and control), in subsection (9A) for the words “the Children and Young Persons

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Act 1933, the Children and Young Persons Act 1969" there shall be substituted "the Children Act 1989" ”.

**Commencement Information**

**I240** Sch. 13 para. 46 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Civil Jurisdiction and Judgments Act 1982 (c. 27)*

- 47 In paragraph 5(a) of Schedule 5 to the Civil Jurisdiction and Judgments Act 1982 (maintenance and similar payments excluded from Schedule 4 to that Act) for the words "section 47 or 51 of the Child Care Act 1980" there shall be substituted "paragraph 23 of Schedule 2 to the Children Act 1989" ”.

**Commencement Information**

**I241** Sch. 13 para. 47 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Mental Health Act 1983 (c. 20)*

- 48 (1) For section 27 of the Mental Health Act 1983 (children and young persons in care of local authority) there shall be substituted the following section—

**“27 Children and young persons in care.**

Where—

- (a) a patient who is a child or young person is in the care of a local authority by virtue of a care order within the meaning of the Children Act 1989; or
- (b) the rights and powers of a parent of a patient who is a child or young person are vested in a local authority by virtue of section 16 of the Social Work (Scotland) Act 1968,

the authority shall be deemed to be the nearest relative of the patient in preference to any person except the patient’s husband or wife (if any).”

- (2) Section 28 of that Act (nearest relative of minor under guardianship, etc.) is amended as mentioned in sub-paragraphs (3) and (4).

- (3) For subsection (1) there shall be substituted—

“(1) Where—

- (a) a guardian has been appointed for a person who has not attained the age of eighteen years; or
- (b) a residence order (as defined by section 8 of the Children Act 1989) is in force with respect to such a person,

the guardian (or guardians, where there is more than one) or the person named in the residence order shall, to the exclusion of any other person, be deemed to be his nearest relative.”

- (4) For subsection (3) there shall be substituted—



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“(3) In this section “guardian” does not include a guardian under this Part of this Act.”

- (5) In section 131(2) of that Act (informal admission of patients aged sixteen or over) for the words from “notwithstanding” to the end there shall be substituted “even though there are one or more persons who have parental responsibility for him (within the meaning of the Children Act 1989)”.

**Commencement Information**

I242 Sch. 13 para. 48 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Registered Homes Act 1984 (c. 23)*

- 49 (1) In section 1(5) of the Registered Homes Act 1984 (requirement of registration) for paragraphs (d) and (e) there shall be substituted—
- “(d) any community home, voluntary home or children’s home within the meaning of the Children Act 1989.”
- (2) In section 39 of that Act (preliminary) for paragraphs (a) and (b) there shall be substituted—
- “(a) the Children Act 1989.”

**Commencement Information**

I243 Sch. 13 para. 49 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Mental Health (Scotland) Act 1984 (c. 36)*

- 50 For section 54 of the Mental Health (Scotland) Act 1984 (children and young persons in care of local authority) there shall be substituted the following section—
- “54 Children and young persons in care of local authority.**
- Where—
- (a) the rights and powers of a parent of a patient who is a child or young person are vested in a local authority by virtue of section 16 of the Social Work (Scotland) Act 1968; or
- (b) a patient who is a child or young person is in the care of a local authority by virtue of a care order made under the Children Act 1989, the authority shall be deemed to be the nearest relative of the patient in preference to any person except the patient’s husband or wife (if any).”

**Commencement Information**

I244 Sch. 13 para. 50 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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*The Matrimonial and Family Proceedings Act 1984 (c. 42)*

- 51 In section 38(2)(b) of the Matrimonial and Family Proceedings Act 1984 (transfer of family proceedings from High Court to county court) after the words “a ward of court” there shall be inserted “or any other proceedings which relate to the exercise of the inherent jurisdiction of the High Court with respect to minors”.

**Commencement Information**

**I245** Sch. 13 para. 51 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Police and Criminal Evidence Act 1984 (c. 60)*

- 52 In section 37(14) of the Police and Criminal Evidence Act 1984 (duties of custody officer before charge) after the words “Children and Young Persons Act 1969” there shall be inserted “or in Part IV of the Children Act 1989”.

**Commencement Information**

**I246** Sch. 13 para. 52 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 53 <sup>F126</sup>(1) . . . . .

(2) After that subsection there shall be inserted—

“(6A) In this section “local authority accommodation” means accommodation provided by or on behalf of a local authority (within the meaning of the Children Act 1989).

(6B) Where an arrested juvenile is moved to local authority accommodation under subsection (6) above, it shall be lawful for any person acting on behalf of the authority to detain him.”.

(3) In subsection (8) of that section for the words “Children and Young Persons Act 1969” there shall be substituted “Children Act 1989”.

**Textual Amendments**

**F126** Sch. 13 para. 53(1) repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), Sch.13; S.I. 1992/333, art. 2(2), Sch.2.

**Commencement Information**

**I247** Sch. 13 para. 53 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 54 In section 39(4) of that Act (responsibilities in relation to persons detained) for the words “transferred to the care of a local authority in pursuance of arrangements made” there shall be substituted “moved to local authority accommodation”.

**Commencement Information**

**I248** Sch. 13 para. 54 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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- 55 In Schedule 2 to that Act (preserved powers of arrest) in the entry relating to the Children and Young Persons Act 1969 for the words “Sections 28(2) and” there shall be substituted “ Section” ”.

**Commencement Information**

**I249** Sch. 55 para. 55 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Surrogacy Arrangements Act 1985 (c. 49)*

- 56 In section 1(2)(b) of the Surrogacy Arrangements Act 1985 (meaning of “surrogate mother”, etc.) for the words “the parental rights being exercised” there shall be substituted “ parental responsibility being met” ”.

**Commencement Information**

**I250** Sch. 13 para. 56 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Child Abduction and Custody Act 1985 (c. 60)*

- 57 (1) In section 9(a) and 20(2)(a) of the Child Abduction and Custody Act 1985 (orders with respect to which court’s powers suspended), for the words “any other order under section 1(2) of the Children and Young Persons Act 1969” there shall be substituted “ a supervision order under section 31 of the Children Act 1989” ”.

- (2) At the end of section 27 of that Act (interpretation), there shall be added—

“(4) In this Act a decision relating to rights of access in England and Wales means a decision as to the contact which a child may, or may not, have with any person.”

- (3) In Part I of Schedule 3 to that Act (orders in England and Wales which are custody orders for the purposes of the Act), for paragraph 1 there shall be substituted—

“1 The following are the orders referred to in section 27(1) of this Act—

- (a) a care order under the Children Act 1989 (as defined by section 31(11) of that Act, read with section 105(1) and Schedule 14);
- (b) a residence order (as defined by section 8 of the Act of 1989); and
- (c) any order made by a court in England and Wales under any of the following enactments—
  - (i) section 9(1), 10(1)(a) or 11(a) of the Guardianship of Minors Act 1971;
  - (ii) section 42(1) or (2) or 43(1) of the Matrimonial Causes Act 1973;
  - (iii) section 2(2)(b), 4(b) or (5) of the Guardianship Act 1973 as applied by section 34(5) of the Children Act 1975;
  - (iv) section 8(2)(a), 10(1) or 19(1)(ii) of the Domestic Proceedings and Magistrates Courts Act 1978;

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(v) section 26(1)(b) of the Adoption Act 1976.”

**Commencement Information**

**I251** Sch. 13 para. 57 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)*

- 58 In section 1(3) of the Disabled Persons (Services, Consultation and Representation) Act 1986 (circumstances in which regulations may provide for the appointment of authorised representatives of disabled persons)—
- (a) in paragraph (a), for the words “parent or guardian of a disabled person under the age of sixteen” there shall be substituted—
- “(i) the parent of a disabled person under the age of sixteen, or
- (ii) any other person who is not a parent of his but who has parental responsibility for him”; and
- (b) in paragraph (b), for the words “in the care of” there shall be substituted “looked after by” ”.

**Commencement Information**

**I252** Sch. 13 para. 58 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 59 (1) Section 2 of that Act (circumstances in which authorised representative has right to visit etc. disabled person) shall be amended as follows.
- (2) In subsection (3)(a) for the words from second “the” to “by” there shall be substituted “for the words “if so requested by the disabled person” there shall be substituted “if so requested by any person mentioned in section 1(3)(a)(i) or (ii)”>.” ”
- (3) In subsection (5) after paragraph (b) there shall be inserted—
- “(bb) in accommodation provided by or on behalf of a local authority under Part III of the Children Act 1989, or”.
- (4) After paragraph (c) of subsection (5) there shall be inserted—
- “(cc) in accommodation provided by a voluntary organisation in accordance with arrangements made by a local authority under section 17 of the Children Act 1989, or”.

**Commencement Information**

**I253** Sch. 13 para. 59 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 60 In section 5(7)(b) of that Act (disabled persons leaving special education) for the word “guardian” there shall be substituted “other person who is not a parent of his but who has parental responsibility for him” ”.

*Status: Point in time view as at 01/10/2001.*

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#### Commencement Information

**I254** Sch. 13 para. 60 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 61 (1) In section 16 of that Act (interpretation) in the definition of “disabled person”, in paragraph (a) for the words from “means” to “applies” there shall be substituted “means—
- (i) in the case of a person aged eighteen or over, a person to whom section 29 of the 1948 Act applies, and
  - (ii) in the case of a person under the age of eighteen, a person who is disabled within the meaning of Part III of the Children Act 1989”.
- (2) After the definition of “parent” in that section there shall be inserted—
- ““parental responsibility” has the same meaning as in the Children Act 1989.”
- (3) In the definition of “the welfare enactments” in that section, in paragraph (a) after the words “the 1977 Act” there shall be inserted “ and Part III of the Children Act 1989” ”.
- (4) At the end of that section there shall be added—
- “(2) In this Act any reference to a child who is looked after by a local authority has the same meaning as in the Children Act 1989.”

#### Commencement Information

**I255** Sch. 13 para. 61 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *The Family Law Act 1986 (c. 55)*

- 62 (1) The Family Law Act 1986 shall be amended as follows.
- (2) Subject to paragraphs 63 to 71, in Part I—
- (a) for the words “custody order”, in each place where they occur, there shall be substituted “ Part I order” ”;
  - (b) for the words “proceedings with respect to the custody of”, in each place where they occur, there shall be substituted “ Part I proceedings with respect to” ”; and
  - (c) for the words “matters relating to the custody of”, in each place where they occur, there shall be substituted “ Part I matters relating to” ”.
- (3) For section 42(7) (general interpretation of Part I) there shall be substituted—
- “(7) In this Part—
- (a) references to Part I proceedings in respect of a child are references to any proceedings for a Part I order or an order corresponding to a Part I order and include, in relation to proceedings outside the United Kingdom, references to proceedings before a tribunal or other authority having power under the law having effect there to determine Part I matters; and

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- (b) references to Part I matters are references to matters that might be determined by a Part I order or an order corresponding to a Part I order.”

#### Commencement Information

**I256** Sch. 13 para. 62 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 63 (1) In section 1 (orders to which Part I of the Act of 1986 applies), in subsection (1)—
- (a) for paragraph (a) there shall be substituted—
- “(a) a section 8 order made by a court in England and Wales under the Children Act 1989, other than an order varying or discharging such an order”; and
- (b) for paragraph (d) there shall be substituted the following paragraphs—
- “(d) an order made by a court in England and Wales in the exercise of the inherent jurisdiction of the High Court with respect to children—
- (i) so far as it gives care of a child to any person or provides for contact with, or the education of, a child; but
- (ii) excluding an order varying or revoking such an order;
- (e) an order made by the High Court in Northern Ireland in the exercise of its jurisdiction relating to wardship—
- (i) so far as it gives care and control of a child to any person or provides for the education of or access to a child; but
- (ii) excluding an order relating to a child of whom care or care and control is (immediately after the making of the order) vested in the Department of Health and Social Services or a Health and Social Services Board.”

<sup>F127</sup>(2) .....

- (3) For subsections (3) to (5) of that section there shall be substituted—

“(3) In this Part, “Part I order”—

- (a) includes any order which would have been a custody order by virtue of this section in any form in which it was in force at any time before its amendment by the Children Act 1989; and
- (b) (subject to sections 32 and 40 of this Act) excludes any order which would have been excluded from being a custody order by virtue of this section in any such form.”

#### Textual Amendments

**F127** SCh. 13 para. 63(2) repealed (4.11.1996) by S.I. 1995/756, arts. 1(2), 15, Sch.; S.R. 1996/297, art. 3

*Status: Point in time view as at 01/10/2001.*

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### Commencement Information

**I257** Sch. 13 para. 63 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

64 For section 2 there shall be substituted the following sections—

#### “2 Jurisdiction: general.

- (1) A court in England and Wales shall not have jurisdiction to make a section 1(1)(a) order with respect to a child in or in connection with matrimonial proceedings in England and Wales unless the condition in section 2A of this Act is satisfied.
- (2) A court in England and Wales shall not have jurisdiction to make a section 1(1)(a) order in a non-matrimonial case (that is to say, where the condition in section 2A of this Act is not satisfied) unless the condition in section 3 of this Act is satisfied.
- (3) A court in England and Wales shall not have jurisdiction to make a section 1(1)(d) order unless—
  - (a) the condition in section 3 of this Act is satisfied, or
  - (b) the child concerned is present in England and Wales on the relevant date and the court considers that the immediate exercise of its powers is necessary for his protection.

#### 2A Jurisdiction in or in connection with matrimonial proceedings.

- (1) The condition referred to in section 2(1) of this Act is that the matrimonial proceedings are proceedings in respect of the marriage of the parents of the child concerned and—
  - (a) the proceedings—
    - (i) are proceedings for divorce or nullity of marriage, and
    - (ii) are continuing;
  - (b) the proceedings—
    - (i) are proceedings for judicial separation,
    - (ii) are continuing,and the jurisdiction of the court is not excluded by subsection (2) below; or
  - (c) the proceedings have been dismissed after the beginning of the trial but—
    - (i) the section 1(1)(a) order is being made forthwith, or
    - (ii) the application for the order was made on or before the dismissal.
- (2) For the purposes of subsection (1)(b) above, the jurisdiction of the court is excluded if, after the grant of a decree of judicial separation, on the relevant date, proceedings for divorce or nullity in respect of the marriage are continuing in Scotland or Northern Ireland.
- (3) Subsection (2) above shall not apply if the court in which the other proceedings there referred to are continuing has made—



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- (a) an order under section 13(6) or 21(5) of this Act (not being an order made by virtue of section 13(6)(a)(i)), or
  - (b) an order under section 14(2) or 22(2) of this Act which is recorded as being made for the purpose of enabling Part I proceedings to be taken in England and Wales with respect to the child concerned.
- (4) Where a court—
- (a) has jurisdiction to make a section 1(1)(a) order in or in connection with matrimonial proceedings, but
  - (b) considers that it would be more appropriate for Part I matters relating to the child to be determined outside England and Wales,
- the court may by order direct that, while the order under this subsection is in force, no section 1(1)(a) order shall be made by any court in or in connection with those proceedings.”

#### Commencement Information

**I258** Sch. 13 para. 64 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 65 (1) In section 3 (habitual residence or presence of child concerned) in subsection (1) for “section 2” there shall be substituted “section 2(2)”.
- (2) In subsection (2) of that section for the words “proceedings for divorce, nullity or judicial separation” there shall be substituted “matrimonial proceedings”.

#### Commencement Information

**I259** Sch. 13 para. 65 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 66 (1) In section 6 (duration and variation of Part I orders), for subsection (3) there shall be substituted the following subsections—
- “(3) A court in England and Wales shall not have jurisdiction to vary a Part I order if, on the relevant date, matrimonial proceedings are continuing in Scotland or Northern Ireland in respect of the marriage of the parents of the child concerned.
- (3A) Subsection (3) above shall not apply if—
- (a) the Part I order was made in or in connection with proceedings for divorce or nullity in England and Wales in respect of the marriage of the parents of the child concerned; and
  - (b) those proceedings are continuing.
- (3B) Subsection (3) above shall not apply if—
- (a) the Part I order was made in or in connection with proceedings for judicial separation in England and Wales;
  - (b) those proceedings are continuing; and
  - (c) the decree of judicial separation has not yet been granted.”
- (2) In subsection (5) of that section for the words from “variation of” to “if the ward” there shall be substituted “variation of a section 1(1)(d) order if the child concerned”.



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(3) For subsections (6) and (7) of that section there shall be substituted the following subsections—

“(6) Subsection (7) below applies where a Part I order which is—

- (a) a residence order (within the meaning of the Children Act 1989) in favour of a person with respect to a child,
- (b) an order made in the exercise of the High Court’s inherent jurisdiction with respect to children by virtue of which a person has care of a child, or
- (c) an order—
  - (i) of a kind mentioned in section 1(3)(a) of this Act,
  - (ii) under which a person is entitled to the actual possession of a child,

ceases to have effect in relation to that person by virtue of subsection (1) above.

(7) Where this subsection applies, any family assistance order made under section 16 of the Children Act 1989 with respect to the child shall also cease to have effect.

(8) For the purposes of subsection (7) above the reference to a family assistance order under section 16 of the Children Act 1989 shall be deemed to include a reference to an order for the supervision of a child made under—

- (a) section 7(4) of the Family Law Reform Act 1969,
- (b) section 44 of the Matrimonial Causes Act 1973,
- (c) section 2(2)(a) of the Guardianship Act 1973,
- (d) section 34(5) or 36(3)(b) of the Children Act 1975, or
- (e) section 9 of the Domestic Proceedings and Magistrates’ Courts Act 1978;

but this subsection shall cease to have effect once all such orders for the supervision of children have ceased to have effect in accordance with Schedule 14 to the Children Act 1989.”

#### **Commencement Information**

**I260** Sch. 13 para. 66 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

67 For section 7 (interpretation of Chapter II) there shall be substituted—

#### **“7 Interpretation of Chapter II.**

In this Chapter—

- (a) “child” means a person who has not attained the age of eighteen;
- (b) “matrimonial proceedings” means proceedings for divorce, nullity of marriage or judicial separation;
- (c) “the relevant date” means, in relation to the making or variation of an order—
  - (i) where an application is made for an order to be made or varied, the date of the application (or first application, if two or more are determined together), and

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- (ii) where no such application is made, the date on which the court is considering whether to make or, as the case may be, vary the order; and
- (d) “section 1(1)(a) order” and “section 1(1)(d) order” mean orders falling within section 1(1)(a) and (d) of this Act respectively.”

#### Commencement Information

**I261** Sch. 13 para. 67 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 68 In each of the following sections—
- (a) section 11(2)(a) (provisions supplementary to sections 9 and 10),
  - (b) section 13(5)(a) (jurisdiction ancillary to matrimonial proceedings),
  - (c) section 20(3)(a) (habitual residence or presence of child),
  - (d) section 21(4)(a) (jurisdiction in divorce proceedings, etc.), and
  - (e) section 23(4)(a) (duration and variation of custody orders),
- for “4(5)” there shall be substituted “ 2A(4) ”.

#### Extent Information

**E3** Sch. 13 para. 68(a)(b) extends to Scotland and para. 68(c)-(e) extends to Northern Ireland see s. 108(11)(12)

#### Commencement Information

**I262** Sch. 13 para. 68 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 69 In each of the following sections—
- [<sup>F128</sup>(a) section 19(2) (jurisdiction in cases other than divorce, etc.),]
  - (b) section 20(6) (habitual residence or presence of child), and
  - (c) section 23(5) (duration and variation of custody orders),
- for “section 1(1)(d)” there shall be substituted “ section 1(1)(e) ”.

#### Textual Amendments

**F128** Sch. 13 para. 69(a) repealed (N.I.) (4.11.1996) by S.I. 1995/755, art. 185(2), Sch. 10; S.R. 1996/297, art. 2(2)

#### Commencement Information

**I263** Sch. 13 para. 69 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 70 In section 34(3) (power to order recovery of child) for paragraph (a) there shall be substituted—
- “(a) section 14 of the Children Act 1989”.

#### Commencement Information

**I264** Sch. 13 para. 70 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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- 71 (1) In section 42 (general interpretation of Part I), in subsection (4)(a) for the words “has been boarded out with those parties” there shall be substituted “is placed with those parties as foster parents”.
- (2) In subsection (6) of that section, in paragraph (a) after the word “person” there shall be inserted “to be allowed contact with or”.

**Commencement Information**

**I265** Sch. 13 para. 71 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*The Local Government Act 1988 (c. 9)*

- 72 In Schedule 1 to the Local Government Act 1988 (competition) at the end of paragraph 2(4) (cleaning of buildings: buildings to which competition provisions do not apply) for paragraph (c) there shall be substituted—
- “(c) section 53 of the Children Act 1989.”

**Commencement Information**

**I266** Sch. 13 para. 72 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Amendments of local Acts*

- 73 (1) Section 16 of the<sup>M41</sup> Greater London Council (General Powers) Act 1981 (exemption from provisions of Part IV of the Act of certain premises) shall be amended as follows.
- (2) After paragraph (g) there shall be inserted—
- “(gg) used as a children’s home as defined in section 63 of the Children Act 1989”.
- (3) In paragraph (h)—
- (a) for the words “section 56 of the Child Care Act 1980” there shall be substituted “section 60 of the Children Act 1989”;
- (b) for the words “section 57” there shall be substituted “section 60”; and
- (c) for the words “section 32” there shall be substituted “section 53”.
- (4) In paragraph (i), for the words “section 8 of the Foster Children Act 1980” there shall be substituted “section 67 of the Children Act 1989”.

**Commencement Information**

**I267** Sch. 13 para. 73 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M41** 1981 c. xvii.

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- 74 (1) Section 10(2) of the <sup>M42</sup>Greater London Council (General Powers) Act 1984 (exemption from provisions of Part IV of the Act of certain premises) shall be amended as follows.
- (2) In paragraph (d)—
- (a) for the words “section 56 of the Child Care Act 1980” there shall be substituted “section 60 of the Children Act 1989”;
  - (b) for the words “section 57” there shall be substituted “section 60”; and
  - (c) for the words “section 31” there shall be substituted “section 53”.
- (3) In paragraph (e), for the words “section 8 of the Foster Children Act 1980” there shall be substituted “section 67 of the Children Act 1989”.
- (4) In paragraph (l) for the words “section 1 of the Children’s Homes Act 1982” there shall be substituted “section 63 of the Children Act 1989”.

#### Commencement Information

I268 Sch. 13 para. 74 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

M42 1984 c. xxvii.

## SCHEDULE 14

Section 108(6).

### TRANSITIONALS AND SAVINGS

#### *Pending proceedings, etc.*

- 1 (1) [<sup>F129</sup>Subject to sub-paragraphs (1A) and (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.
- [<sup>F130</sup>(1A) Proceedings pursuant to section 7(2) of the Family Law Reform Act 1969 (committal of wards of court to care of local authority) or in the exercise of the High Court’s inherent jurisdiction with respect to children which are pending in relation to a child who has been placed or allowed to remain in the care of a local authority shall not be treated as pending proceedings after 13th October 1992 for the purposes of this Schedule if no final order has been made by that date pursuant to section 7(2) of the 1969 Act or in the exercise of the High Court’s inherent jurisdiction in respect of the child’s care.]
- (2) The repeals are those of—
- (a) section 42(3) of the <sup>M43</sup>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 <sup>M44</sup>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

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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.

#### Textual Amendments

**F129** Words in Sch. 14 para. 1(1) substituted (14.10.1991) by S.I. 1991/828, art. 4, Sch. para. 1A(1) (as inserted by S.I. 1991/1990, art. 2(c), Sch. para. 1)

**F130** Sch. 14 para. 1(1A) inserted (14.10.1991) by S.I. 1991/828, art. 4, Sch. para. 1A(2) (as inserted by S.I. 1991/1990, art. 2(c), Sch. para. 1)

#### Commencement Information

**I269** Sch. 14 para. 1 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M43** 1973 c. 18.

**M44** 1956 c. 69.

- 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 <sup>M45</sup>Children and Young Persons Act 1963 (order directing a local authority to bring a child or young person before a [<sup>F131</sup>youth court] under section 1 of the Children and Young Persons Act 1969), the order shall cease to have effect on that day.

#### Textual Amendments

**F131** Words in Sch. 14 para. 2 substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 100, Sch. 11 para. 40(1)(2)(r); S.I. 1992/333, art. 2(2), Sch. 2.

#### Commencement Information

**I270** Sch. 14 para. 2 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M45** 1963 c. 37.

### 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

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- (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.

**Commencement Information**

**I271** Sch. 14 para. 3 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*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.

**Commencement Information**

**I272** Sch. 14 para. 4 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*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 <sup>M46</sup>Domestic Proceedings and Magistrates’ Courts Act 1978;
  - (b) the <sup>M47</sup>Children Act 1975;
  - (c) the <sup>M48</sup>Matrimonial Causes Act 1973;
  - (d) the Guardianship of Minors Acts 1971 and 1973;
  - (e) the <sup>M49</sup>Matrimonial Causes Act 1965;
  - (f) the <sup>M50</sup>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.

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#### Commencement Information

**I273** Sch. 14 para. 5 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M46** 1978 c. 22.

**M47** 1975 c. 72.

**M48** 1973 c. 18.

**M49** 1965 c. 72.

**M50** 1960 c. 48.

### *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—
- “(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.

#### Commencement Information

**I274** Sch. 14 para. 6 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *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



*Status: Point in time view as at 01/10/2001.*

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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, [<sup>F132</sup>Parts I and II and paragraph 15 of Schedule I] 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.”
- [<sup>F133</sup>(d) for paragraph 15 of Schedule I there shall be substituted—
- “15 Where a child lives with a person as the result of a custodianship order within the meaning of section 33 of the Children Act 1975, a local authority may make contributions to that person towards the cost of the accommodation and maintenance of the child so long as that person continues to have legal custody of that child by virtue of the order.”]

#### Textual Amendments

**F132** Words in Sch. 14 para. 7(2) substituted (14.10.1991) by S.I. 1991/828, art. 4, Sch. para. 1B(1) (as inserted by S.I. 1991/1990, art. 2(c), Sch. para. 1)

**F133** Sch. 14 para. 7(3)(d) inserted (14.10.1991) by S.I. 1991/828, art. 4, Sch. para. 1B(2) (as inserted by S.I. 1991/1990, art. 2(c), Sch. para. 1)

#### Commencement Information

**I275** Sch. 14 para. 7 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *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” ”.

**Commencement Information**

**I276** Sch. 14 para. 8 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*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.”

**Commencement Information**

**I277** Sch. 14 para. 9 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Status: Point in time view as at 01/10/2001.*

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### *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<sup>M51</sup> of Minors Act 1971;
  - (b) section 43(1) of the<sup>M52</sup> Children Act 1975; or
  - (c) section 33 of the<sup>M53</sup> 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—
- (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.

#### **Commencement Information**

**I278** Sch. 14 para. 10 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### **Marginal Citations**

**M51** 1971 c. 3.

**M52** 1975 c. 72.

**M53** 1978 c. 22.

### *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.

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- (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).

#### Commencement Information

**I279** Sch. 14 para. 11 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## 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 <sup>M54</sup>Guardianship of Minors Act 1971;
- (ii) under section 38(3) of the <sup>M55</sup>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.

#### Modifications etc. (not altering text)

**C31** Sch. 14 para. 12 amended (14.10.1991) by S.I. 1991/828, art. 4, Sch. para. 1C (as inserted by S.I. 1991/1990, art. 2(c), Sch. para.1)

#### Commencement Information

**I280** Sch. 14 para. 12 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M54** 1971 c. 3.

**M55** 1956 c. 69.

### *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,

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shall take effect in accordance with section 5 (as modified, where it applies, by paragraph 8(2)).

**Modifications etc. (not altering text)**

**C32** Sch. 14 para. 13 amended (14.10.1991) by S.I. 1991/828, art. 4, Sch. para. 1C (as inserted by S.I. 1991/1990, art. 2(c), Sch. para. 1)

**Commencement Information**

**I281** Sch. 14 para. 13 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Persons deemed to be appointed as guardians under existing wills*

- 14 For the purposes of the <sup>M56</sup>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.

**Modifications etc. (not altering text)**

**C33** Sch. 14 para. 14 amended (14.10.1991) by S.I. 1991/828, art. 4, Sch. para. 1C (as inserted by S.I. 1991/1990, art. 2(c), Sch. para.1)

**Commencement Information**

**I282** Sch. 14 para. 14 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M56** 1837 c. 26.

*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 <sup>M57</sup>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;
  - <sup>F134</sup>(b) .....
  - (c) in care—
    - (i) under section 2 of the <sup>M58</sup>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 <sup>M59</sup>Children Act 1948),

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- 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 <sup>M60</sup>Matrimonial Proceedings (Magistrates' Courts) Act 1960;
  - (ii) section 7(2) of the <sup>M61</sup>Family Law Reform Act 1969;
  - (iii) section 43(1) of the <sup>M62</sup>Matrimonial Causes Act 1973; or
  - (iv) section 2(2)(b) of the <sup>M63</sup>Guardianship Act 1973;
  - (v) section 10 of the <sup>M64</sup>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 <sup>M65</sup>Children Act 1975; <sup>F135</sup> . . .
- (g) in care by virtue of an order made, on the refusal of an adoption order, under section 26 of the <sup>M66</sup>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.
- [<sup>F136</sup>, or—
- (h) in care by virtue of an order of the court made in the exercise of the High Court's inherent jurisdiction with respect to children.]
- (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.

#### Textual Amendments

**F134** Sch. 14 para. 15(1)(b) repealed (1. 1. 1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(2), **Sch. 3**; S.I. 1991/2719, **art. 2**, Sch. (with art. 3(1))

**F135** Word in Sch. 14 para. 15(1) repealed (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(7), **Sch. 20**; S.I. 1991/1883, **art. 3**, **Sch.**

**F136** Sch. 14 para. 15(1)(h) added (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 33(2)**; S.I. 1991/1883, **art. 3**, **Sch.**

#### Commencement Information

**I283** Sch. 14 para. 15 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

#### Marginal Citations

**M57** 1969 c. 54.

**M58** 1980 c. 5.

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<b>M59</b>	1948 c. 43.
<b>M60</b>	1960 c. 48.
<b>M61</b>	1969 c. 46.
<b>M62</b>	1973 c. 18.
<b>M63</b>	1973 c. 29.
<b>M64</b>	1978 c. 22.
<b>M65</b>	1975 c. 72.
<b>M66</b>	1976 c. 36.

*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) <sup>F137</sup> . . . 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 <sup>M67</sup> and Young Persons Act 1969; <sup>F138</sup> . . .
- <sup>F138</sup>(b) . . . . .  
 this Act applies as if in section 91(12) for the word “eighteen” there were substituted “nineteen” ”
- <sup>F139</sup>(3) . . . . .
- [<sup>F140</sup>(3A) Where in respect of a child who has been placed or allowed to remain in the care of a local authority pursuant to section 7(2) of the Family Law Reform Act 1969 or in the exercise of the High Court’s inherent jurisdiction and the child is still in the care of a local authority, proceedings have ceased by virtue of paragraph 1 (1A) to be treated as pending, paragraph 15(2) shall apply on 14th October 1992 as if the child was in care pursuant to an order as specified in paragraph 15(1)(e)(ii) or (h) as the case may be.]
- (4) [<sup>F141</sup>Sub-paragraphs (5) and (6) only apply]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 [<sup>F142</sup>(h)]of that paragraph.
- (5) [<sup>F143</sup>Subject to sub-paragraph (6),]Where a court, on making the order, or at any time thereafter, gave directions [<sup>F144</sup>
- (a) under section 4(4)(a) of the Guardianship Act 1973;
- (b) under section 43(5)(a) of the Matrimonial Causes Act 1973; or
- (c) in the exercise of the High Court’s inherent jurisdiction with respect to children,]
- as to the exercise by the authority of any powers, those directions shall [<sup>F145</sup>, subject to the provisions of section 25 of this Act and of any regulations made under that section,]continue to have effect (regardless of any conflicting provision in this Act [<sup>F146</sup>other than section 25]) until varied or discharged by a court under this sub-paragraph.
- [<sup>F147</sup>(6) Where directions referred to in sub-paragraph (5) are to the effect that a child be placed in accommodation provided for the purpose of restricting liberty then the

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directions shall cease to have effect upon the expiry of the maximum period specified by regulations under section 25(2)(a) in relation to children of his description, calculated from 14th October 1991.]

#### Textual Amendments

- F137** Words in Sch. 14 para. 16(1) repealed (1. 1. 1992) by Armed Forces Act 1991 (c. 62), s. 26(2), **Sch.3**; S.I. 1991/2719, **art. 2**, Sch. (with art. 3(1))
- F138** Sch. 14 para. 16(2)(b) and the word "or" immediately preceding it repealed (1. 1. 1992) by Armed Forces Act 1991 (c. 62), s. 26(2), **Sch.3**; S.I. 1991/2719, **art. 2**, Sch. (with art. 3(1))
- F139** Sch. 14 para. 16(3) repealed (1. 1. 1992) by Armed Forces Act 1991 (c. 62), s. 26(2), **Sch.3**; S.I. 1991/2719, **art. 2**, Sch. (with art. 3(1))
- F140** Sch. 14 para. 16(3A) inserted (14.10.1991) by S.I. 1991/828, **art. 4**, **Sch. para. 1D** (as inserted by S.I. 1991/1990, **art. 2(c)**, **Sch. para. 1**)
- F141** Words in Sch. 14 para. 16(4) substituted by S.I. 1991/828, **art. 4**, **Sch. para. 1**
- F142** "(h)" in Sch. 14 para. 16(4) substituted (14.10.1991) for "(g)" by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 33(3)(a)**; S.I. 1991/1883, **art. 3**, **Sch.**
- F143** Words in Sch. 14 para. 16(5) inserted by S.I. 1991/828, **art. 4**, **Sch. para. 2(a)**
- F144** Sch. 14 para. 16(5)(a)(b)(c) substituted (14.10.1991) for the words from "under" to "1973" by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 33(3)(b)**; S.I. 1991/1883, **art. 3**, **Sch.**
- F145** Words in Sch. 14 para. 16(5) inserted by S.I. 1991/828, **art. 4**, **Sch. para. 2(b)**
- F146** Words in Sch. 14 para. 16(5) inserted by S.I. 1991/828, **art. 4**, **Sch. para. 2(c)**
- F147** Sch. 14 para. 16(6) inserted by S.I. 1991/828, **art. 4**, **Sch. para. 3**

#### Commencement Information

- I284** Sch. 14 para. 16 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

#### Marginal Citations

- M67** 1969 c. 54.

#### *Cessation of wardship where ward in care*

- [<sup>F148</sup>16A [ Where a child who is a ward of court is in care by virtue of—
- <sup>F149</sup>(1) (a) an order under section 7(2) of the Family Law Reform Act 1969; or
- (b) an order made in the exercise of the High Court's inherent jurisdiction with respect to children,
- he shall, on the day on which Part IV commences, cease to be a ward of court.
- [ Where immediately before the day on which Part IV commences a child was in the
- <sup>F150</sup>(2) care of a local authority and as a result of an order—
- (a) pursuant to section 7(2) of the Family Law Reform Act 1969; or
- (b) made in the exercise of the High Court's inherent jurisdiction with respect to children,
- continued to be in the care of a local authority and was made a ward of court, he shall on the day on which Part IV commences, cease to be a ward of court.]
- <sup>F150</sup>(3) Sub-paragraphs (1) and (2) do not apply in proceedings which are pending.]



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#### Textual Amendments

- F148** Sch. 14 para. 16A inserted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, Sch. 16 para. 33(4); S.I. 1991/1883, art. 3, Sch.
- F149** Words in Sch. 14 para. 16A inserted (14.10.1991) by S.I. 1991/828, art. 4, Sch. para. 4(a) (as substituted by S.I. 1991/1990, art. 2(c), Sch. para.2)
- F150** Sch. 14 para. 16A(2)(3) inserted (14.10.1991) by S.I. 1991/828, art. 4, Sch. para. 4(b) (as substituted by S.I. 1991/1990, art. 2(c), Sch. para.2)

#### *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 <sup>M68</sup>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.

#### Commencement Information

**I285** Sch. 14 para. 17 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M68** 1980 c. 5.

#### *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.

#### Commencement Information

**I286** Sch. 14 para. 18 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- [<sup>F151</sup>18A] This paragraph applies to any decision of a local authority to terminate arrangements for access or to refuse to make such arrangements—
- (a) of which notice has been given under, and in accordance with, section 12B of the Child Care Act 1980 (termination of access); and
  - (b) which is in force immediately before the commencement of Part IV.



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- (2) On and after the commencement of Part IV, a decision to which this paragraph applies shall have effect as a court order made under section 34(4) authorising the local authority to refuse to allow contact between the child and the person to whom notice was given under section 12B of the Child Care Act 1980.]

#### Textual Amendments

**F151** Sch. 14 para. 18A inserted (14.10.1991) by S.I. 1991/828, art. 4, Sch. para. 5

- 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 [<sup>F152</sup>youth court], its operation shall be suspended until the date on which the application to vary or discharge it is determined or abandoned.

#### Textual Amendments

**F152** Words in Sch. 14 para. 19 substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 100, Sch. 11 para. 40(1)(2)(r); S.I. 1992/333, art. 2(2), Sch. 2.

#### Commencement Information

**I287** Sch. 14 para. 19 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *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 <sup>M69</sup>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 <sup>M70</sup>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.
- (2) Where this paragraph applies, the child shall, on and after the day mentioned in subparagraph (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—

*Status: Point in time view as at 01/10/2001.*

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- (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.

#### Commencement Information

**I288** Sch. 14 para. 20 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M69** 1980 c. 5.

**M70** 1948 c. 43.

#### *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.

#### Commencement Information

**I289** Sch. 14 para. 21 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *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

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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 [F153(h)] of paragraph 15(1); or
  - (ii) paragraph 20(1); or
- (b) the subject of a criminal care order (within the meaning of paragraph 34).

#### Textual Amendments

**F153** “h” in Sch. 14 para. 22(a)(i) substituted (14.10.1991) for “g” by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 33(5)**; S.I. 1991/1883, art. 3, **Sch.**

#### Commencement Information

**I290** Sch. 14 para. 22 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

#### *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<sup>M71</sup>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.

#### Commencement Information

**I291** Sch. 14 para. 23 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

#### Marginal Citations

**M71** 1980 c. 5.

#### *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<sup>M72</sup>Proceedings and Magistrates’ Courts Act 1978;
- (b) section 26(2) of the<sup>M73</sup>Adoption Act 1976;
- (c) section 36(5) of the<sup>M74</sup>Children Act 1975;

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- (d) section 2(3) of the <sup>M75</sup>Guardianship Act 1973;
  - (e) section 2(1)(h) of the <sup>M76</sup>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—
          - (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.”

#### Commencement Information

**I292** Sch. 14 para. 24 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M72** 1978 c. 22.  
**M73** 1976 c. 36.  
**M74** 1975 c. 72.  
**M75** 1973 c. 29.  
**M76** 1960 c. 48.

### SUPERVISION ORDERS

- 25 (1) This paragraph applies to any supervision order—
- (a) made—
    - (i) under section 1(3)(b) of the Children <sup>M77</sup>and Young Persons Act 1969; or

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- (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 [<sup>F154</sup>six months or more], 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.

**Textual Amendments**

**F154** Words in [Sch. 14 para. 25](#) substituted (14.10.1991) by [S.I. 1991/828, art. 4, Sch. para. 6](#)

**Commencement Information**

**I293** [Sch. 14 para. 25](#) wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828, art. 3\(2\)](#)

**Marginal Citations**

**M77** 1969 c. 54.

*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 <sup>M78</sup>Proceedings (Magistrates Courts) Act 1960;
  - (b) section 7(4) of the <sup>M79</sup>Family Law Reform Act 1969;
  - (c) section 44 of the <sup>M80</sup>Matrimonial Causes Act 1973;
  - (d) section 2(2)(a) of the <sup>M81</sup>Guardianship Act 1973;

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- (e) section 34(5) or 36(3)(b) of the <sup>M82</sup>Children Act 1975;
  - (f) section 26(1)(a) of the <sup>M83</sup>Adoption Act 1976; or
  - (g) section 9 of the <sup>M84</sup>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.

#### Commencement Information

**I294** Sch. 14 para. 26 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M78** 1960 c. 48.  
**M79** 1969 c. 46.  
**M80** 1973 c. 18.  
**M81** 1973 c. 29.  
**M82** 1975 c. 72.  
**M83** 1976 c. 36.  
**M84** 1978 c. 22.

#### *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 subparagraph (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 <sup>M85</sup>and Young Persons Act 1963 or section 28(6) of the Children and Young Persons Act <sup>M86</sup>1969.
- (2) The enactments are—
- (a) section 40 of the <sup>M87</sup>Children and Young Persons Act 1933 (warrant to search for or remove child);
  - (b) section 28(1) of the <sup>M88</sup>Children and Young Persons Act 1969 (detention of child in place of safety);
  - (c) section 34(1) of the <sup>M89</sup>Adoption Act 1976 (removal of protected children from unsuitable surroundings);
  - (d) section 12(1) of the <sup>M90</sup>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.

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- (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 <sup>M91</sup>Children and Young Persons Act 1963 or section 28(6) of the Children and Young Persons Act 1969.
- (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.

#### Commencement Information

**I295** Sch. 14 para. 27 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M85** 1963 c. 37.  
**M86** 1969 c. 54.  
**M87** 1933 c. 12.  
**M88** 1969 c. 54.  
**M89** 1976 c. 36.  
**M90** 1980 c. 6.  
**M91** 1963 c. 37.

#### *Recovery of children*

- 28 The repeal by this Act of subsection (1) of section 16 of the <sup>M92</sup>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.

#### Commencement Information

**I296** Sch. 14 para. 28 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M92** 1980 c. 5.

- 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.



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#### Commencement Information

**I297** Sch. 14 para. 29 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

- 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.

#### Commencement Information

**I298** Sch. 14 para. 30 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *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 <sup>M93</sup>Guardianship of Minors Act 1971 were a reference to an appointment of a guardian under section 5 of this Act.

#### Commencement Information

**I299** Sch. 14 para. 31 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M93** 1971 c. 3.



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### *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 <sup>M94</sup>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.

#### **Commencement Information**

**I300** Sch. 14 para. 32 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### **Marginal Citations**

**M94** 1980 c. 6.

### *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 <sup>M95</sup>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.

#### **Commencement Information**

**I301** Sch. 14 para. 33 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Status: Point in time view as at 01/10/2001.*

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#### Marginal Citations

**M95** 1948 c. 53.

- 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).
- (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).

#### Commencement Information

**I302** Sch. 12 para. 34 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *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.

#### Commencement Information

**I303** Sch. 14 para. 35 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### *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 <sup>M96</sup>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.

*Status: Point in time view as at 01/10/2001.*

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- (3) While the criminal care order remains in force, any relevant provisions—
- (a) of the Act of 1969; and
  - (b) of the <sup>M97</sup>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 [<sup>F155</sup>subsection (6)] 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.
- (7) Where this paragraph applies, section 5 of the <sup>M98</sup>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.

#### Textual Amendments

**F155** Words in Sch. 14 para. 36(5)(b) substituted (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 116, [Sch. 16 para. 33\(6\)](#); S.I. 1991/1883, [art. 3](#), Sch.

#### Commencement Information

**I304** Sch. 14 para. 36 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, [art. 3\(2\)](#)

#### Marginal Citations

**M96** 1969 c. 54.

**M97** 1980 c. 5.

**M98** 1974 c. 53.

*Status: Point in time view as at 01/10/2001.*

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## 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.

#### Commencement Information

**I305** Sch. 14 para. 37 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### *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 <sup>M99</sup>Children and Young Persons Act 1969); and
  - (b) in Schedule 3—
    - (i) paragraph 13 (amendments of <sup>M100</sup>Births and Deaths Registration Act 1953);
    - (ii) paragraph 43 (amendment of <sup>M101</sup>Perpetuities and Accumulations Act 1964);
    - (iii) paragraphs 46 and 47 (amendments of <sup>M102</sup>Health Services and Public Health Act 1968); and
    - (iv) paragraph 77 (amendment of <sup>M103</sup>Parliamentary and Other Pensions Act 1972).

#### Extent Information

**E4** Sch. 14 para. 38(a) extends to Northern Ireland see s. 108(12)

#### Commencement Information

**I306** Sch. 14 para. 38 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M99** 1969 c. 54.  
**M100** 1953 c. 20.  
**M101** 1964 c. 55.  
**M102** 1968 c. 46.

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M103 1972 c. 48.

*The Child Care Act 1980 (c. 5)*

39 The amendment made to section 106(2)(a) of the <sup>M104</sup>Children and Young Persons Act 1933 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.

**Commencement Information**

I307 Sch. 14 para. 39 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

M104 1933 c. 12.

*Legal aid*

<sup>F156</sup>40 .....

**Textual Amendments**

F156 Sch. 14 para. 40 repealed (1.4.2000) by 1999 c. 22, s. 106, Sch. 15 Pt. I (with s. 107, Sch. 14 para. 7(2), 36(9)); S.I. 2000/774, art. 2(c)(i), Sch.

SCHEDULE 15

Section 108(7).

REPEALS

**Extent Information**

E5 Sch. 15: for extent see s. 108(11)(12)

**Commencement Information**

I308 Sch. 15 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

1891 c. 3.	The Custody of Children Act 1891.	The whole Act.
1933 c. 12.	The Children and Young Persons Act 1933.	In section 14(2), the words from “may also” to “together, and”. In section 34(8), “(a)” and the words from “and (b)” to the end. Section 40.

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		In section 107(1), the definitions of “care order” and “interim order”.
1944 c. 31.	The Education Act 1944.	In section 40(1), the words from “or to imprisonment” to the end.  In section 114(1), the definition of parent.
1948 c. 53.	The Nurseries and Child-Minders Regulation Act 1948.	The whole Act.
1949 c. 76.	The Marriage Act 1949.	In section 3(1), the words “unless the child is subject to a custodianship order, when the consent of the custodian and, where the custodian is the husband or wife of a parent of the child of that parent shall be required”.  Section 78(1A).  Schedule 2.
1956 c. 69.	The Sexual Offences Act 1956.	Section 38.
1959 c. 72.	The Mental Health Act 1959.	Section 9.
1963 c. 37.	The Children and Young Persons Act 1963.	Section 3.  Section 23.  In section 29(1), the words “under section 1 of the Children and Young Persons Act 1969 or”.  Section 53(3).  In Schedule 3, paragraph 11.
1964 c. 42.	The Administration of Justice Act 1964.	In section 38, the definition of “domestic court”.
1968 c. 46.	The Health Services and Public Health Act 1968.	Section 60.  In section 64(3)(a), subparagraphs (vi), (vii), (ix) and (xv).  In section 65(3)(b), paragraphs (vii), (viii) and (x).

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1968 c. 49.	The Social Work (Scotland) Act 1968.	Section 1(4)(a).  Section 5(2)(d).  In section 86(3), the words “the Child Care Act 1980 or”.  In Schedule 8, paragraph 20.
1969 c. 46.	The Family Law Reform Act 1969.	Section 7.
1969 c. 54.	The Children and Young Persons Act 1969.	Sections 1 to 3.  In section 7, in subsection (7) the words “to subsection (7A) of this section and”, paragraph (a) and the words from “and subsection (13) of section 2 of this Act” to the end; and subsection (7A).  Section 7A.  In section 8(3), the words from “and as if the reference to acquittal” to the end.  In section 9(1), the words “proceedings under section 1 of this Act or”.  Section 11A.  Section 14A.  In section 15, in subsection (1) the words “and may on discharging the supervision order make a care order (other than an interim order) in respect of the supervised person”; in subsection (2) the words “and the supervision order was not made by virtue of section 1 of this Act or on the occasion of the discharge of a care order”; in subsection (2A), the words “or made by a court on discharging a care order made under that subsection”; and in subsection (4), the words “or made by a court on discharging a care order made under that section”.

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		<p>In section 16, in subsection (6)(a), the words “a care order or”; and in subsection (8) the words “or, in a case where a parent or guardian of his was a party to the proceedings on an application under the preceding section by virtue of an order under section 32A of this Act, the parent or guardian”.</p> <p>In section 17, paragraphs (b) and (c).</p> <p>Sections 20 to 22.</p> <p>Section 27(4).</p> <p>Section 28.</p> <p>Sections 32A to 32C.</p> <p>In section 34(2) the words “under section 1 of this Act or”, the words “2(3) or” and the words “and accordingly in the case of such a person the reference in section 1(1) of this Act to the said section 2(3) shall be construed as including a reference to this subsection”.</p> <p>In section 70, in subsection (1), the definitions of “care order” and “interim order”; and in subsection (2) the words “21(2), 22(4) or (6) or 28(5)” and the words “care order or warrant”.</p> <p>In Schedule 5, paragraphs 12(1), 37, 47 and 48.</p>
1970 c. 34.	The Marriage (Registrar General’s Licence) Act 1970.	In section 3(b), the words from “as amended” to “1969”.
1970 c. 42.	The Local Authority Social Services Act 1970.	In Schedule 1, in the entry relating to the Children and Young Persons Act 1969, the words “welfare, etc. of foster children”; the entries relating to the Matrimonial Causes Act 1973, section 44, the Domestic Proceedings



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		and Magistrates' Courts Act 1978, section 9, the Child Care Act 1980 and the Foster Children Act 1980.
1971 c. 3.	The Guardianship of Minors Act 1971.	The whole Act.
1971 c. 23.	The Courts Act 1971.	In Schedule 8, paragraph 59(1).
1972 c. 18.	The Maintenance Orders (Reciprocal Enforcement) Act 1972.	Section 41.
1972 c. 70.	The Local Government Act 1972.	In Schedule 23, paragraphs 4 and 9(3).
1972 c. 71.	The Criminal Justice Act 1972.	Section 51(1).
1973 c. 18.	The Matrimonial Causes Act 1973.	Sections 42 to 44.  In section 52(1), the definition of "custody".  In Schedule 2, paragraph 11.
1973 c. 29.	The Guardianship Act 1973.	The whole Act.
1973 c. 45.	The Domicile and Matrimonial Proceedings Act 1973.	In Schedule 1, in paragraph 11(1) the definitions of "custody" and "education" and in paragraph 11(3) the word "four".
1973 c. 62.	The Powers of Criminal Courts Act 1973.	In section 13(1), the words "and the purposes of section 1(2)(bb) of the Children and Young Persons Act 1969".  In Schedule 3, in paragraph 3(2A), the word "and" immediately preceding paragraph (b).
1974 c. 53.	The Rehabilitation of Offenders Act 1974.	In section 1(4)(b) the words "or in care proceedings under section 1 of the Children and Young Persons Act 1969".  In section 5, in subsection 5(e), the words "a care order or"; and in subsection (10) the words "care order or".
1975 c. 72.	The Children Act 1975.	The whole Act.

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1976 c. 36.	The Adoption Act 1976.	<p>Section 11(5).</p> <p>Section 14(3).</p> <p>In section 15, in subsection (1), the words from “subject” to “cases)” and subsection (4).</p> <p>Section 26.</p> <p>In section 28(5), the words “or the organisation”.</p> <p>Section 34.</p> <p>Section 36(1)(c).</p> <p>Section 37(1), (3) and (4).</p> <p>Section 55(4).</p> <p>In section 57, in subsection (2), the words from “and the court” to the end and subsections (4) to (10).</p> <p>In section 72(1), the definition of “place of safety”, in the definition of “local authority” the words from “ and” to the end and, in the definition of “specified order”, the words “Northern Ireland or”.</p> <p>In Schedule 3, paragraphs 8, 11, 19, 21, and 22.</p>
1977 c. 45.	The Criminal Law Act 1977.	Section 58(3).
1977 c. 49.	The National Health Service Act 1977.	<p>In section 21, in subsection (1)(a) the words “and young children”.</p> <p>In Schedule 8, in paragraph 1(1), the words from “and of children” to the end; in paragraph 2(2) the words from “or (b) to persons who” to “arrangements”; and in paragraph 3(1) “(a)” and the words from “or (b) a child” to “school age”.</p> <p>In Schedule 15, paragraphs 10 and 25.</p>

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1978 c. 22.	The Domestic Proceedings and Magistrates' Courts Act 1978.	Sections 9 to 15.  In section 19, in subsection (1) the words "following powers, that is to say" and sub-paragraph (ii), subsections (2) and (4), in subsection (7) the words "and one interim custody order" and in subsection (9) the words "or 21".  In section 20, subsection (4) and in subsection (9) the words "subject to the provisions of section 11(8) of this Act".  Section 21.  In section 24, the words "or 21" in both places where they occur.  In section 25, in subsection (1) paragraph (b) and the word "or" immediately preceding it and in subsection (2) paragraphs (c) and (d).  Section 29(4).  Sections 33 and 34.  Sections 36 to 53.  Sections 64 to 72.  Sections 73(1) and 74(1) and (3).  In section 88(1), the definition of "actual custody".  In Schedule 2, paragraphs 22, 23, 27, 29, 31, 36, 41 to 43, 46 to 50.
1978 c. 28.	The Adoption (Scotland) Act 1978.	In section 20(3)(c), the words "section 12(3)(b) of the Adoption Act 1976 or of".  In section 45(5), the word "approved".  Section 49(4).

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		In section 65(1), in the definition of "local authority", the words from "and" to the end and, in the definition of "specified order", the words "Northern Ireland or".
1978 c. 30.	The Interpretation Act 1978.	In Schedule 1, the entry with respect to the construction of certain expressions relating to children.
1980 c. 5.	The Child Care Act 1980.	The whole Act.
1980 c. 6.	The Foster Children Act 1980.	The whole Act.
1980 c. 43.	The Magistrates' Courts Act 1980.	In section 65(1), paragraphs (e) and (g) and the paragraph (m) inserted in section 65 by paragraph 82 of Schedule 2 to the Family Law Reform Act 1987.  In section 81(8), in the definition of "guardian" the words "by deed or will" and in the definition of "sums adjudged to be paid by a conviction" the words from "as applied" to the end.  In section 143(2), paragraph (i).  In Schedule 7, paragraphs 78, 83, 91, 92, 110, 116, 117, 138, 157, 158, 165, 166 and 199 to 201.
1981 c. 60.	The Education Act 1981.	In Schedule 3, paragraph 9.
1982 c. 20.	The Children's Homes Act 1982.	The whole Act.
1982 c. 48.	The Criminal Justice Act 1982.	Sections 22 to 25.  Section 27.  In Schedule 14, paragraphs 45 and 46.
1983 c. 20.	The Mental Health Act 1983.	In section 26(5), paragraph (d) and the word "or" immediately preceding it.

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1983 c. 41.	The Health and Social Services and Social Security Adjudications Act 1983.	<p>In section 28(1), the words “(including an order under section 38 of the Sexual Offences Act 1956)”.</p> <p>In Schedule 4, paragraphs 12, 26(a), (b) and (c), 35, 44, 50 and 51.</p> <p>Section 4(1).</p> <p>Sections 5 and 6.</p> <p>In section 11, in subsection (2) the words “the Child Care Act 1980 and the Children’s Homes Act 1982”.</p> <p>In section 19, subsections (1) to (5).</p> <p>Schedule 1.</p> <p>In Schedule 2, paragraphs 3, 9 to 14, 20 to 24, 27, 28, 34, 37 and 46 to 62.</p> <p>In Schedule 4, paragraphs 38 to 48.</p> <p>In Schedule 9, paragraphs 5, 16 and 17.</p>
1984 c. 23.	The Registered Homes Act 1984.	<p>In Schedule 1, in paragraph 5, sub-paragraph (a) and paragraphs 6, 7 and 8.</p>
1984 c. 28.	The County Courts Act 1984.	<p>In Schedule 2, paragraph 56.</p>
1984 c. 37.	The Child Abduction Act 1984.	<p>In section 3, the word “and” immediately preceding paragraph (c).</p> <p>In the Schedule, in paragraph 1(2) the words “or voluntary organisation” and paragraph 3(1)(e).</p>
1984 c. 42.	The Matrimonial and Family Proceedings Act 1984.	<p>In Schedule 1, paragraphs 19 and 23.</p>
1984 c. 56.	The Foster Children (Scotland) Act 1984.	<p>In section 1, the words “for a period of more than 6 days” and the words from “The period” to the end.</p> <p>In section 7(1), the word “or” at the end of paragraph (e).</p>

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		In Schedule 2, paragraphs 1 to 3 and 8.
1984 c. 60.	The Police and Criminal Evidence Act 1984.	In section 37(15), the words "and is not excluded from this Part of this Act by section 52 below". Section 39(5). Section 52. In section 118(1), in the definition of parent or guardian, paragraph (b) and the word "and" immediately preceding it. In Schedule 2, the entry relating to section 16 of the Child Care Act 1980. In Schedule 6, paragraphs 19(a) and 22.
1985 c. 23.	The Prosecution of Offences Act 1985.	Section 27.
1985 c. 60.	The Child Abduction and Custody Act 1985.	Section 9(c). Section 20(2)(b) and (c). Section 25(3) and (5). In Schedule 3, paragraph 1(2).
1986 c. 28.	The Children and Young Persons (Amendment) Act 1986.	The whole Act.
1986 c. 33.	The Disabled Persons (Services, Consultation and Representation) Act 1986.	In section 16, in the definition of "guardian", paragraph (a).
1986 c. 45.	The Insolvency Act 1986.	In section 281(5)(b), the words "in domestic proceedings".
1986 c. 50.	The Social Security Act 1986.	In Schedule 10, paragraph 51.
1986 c. 55.	The Family Law Act 1986.	In section 1(2), in paragraph (a) the words "(a) or" and paragraph (b). Section 3(4) to (6). Section 4. Section 35(1).

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1987 c. 42.	The Family Law Reform Act 1987.	<p>In section 42(6), in paragraph (b) the words “section 42(6) of the Matrimonial Causes Act 1973 or”, in paragraph (c) the words “section 42(7) of that Act or” and in paragraph (d) the words “section 19(6) of the Domestic Proceedings and Magistrates’ Courts Act 1978 or”.</p> <p>In Schedule 1, paragraphs 10, 11, 13, 16, 17, 20 and 23.</p> <p>Section 3.</p> <p>Sections 4 to 7.</p> <p>Sections 9 to 16.</p> <p>In Schedule 2, paragraphs 11, 14, 51, 67, 68, 94 and 95.</p> <p>In Schedule 3, paragraphs 11 and 12.</p>
1988 c. 34.	The Legal Aid Act 1988.	<p>Section 3(4)(c).</p> <p>Section 27.</p> <p>Section 28.</p> <p>In section 30, subsections (1) and (2).</p> <p>In Part I of Schedule 2, paragraph 2(a) and (e).</p>

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