

SCHEDULES

SCHEDULE 8

Article 184(1).

TRANSITIONALS AND SAVINGS

Pending proceedings, etc.

1.—(1) Subject to sub-paragraphs (2) and (5), nothing in any provision of this Order (other than the repeals mentioned in sub-paragraph (3)) shall affect any proceedings which are pending immediately before the commencement of that provision.

(2) Proceedings 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 the Department or an authority shall not be treated as pending proceedings after the expiration of one year from the commencement of this sub-paragraph if no final order has been made by then in the exercise of the High Court's inherent jurisdiction in respect of the child's care.

(3) The repeals are those of—

- (a) Article 45(3) of the Matrimonial Causes (Northern Ireland) Order 1978^{F1} (declaration by court that party to marriage unfit to have custody of children of family);
- (b) section 12 of the Criminal Law Amendment Act 1885^{F2} (power to divest person of authority over girl in cases of seduction or prostitution);
- (c) section 1(4) of the Punishment of Incest Act 1908^{F3} (power to divest person of authority over girl in cases of incest).

(4) 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 Order shall be construed as including a reference to an order made after that commencement in proceedings pending before that commencement.

(5) Sub-paragraph (4) is not to be read as making the order in question have effect from a date earlier than that on which it was made.

(6) An order under Article 169(5) (orders for admissibility of hearsay) may make such provision with respect to the application of the order in relation to proceedings which are pending when the order comes into operation as the Lord Chancellor considers appropriate.

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| F1 | 1978 NI 15 |
| F2 | 1885 c. 69 |
| F3 | 1908 c. 45 |

2. Where, immediately before the commencement of Part V, there was in force an order under section 94(4) of the Children and Young Persons Act (Northern Ireland) 1968^{F4} (order directing the Department to bring a child or young person before a juvenile court under subsection (1) of that section), the order shall cease to have effect on the commencement of that Part.

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| F4 | 1968 c. 34 (NI) |
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CUSTODY ORDERS, ETC.

Cessation of declarations of unfitness, etc.

3. Where, immediately before the commencement of Parts II and III, there was in force—
- (a) a declaration under Article 45(3) of the Matrimonial Causes (Northern Ireland) Order 1978^{F5} (declaration by court that party to marriage unfit to have custody of children of family); or
 - (b) an order under section 12 of the Criminal Law Amendment Act 1885^{F6} or section 1(4) of the Punishment of Incest Act 1908^{F7} divesting a person of authority over a girl;

the declaration or, as the case may be, the order shall cease to have effect on the commencement of those Parts.

F5	1978 NI 15
F6	1885 c. 69
F7	1908 c. 45

Orders to which paragraphs 5 to 10 apply

- 4.—(1) In paragraphs 5 to 10 “an existing order” means any order which—
- (a) is in force immediately before the commencement of Parts II and III;
 - (b) was made under any statutory provision 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 11(3).

- (2) The statutory provisions are—
- (a) the Domestic Proceedings (Northern Ireland) Order 1980^{F8};
 - (b) the Matrimonial Causes (Northern Ireland) Order 1978;
 - (c) the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945^{F9};
 - (d) the Matrimonial Causes Act (Northern Ireland) 1939^{F10};
 - (e) the Guardianship of Infants Act 1886^{F11}.

(3) For the purposes of this paragraph and paragraphs 5 to 10 “custody” includes legal custody, joint as well as sole custody, and parental rights and duties retained under an order under Article 10(4) of the Domestic Proceedings (Northern Ireland) Order 1980, but does not include access.

F8	1980 NI 5
F9	1945 c. 14 (NI)
F10	1939 c. 13 (NI)
F11	1886 c. 27

Parental responsibility of parents

5.—(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 Article 5 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,

Article 5 shall apply as modified by sub-paragraphs (3) and (4).

(3) The modification is that for Article 5(7) there shall be substituted—

“(7) 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 Order with respect to the child.”.

(4) The modifications are that—

- (a) for the purposes of Article 5(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 Article) an order under Article 7(1) giving him parental responsibility for the child; and
- (b) where by virtue of head (a) a court is deemed to have made an order under Article 7(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 Article 7(1) to an end at any time while he has care and control of the child by virtue of the order.

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

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

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

(3) The modifications are that—

- (a) for Article 5(7) there shall be substituted—

“(7) 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 Order with respect to the child.”;

- (b) at the end of Article 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 Article 53(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;”

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Persons who have care and control

7.—(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) Article 10 shall have effect as if for paragraph (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;”.

(3) Article 22 shall have effect as if for paragraph (3)(a) there were substituted—

“(a) who has care and control of the child by virtue of an existing order; or”.

(4) Article 27 shall have effect as if for paragraph (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.”

(5) Articles 159 and 160 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;

(b) for Article 159(3) there were substituted—

“(3) Paragraph (1) shall not apply if the existing order referred to in sub-paragraph (b) of that paragraph was one by virtue of which a surviving parent of the child also had care and control of him.”;

(c) for Article 160(7) there were substituted—

“(7) Paragraph (5) shall not apply if the existing order referred to in sub-paragraph (b) of that paragraph was one by virtue of which a surviving parent also had care and control of him.”.

(6) In Schedule 1, paragraphs 2(1) and 16(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 the words “who has been given care and control of the child by virtue of an existing order”.

Persons who have access

8.—(1) Sub-paragraphs (2) to (4) apply where a person has access by virtue of an existing order.

(2) Article 10 shall have effect as if after paragraph (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) Article 16(2) shall have effect as if after sub-paragraph (b) there were inserted—

“(bb) any person who has access to the child by virtue of an existing order;”.

(4) Articles 62(11), 63(13) and 65(10) shall have effect as if in each case after sub-paragraph (d) there were inserted—

“(dd) any person who has been given access to him by virtue of an existing order;”.

Enforcement of certain existing orders

9.—(1) Sub-paragraph (2) applies in relation to any existing order which, but for the repeal by this Order of Article 37 of the Domestic Proceedings (Northern Ireland) Order 1980^{F12} (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 mentioned in sub-paragraph (1), be enforced under Article 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.

F12 1980 NI 5

Discharge of existing orders

10.—(1) The making of a residence order or 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 Article 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 Article 8 order.

- (3) The court may discharge an existing order which is in force with respect to a child—
- (a) in any family proceedings relating to the child or in which any question arises with respect to the child's welfare; or
 - (b) on the application of—
 - (i) any parent or guardian of the child;
 - (ii) the child himself; or
 - (iii) any person named in the order.

(4) A child may not apply for the discharge of an existing order except with the leave of the court.

(5) The power in sub-paragraph (3) to discharge an existing order includes the power to discharge any part of the order.

(6) In considering whether to discharge an order under the power conferred by sub-paragraph (3) the court shall, if the discharge of the order is opposed by any party to the proceedings, have regard in particular to the matters mentioned in Article 3(3).

CHILDREN IN CARE

Children in compulsory care

11.—(1) Sub-paragraph (2) applies where, immediately before the commencement of Part V—

- (a) a person is in the care of the Department or an authority by virtue of any order mentioned in sub-paragraph (3); or
- (b) there is in force a parental rights order under section 104 of the Children and Young Persons Act (Northern Ireland) 1968^{F13} with respect to a person.

(2) Where this sub-paragraph applies, then, on and after the commencement of Part V—

- (a) the order in question shall be deemed to be a care order;

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- (b) if the person was in the care of an authority immediately before that commencement, that authority shall be deemed to be the authority designated in that deemed care order, or if the person was in the care of the Department, the authority in whose area he is 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 an authority shall include a reference to a person who is the subject of such a deemed care order,

and the provisions of this Order shall apply accordingly, subject to paragraph 12.

- (3) The orders referred to in sub-paragraph (1)(a) are—
 - (a) an order committing a person to the care of a fit person under section 66, 74, 95, 96, 97, 143 or 144 of the Children and Young Persons Act (Northern Ireland) 1968;
 - (b) an order which by virtue of regulations under section 101 of the Children Act 1989^{F14} has effect as if it were an order under section 95(1)(b) of the Children and Young Persons Act (Northern Ireland) 1968 committing a person to the care of an authority;
 - (c) an order under—
 - (i) section 74 of the Social Work (Scotland) Act 1968^{F15};
 - (ii) section 25 of the Children and Young Persons Act 1969^{F16};
 - (d) an order under—
 - (i) Article 46 of the Matrimonial Causes (Northern Ireland) Order 1978^{F17};
 - (ii) Article 12 of the Domestic Proceedings (Northern Ireland) Order 1980^{F18};
 - (iii) Article 27(1)(b) of the Adoption Order;
 - (e) an order of the High Court in the exercise of its inherent jurisdiction with respect to children.

F13 1968 c. 34 (NI)

F14 1989 c. 41

F15 1968 c. 49

F16 1969 c. 54

F17 1978 NI 15

F18 1980 NI 5

12.—(1) This sub-paragraph applies to a child who has been placed or allowed to remain in the care of the Department or an authority in the exercise of the High Court's inherent jurisdiction and who immediately before the expiration of one year from the commencement of paragraph 1(2) is still in the care of the Department or an authority.

(2) Where in respect of a child to whom sub-paragraph (1) applies proceedings have ceased by virtue of paragraph 1(2) to be treated as pending, paragraph 11(2) shall apply on the expiration of one year from the commencement of paragraph 1(2) as if the child was in care pursuant to an order specified in paragraph 11(3)(e).

(3) Sub-paragraphs (4) and (5) only apply where a child who is the subject of a care order by virtue of paragraph 11(2) is a person falling within sub-paragraph (3)(d) or (e) of that paragraph.

(4) Subject to sub-paragraph (5), where a court, on making the order, or at any time thereafter, gave directions under—

- (a) Article 46(5)(a) of the Matrimonial Causes (Northern Ireland) Order 1978^{F19}; or
- (b) in the exercise of the High Court's inherent jurisdiction with respect to children,

as to the exercise by the Department or an authority of any powers, those directions shall, subject to the provisions of Article 44 and regulations made under that Article, continue to have effect (regardless of any conflicting provision in this Order other than Article 44 or in such regulations) until varied or discharged by a court under this sub-paragraph.

(5) Where directions referred to in sub-paragraph (4) are to the effect that a child be placed in accommodation provided for the purpose of restricting liberty, then the directions shall cease to have effect upon the expiry of the maximum period specified by regulations under Article 44(3)(a) in relation to children of his description, calculated from the commencement of that Article.

F19 1978 NI 15

Cessation of wardship where child is in care

13.—(1) Where a child who is a ward of court is in the care of the Department or an authority by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children, he shall, on the commencement of Part V, cease to be a ward of court.

(2) Where immediately before the commencement of Part V a child was in the care of the Department or an authority and as a result of an order made in the exercise of the High Court's inherent jurisdiction with respect to children continued to be in the care of the Department or an authority and was made a ward of court, he shall, on the commencement of Part V, cease to be a ward of court.

(3) Sub-paragraphs (1) and (2) do not apply in proceedings which are pending.

Children placed with parent, etc., while in compulsory care

14.—(1) This paragraph applies where a child is deemed by paragraph 11 to be in the care of the Department or an authority under an order which is deemed by that paragraph to be a care order.

(2) If, immediately before the commencement of Part IV, the child was allowed to be under the control of—

- (a) a parent or guardian under section 105(3) or 145(1) of the Children and Young Persons Act (Northern Ireland) 1968,^{F20} or
- (b) a person who, before the child was in the care of the Department or an authority, had care and control of the child by virtue of an order falling within paragraph 4,

on and after that commencement the provision made by and under Article 27(5) shall apply as if the child had been placed with the person in question in accordance with that provision.

F20 1968 c. 34 (NI)

Children in voluntary care

15.—(1) This paragraph applies where, immediately before the commencement of Part IV, a child—

- (a) was in the care of the Department or an authority under section 103 of the Children and Young Persons Act (Northern Ireland) 1968; or
- (b) was deemed by virtue of subsection (7) of that section to have come within the care of the Department or an authority.

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(2) Where this paragraph applies, the child shall, after the commencement of Part IV, be treated for the purposes of this Order as a child who is provided with accommodation under Part IV, but he shall cease to be so treated once he ceases to be so accommodated in accordance with the provisions of that Part.

Boarded out children

16.—(1) Where, immediately before the commencement of Part IV, a child in the care of the Department or an authority—

(a) was—

(i) boarded out with a person under section 114(1)(a) of the Children and Young Persons Act (Northern Ireland) 1968; or

(ii) allowed to be under the control of a person under section 105(3) or 145(1) of that Act; and

(b) the person with whom he was boarded out or, as the case may be, under whose control he was allowed to be was not a person falling within paragraph 14(2)(a) or (b),

after the commencement of that Part, he shall be treated (subject to sub-paragraph (2)) as having been placed with an 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 Order.

(2) Regulations made under Article 27(2)(a) shall not apply in relation to a person who is an authority foster parent by virtue of sub-paragraph (1) before the end of the period of twelve months beginning with the commencement of Part IV and accordingly that person, if the child was boarded out with him as mentioned in sub-paragraph (1)(a)(i), shall for that period be subject to terms and regulations mentioned in section 114(1)(a) of the Children and Young Persons Act (Northern Ireland) 1968 as if that section had not been repealed by this Order.

Children in care to qualify for advice and assistance

17. Any reference in Part IV to a person qualifying for advice and assistance shall be construed as including a reference to a person within the area of the authority in question who is under 21 and who was, at any time after reaching the age of 16 but while still a child a person falling within paragraph 11(1), 15(1) or 30(1).

Emigration of children in care

18. Where the Head of the Department is considering whether to give his consent under section 118 of the Children and Young Persons Act (Northern Ireland) 1968 to arrangements for the emigration of a child in the care of the Department but immediately before the repeal of that section by this Order he has not decided whether to give his consent, that section shall continue to apply (regardless of that repeal) until the Head of the Department has determined whether to give his consent.

Contributions for maintenance of children in care

19.—(1) Where, immediately before the commencement of Part IV, there was in force an order made (or having effect as if made) under any of the provisions mentioned in sub-paragraph (2), then, after the commencement of that Part—

(a) the order shall have effect as if made under Article 41(2) against a person liable to contribute; and

- (b) Articles 38 to 43 shall apply to the order, subject to the modifications in sub-paragraph (3).
- (2) The provisions referred to in sub-paragraph (1) are—
 - (a) Article 13(4) of the Domestic Proceedings (Northern Ireland) Order 1980;
 - (b) Article 27(2) of the Adoption Order;
 - (c) section 156 of the Children and Young Persons Act (Northern Ireland) 1968,(provisions empowering the court to make an order requiring a person to make periodical payments to the Department or an authority in respect of a child in care).
- (3) The modifications are that in Article 41—
 - (a) in paragraph (4), sub#paragraph (a) shall be omitted;
 - (b) for paragraph (6) there shall be substituted—
 - “(6) Where—
 - (a) a contribution order is in force;
 - (b) the authority serves a contribution notice under Article 40; and
 - (c) the contributor and the authority reach an agreement under Article 40(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 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.” .

Supervision orders

Orders under the 1968 Act

- 20.**—(1) This paragraph applies to any supervision order made under the Children and Young Persons Act (Northern Ireland) 1968—
- (a) which places a child under the supervision of the Department or an authority; and
 - (b) which is in force immediately before the commencement of Part V.
- (2) On and after the commencement of Part V, the order shall be deemed to be a supervision order made under Article 50 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.

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(3) Where, immediately before the commencement of Part V, the order had been in force for a period of more than six months, it shall cease to have effect at the end of the period of six months from the commencement of that Part 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 Article 179 (effect and duration of orders, etc.); or
- (c) it would have ceased to have had effect earlier had this Order not been made.

(4) Where sub-paragraph (3) applies, paragraph 6 of Schedule 3 shall not apply.

(5) Where, immediately before the commencement of Part V, the order had been in force for a period of six months or less it shall cease to have effect in accordance with Article 179 (effect and duration of orders, etc.) 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 Order not been made.

21.—(1) This paragraph applies to any supervision order made under the Children and Young Persons Act (Northern Ireland) 1968—

- (a) which places a child under the supervision of an education and library board; and
- (b) which is in force immediately before the commencement of Part V.

(2) On and after the commencement of Part V, the order shall be deemed to be an education supervision order made under Article 55 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 be directions under Schedule 4.

(3) Where, immediately before the commencement of Part V, the order had been in force for a period of more than six months, it shall continue to have effect until the end of the period of six months from the commencement of that Part unless—

- (a) the court directs that it shall continue to have effect until a different date (which shall not be later than either the date on which the child ceases to be of compulsory school age or the end of the period of three years from the making of the order);
- (b) it ceases to have effect earlier in accordance with sub-paragraph (4); or
- (c) it would have ceased to have effect earlier had this Order not been made.

(4) The order shall cease to have effect on the making of a care order.

(5) Where sub-paragraph (3) applies, paragraph 5 of Schedule 4 shall not apply.

(6) Where, immediately before the commencement of Part V, the order had been in force for a period of six months or less, it shall cease to have effect in accordance with paragraph 5 of Schedule 4 unless—

- (a) the court directs that it shall continue to have effect until a different date (which shall not be later than either the date on which the child ceases to be of compulsory school age or the end of the period of three years from the making of the order);
- (b) it would have ceased to have effect earlier had this Order not been made.

Other supervision orders

22.—(1) This paragraph applies to any order for the supervision of a child which was in force immediately before the commencement of Part V and was made under—

- (a) Article 47 of the Matrimonial Causes (Northern Ireland) Order 1978^{F21};
- (b) Article 11 of the Domestic Proceedings (Northern Ireland) Order 1980^{F22};
- (c) Article 27(1)(a) of the Adoption Order.

(2) The order shall not be deemed to be a supervision order made under any provision of this Order but shall nevertheless continue in force for a period of one year from the commencement of Part V 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 Order not been made.

F21 [1978 NI 15](#)

F22 [1980 NI 5](#)

Place of safety orders

23.—(1) This paragraph applies to—

- (a) any order or warrant authorising the taking or removal of a child to a place of safety which—
 - (i) was made, or issued, under any of the provisions mentioned in sub-paragraph (2); and
 - (ii) was in force immediately before the commencement of Part V; and
- (b) any interim order made under section 101(1) of the Children and Young Persons Act (Northern Ireland) 1968^{F23}.

(2) The provisions referred to in sub-paragraph (1)(a)(i) are—

- (a) section 8 of the Children and Young Persons Act (Northern Ireland) 1968 (children improperly kept);
- (b) section 18(1) of that Act (detention of child in place of safety);
- (c) section 32 of that Act (warrant to search for or remove child);
- (d) Article 35 of the Adoption Order (removal of protected child from unsuitable surroundings).

(3) The order or warrant shall continue to have effect as if this Order were not in operation.

(4) Any statutory provision repealed by this Order 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 if this Order were not in operation.

(5) Sub-paragraph (4) does not apply to the power to make an interim order or further interim order given by section 101 of the Children and Young Persons Act (Northern Ireland) 1968.

(6) Where, immediately before section 32 or 99 of the Children and Young Persons Act (Northern Ireland) 1968 is wholly or partly repealed by this Order, a child is being detained under the powers granted by that section, he may continue to be detained in accordance with that section.

F23 [1968 c. 34 \(NI\)](#)

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Voluntary homes

24.—(1) This paragraph applies to a voluntary home which is registered in the register kept for the purposes of section 127 of the Children and Young Persons Act (Northern Ireland) 1968 by the Department.

(2) Where a voluntary home to which this paragraph applies is being carried on immediately before the commencement of Part VIII, that home shall be deemed to have been registered under that Part by the authority in whose area the home is situated on the last anniversary of the original registration to fall before the commencement of that Part.

Foster children

25.—(1) This paragraph applies where—

- (a) immediately before the commencement of Part IX, a person is providing a child to whom section 1 of the Children and Young Persons Act (Northern Ireland) 1968 applies with care and maintenance; and
- (b) the circumstances of the case are such that, had Parts IX and X then been in operation, he would have been treated for the purposes of this Order 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 maintained as before, Article 95(1) and (3) shall not apply in relation to him if—

- (a) an application for registration of the home in question is made under Article 96 before the end of the period of three months beginning with the day on which Part IX comes into operation; 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 Article 95(1) and (3) do not apply, the child shall be treated as a privately fostered child for the purposes of Part X.

Child minders

26.—(1) Sub-paragraph (2) applies where, immediately before the commencement of Part XI, any premises are registered under section 11 of the Children and Young Persons Act (Northern Ireland) 1968 (registration of premises of child minders).

(2) During the transitional period, the provisions of that Act shall continue to have effect with respect to those premises to the exclusion of Part XI.

(3) Nothing in sub-paragraph (2) shall prevent an authority from registering any person under Part XI 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 XI; or
- (b) if earlier, the date on which an authority registers any person under Part XI with respect to the premises.

Guardians

Existing guardians to be guardians under this Order

27.—(1) Any appointment of a person as guardian for a child which—

(a) was made—

(i) under section 3 or 6 of the Guardianship of Infants Act 1886^{F24};

(ii) under section 12 of the Criminal Law Amendment Act 1885^{F25};

(iii) section 6 of the Tenures Abolition Act (Ireland) 1662^{F26}; or

(iv) under the High Court's inherent jurisdiction with respect to children; and

(b) has taken effect before the commencement of Part XV,

shall (subject to sub-paragraph (2)) be deemed, after the commencement of that Part, to be an appointment made and having effect under Article 159 or 160 as the case may be.

(2) Where an appointment of a person as guardian of a child has effect under that Part by virtue of sub-paragraph (1)(a)(ii), the appointment shall not have effect for a period which is longer than any period directed by the court.

F24 1886 c. 27

F25 1885 c. 69

F26 1662 c. 19

Appointment of guardian not yet in effect

28. Any appointment of a person to be a guardian of a child—

(a) which was made as mentioned in paragraph 27(1)(a)(i) or (iii); but

(b) which, immediately before the commencement of Part XV, had not taken effect,

shall take effect in accordance with that Part (as modified, where it applies, by paragraph 7(5)).

Children accommodated in certain establishments

29. In calculating, for the purposes of Article 174(1)(a) or (2)(a) or Article 175(1)(a) or 177(1)(a) the period of time for which a child has been accommodated any part of that period which fell before commencement of that Article shall be disregarded.

Training school orders

30.—(1) This paragraph applies where, immediately before the commencement of Part V, a person was under the care of the managers of a training school by virtue of a training school order under section 95, 108(a) or 143(6)(b) of the Children and Young Persons Act (Northern Ireland) 1968.

(2) If, on the commencement of Part V, the person has reached the age of 18, the training school order shall cease to have effect.

(3) If, on the commencement of Part V, the person has not reached the age of 18, then, on and after the commencement of that Part—

(a) the training school order shall be deemed to be a care order;

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- (b) the authority in whose area the person is ordinarily resident shall be deemed to be the authority designated in that deemed care order; and
- (c) any reference to a child in the care of an authority shall include a reference to a person who is the subject of such a deemed care order,

and the provisions of this Order shall apply accordingly, subject to sub-paragraphs (4) and (5).

(4) The deemed care order shall not continue to have effect beyond the date on which the training school order would have ceased to have effect by virtue of section 87(1) of the Children and Young Persons Act (Northern Ireland) 1968.

(5) Before the expiration of the period of six months beginning with the commencement of Part V, the authority referred to in sub-paragraph (3)(b) shall review the case of any person in relation to whom it is the authority designated in the deemed care order in accordance with Article 45 (reviews where child is looked after by an authority).

Miscellaneous

Marriage consents

31.—(1) In the circumstances mentioned in sub-paragraph (2), section 1 of, and the Schedule to, the Marriages Act (Northern Ireland) 1954^{F27} (consent to marriage of minors) shall continue to have effect regardless of the amendments and repeals of provisions of that Act contained in Schedules 9 and 10.

(2) The circumstances are that—

- (a) immediately before the commencement of paragraph 10 of Schedule 9 there is in force—
 - (i) an existing order, as defined in paragraph 4(1); or
 - (ii) an order of a kind mentioned in paragraph 11(1)(b) or (3); and
- (b) section 1 of, and the Schedule to, the Marriages Act (Northern Ireland) 1954 would, but for this Order, have applied to the marriage of the child who is the subject of the order.

F27 1954 c. 21 (NI)
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Affiliation orders, etc.

32.—(1) This paragraph applies to the following orders—

- (a) any affiliation order in force immediately before the commencement of Article 158;
- (b) any order which is enforceable in like manner as an affiliation order and is in force immediately before the commencement of Article 158;
- (c) any order made in relation to an order described in head (a) or (b).

(2) The repeal by this Order of any statutory provision relating to affiliation orders shall not affect any order to which this paragraph applies.

(3) Where—

- (a) an application is made to the High Court or a county court for an order under paragraph 2 of Schedule 1 in respect of a child whose parents were not married to each other at the time of his birth; and
- (b) an affiliation order providing for periodical payments is in force in respect of the child by virtue of this Schedule,

the court may direct that the affiliation order shall cease to have effect on such date as may be specified in the direction.

Property rights where parents not married to each other

33.—(1) In this paragraph “the 1977 Order” means the Family Law Reform (Northern Ireland) Order 1977^{F28}.

(2) The repeal by this Order of Article 3 of the 1977 Order (rights on intestacy) shall not affect any rights arising under the intestacy of a person who dies before the repeal comes into operation.

(3) The repeal by this Order of Article 4 of the 1977 Order (presumption in dispositions of property) shall not affect, or affect the operation of section 3 of the Legitimacy Act (Northern Ireland) 1928^{F29} or section 34 of the Trustee Act (Northern Ireland) 1958^{F30} in relation to—

- (a) any disposition inter vivos made before the date on which the repeal comes into operation;
or
- (b) any disposition by will executed before that date.

(4) The repeal by this Order of Article 6 of the 1977 Order shall not affect the liability of trustees or personal representatives in respect of any conveyance or distribution made before the repeal comes into operation.

F28 1977 NI 17

F29 1928 c. 5 (NI)

F30 1958 c. 23 (NI)

Attendance of child before court

34. Section 170 of the Children and Young Persons Act (Northern Ireland) 1968 (power to enforce attendance of child before court) shall apply in relation to any provision of that Act repealed by this Order as if this Order had not been made.

Para.35 rep. by SI 1998/2857

Saving for certain amendments of 1968 Act

36. Notwithstanding the repeal by this Order of Part I of Schedule 16 to the Health and Personal Social Services (Northern Ireland) Order 1972^{F31}, the Children and Young Persons Act (Northern Ireland) 1968 shall continue to have effect subject to the amendments made by paragraphs 2, 4, 7 and 13 of that Schedule.

F31 1972 NI 14

Changes to legislation:

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Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 45(2)(e) words repealed by 2022 c. 18 (N.I.) Sch. 5
- art. 7(2A)(ba) substituted for word by 2009 c. 24 Sch. 6 para. 26(2)
- art. 7(2B)(ba) substituted for word by 2009 c. 24 Sch. 6 para. 26(3)
- art. 8(4)(ha) applied by 2022 c. 18 (N.I.) s. 116
- art. 10(5A) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 26(b)
- art. 10(7A) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 26(c)
- art. 14A?-14F and cross-heading inserted by 2022 c. 18 (N.I.) s. 119(1)
- art. 14A(7) applied (with modifications) for specified purposes by 2022 c. 18 (N.I.) s. 26(6)
- art. 14C(1)(b) applied (with modifications) for specified purposes by 2022 c. 18 (N.I.) s. 26(7)(a)
- art. 14C(3)(4) excluded by 2022 c. 18 (N.I.) s. 26(7)(b)
- art. 18(4A) inserted by 2022 c. 18 (N.I.) s. 120(1)
- art. 18(6)-(6C) substituted for art. 18(6) by 2022 c. 18 (N.I.) s. 121(1)
- art. 22(3)(aa) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 29
- art. 26(1A) inserted by 2022 c. 18 (N.I.) s. 122(1)
- art. 26A inserted by 2022 c. 18 (N.I.) s. 123
- art. 27(7A) inserted by 2022 c. 18 (N.I.) s. 125(3)
- art. 27(8)(c) and word added by 2022 c. 18 (N.I.) s. 122(2)(b)
- art. 27(9A)-(9D) inserted by 2022 c. 18 (N.I.) s. 124
- art. 28(4) inserted by 2022 c. 18 (N.I.) s. 125(4)
- art. 28A inserted by 2022 c. 18 (N.I.) s. 126
- art. 28B inserted by 2022 c. 18 (N.I.) s. 127
- art. 33(9) added by 2022 c. 18 (N.I.) Sch. 3 para. 31(c)
- art. 34E(1)(d) and word inserted by 2022 c. 18 (N.I.) Sch. 3 para. 32(a)(iii)
- art. 34E(3)(4) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 32(b)
- art. 34F(1)(aa) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 33(a)(i)
- art. 34F(1A)-(1D) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 33(b)
- art. 34G inserted by 2022 c. 18 (N.I.) s. 129
- art. 34AA inserted by 2022 c. 18 (N.I.) s. 128(1)
- art. 34DA inserted by 2022 c. 18 (N.I.) s. 128(2)
- art. 34DB34DC inserted by 2022 c. 18 (N.I.) s. 128(3)
- art. 35(1)-(1B) substituted for art. 35(1) by 2022 c. 18 (N.I.) Sch. 3 para. 34(a)
- art. 35(5)(za) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 34(c)
- art. 35D(1)(aa)(ab) inserted by 2022 c. 18 (N.I.) s. 128(4)
- art. 35D(1A) inserted by 2022 c. 18 (N.I.) s. 130(1)
- art. 45(2)(e)(i)(ii) inserted by 2022 c. 18 (N.I.) s. 131(a)
- art. 45(2)(f)(i)-(iii) inserted by 2022 c. 18 (N.I.) s. 131(b)
- art. 45(3A)-(3C) inserted by 2022 c. 18 (N.I.) s. 130(4)
- art. 45(4A) inserted by 2022 c. 18 (N.I.) s. 130(6)
- art. 45(5A) inserted by 2022 c. 18 (N.I.) s. 130(7)
- art. 45A?? inserted by 2022 c. 18 (N.I.) s. 132
- art. 50A?? inserted by 2022 c. 18 (N.I.) s. 134(1)
- art. 53(1)(ba) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 38(b)
- art. 53(6A) inserted by 2022 c. 18 (N.I.) s. 135(3)
- art. 53(8)(za) inserted by 2022 c. 18 (N.I.) s. 135(4)
- art. 57(3A) inserted by 2022 c. 18 (N.I.) s. 119(3)

- art. 60(6)(ha) inserted by 2022 c. 18 (N.I.) s. 138
- art. 66(5A) inserted by 2022 c. 18 (N.I.) s. 120(3)
- art. 107(7)(c) added by 2022 c. 18 (N.I.) s. 139(4)
- art. 108(2A) inserted by 2022 c. 18 (N.I.) s. 140(3)
- art. 108(3)(c) and word added by 2022 c. 18 (N.I.) s. 140(4)(c)
- art. 112A inserted by 2022 c. 18 (N.I.) s. 141
- art. 159(1)(c) and word added by 2022 c. 18 (N.I.) s. 119(4)(b)
- art. 165(2)(k) inserted by 2011 c. 24 (N.I.) s. 95(3)
- art. 170(2)-(9A) modified by 2022 c. 18 (N.I.) s. 105(3)
- art. 170(9A) inserted by 2022 c. 18 (N.I.) s. 142
- art. 179(5A) inserted by 2022 c. 18 (N.I.) Sch. 3 para. 42
- art. 181(1) art. 181 renumbered as art. 181 (1) by 2022 c. 18 (N.I.) s, 143(3)
- art. 181(1) words substituted by 2022 c. 18 (N.I.) s. 143(4)
- art. 181(2) added by 2022 c. 18 (N.I.) s. 143(5)
- art. 183(2A) inserted by 2022 c. 18 (N.I.) s. 130(8)