

SCHEDULES

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”.

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”.

- 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”.

- 4 In section 10(1A) of that Act (vagrants preventing children from receiving education), for the words from “to bring the child” to the end there shall be substituted “to make an application in respect of the child or young person for an education supervision order under section 36 of the Children Act 1989”.

- 5 For section 17 of that Act (interpretation of Part I) there shall be substituted the following section—

“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.

Status: This is the original version (as it was originally enacted).

- (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.”
- 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.”
- 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”.

The Education Act 1944 (c. 31)

- 8 (1) Section 40 of the Education Act 1944 (enforcement of school attendance) shall be amended as follows.
- (2) For subsection (2) there shall be substituted—
- “(2) Proceedings for such offences shall not be instituted except by a local education authority.
- (2A) Before instituting such proceedings the local education authority shall consider whether it would be appropriate, instead of or as well as instituting the proceedings, to apply for an education supervision order with respect to the child.”
- (3) For subsections (3) and (4) there shall be substituted—
- “(3) The court—
- (a) by which a person is convicted of an offence against section 37 of this Act; or
- (b) before which a person is charged with an offence under section 39 of this Act,
- may direct the local education authority instituting the proceedings to apply for an education supervision order with respect to the child unless the authority, having consulted the appropriate local authority, decide that the child’s welfare will be satisfactorily safeguarded even though no education supervision order is made.

Status: This is the original version (as it was originally enacted).

(3A) Where, following such a direction, a local education authority decide not to apply for an education supervision order they shall inform the court of the reasons for their decision.

(3B) Unless the court has directed otherwise, the information required under subsection (3A) shall be given to the court before the end of the period of eight weeks beginning with the date on which the direction was given.

(4) Where—

(a) a local education authority apply for an education supervision order with respect to a child who is the subject of a school attendance order; and

(b) the court decides that section 36(3) of the Children Act 1989 prevents it from making the order;

the court may direct that the school attendance order shall cease to be in force.”

(4) After subsection (4) there shall be inserted—

“(5) In this section—

“appropriate local authority” has the same meaning as in section 36(9) of the Children Act 1989; and

“education supervision order” means an education supervision order under that Act.”

9 In section 71 of that Act (complaints with respect to independent schools), the following paragraph shall be added after paragraph (d), in subsection (1)—

“(e) there has been a failure, in relation to a child provided with accommodation by the school, to comply with the duty imposed by section 87 of the Children Act 1989 (welfare of children accommodated in independent schools);”.

10 After section 114(1C) of that Act (interpretation) there shall be inserted the following subsections—

“(1D) In this Act, unless the context otherwise requires, “parent”, in relation to a child or young person, includes any person—

(a) who is not a parent of his but who has parental responsibility for him, or

(b) who has care of him,

except for the purposes of the enactments mentioned in subsection (1E) of this section, where it only includes such a person if he is an individual.

(1E) The enactments are—

(a) sections 5(4), 15(2) and (6), 31 and 65(1) of, and paragraph 7(6) of Schedule 2 to, the Education (No. 2) Act 1986; and

(b) sections 53(8), 54(2), 58(5)(k), 60 and 61 of the Education Reform Act 1988.

(1F) For the purposes of subsection (1D) of this section—

(a) “parental responsibility” has the same meaning as in the Children Act 1989; and

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

- (b) in determining whether an individual has care of a child or young person any absence of the child or young person at a hospital or boarding school and any other temporary absence shall be disregarded.”

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”.

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.”

The Mines and Quarries Act 1954 (c. 70)

- 13 In section 182(1) of the Mines and Quarries Act 1954 (interpretation), in the definition of “parent”, for the words from “or guardian” to first “young person” there shall be substituted “of a 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)”.

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;”.

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)”.

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

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.”

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 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.”

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.”
- 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)”.
- 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”.
- 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”.
- 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”.
- 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”.

The Civil Evidence Act 1968 (c. 64)

- 24 In section 12(5)(b) of the Civil Evidence Act 1968 (findings of paternity etc. as evidence in civil proceedings -meaning of “relevant proceedings”) for sub-paragraph (iv) there shall be substituted—
“(iv) paragraph 23 of Schedule 2 to the Children Act 1989.”

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

The Administration of Justice Act 1970 (c. 31)

- 25 In Schedule 8 to the Administration of Justice Act 1970 (maintenance orders for purposes of Maintenance Orders Act 1958 and the 1970 Act), in paragraph 6 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”.

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.”

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—

“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.”

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

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).”.

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”.

The Tribunals and Inquiries Act 1971 (c. 62)

- 30 In Schedule 1 to the Tribunals and Inquiries Act 1971 (tribunals under direct supervision of the Council on Tribunals) for paragraph 4 there shall be substituted—

“Registration of voluntary homes and children’s homes under the Children Act 1989

- 4 Registered Homes Tribunals constituted under Part III of the Registered Homes Act 1984.”

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”.
- (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”.

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.”.

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

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”.

The Powers of Criminal Courts Act 1973 (c. 62)

- 34 In Schedule 3 to the Powers of Criminal Courts Act 1973 (the probation and after-care service and its functions), in paragraph 3(2A) after paragraph (b) there shall be inserted—
- “and
- (c) directions given under paragraph 2 or 3 of Schedule 3 to the Children Act 1989”.

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”.

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

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.”

- 37 In section 19(3A)(b) (interim orders) for the words “subsections (2) and” there shall be substituted “subsection”.

- 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.”

- 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.

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

(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.”

40 In section 23(1) of that Act (supplementary provisions with respect to the variation and revocation of orders) for the words “14(3), 20 or 21” there shall be substituted “20” and for the words “section 20 of this Act” there shall be substituted “that section”.

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”; and

(b) after paragraph (a) there shall be inserted “or”.

42 In section 29(5) of that Act (appeals) for the words “sections 14(3), 20 and 21” there shall be substituted “section 20”.

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”; and

(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”.

The Magistrates' Courts Act 1980 (c. 43)

44 (1) In section 59(2) of the Magistrates' Courts Act 1980 (periodical payments through justices' clerk) for the words “the Guardianship of Minors Acts 1971 and 1973” there shall be substituted “(or having effect as if made under) Schedule 1 to the Children Act 1989”.

(2) For section 62(5) of that Act (payments to children) there shall be substituted—

“(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.”.

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”.

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

(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;”.

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 Act 1933, the Children and Young Persons Act 1969” there shall be substituted “the Children Act 1989”.

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”.

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—

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

- (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—

“(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)”.

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.”

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).”

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”.

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

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”.
- 53 (1) In section 38 of that Act (duties of custody officer after charge), in subsection (6) for the words from “make arrangements” to the end there shall be substituted “secure that the arrested juvenile is moved to local authority accommodation”.
- (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”.
- 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”.
- 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”.

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”.

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);

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

- (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;
 - (v) section 26(1)(b) of the Adoption Act 1976.”

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”.
- 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”.
- 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”.
- 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—

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

- (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.”

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
- (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.”

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—

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

- (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.”

(2) In subsection (2) of that section, in paragraph (c) for “(d)” there shall be substituted “(e)”.

(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.”

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—
- (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.”

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”.

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

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

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”.

(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.”

“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
 - (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.”

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)”.

69 In each of the following sections—

- (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)”.

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”.

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”.

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.”

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

Amendments of local Acts

- 73 (1) Section 16 of the 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”.
- 74 (1) Section 10(2) of the 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”.