

## SCHEDULES

### SCHEDULE 8

#### TRANSITIONALS AND SAVINGS

#### 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<sup>(1)</sup> 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;
  - (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<sup>(2)</sup> 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<sup>(3)</sup>;
    - (ii) section 25 of the Children and Young Persons Act 1969<sup>(4)</sup>;
  - (d) an order under—
    - (i) Article 46 of the Matrimonial Causes (Northern Ireland) Order 1978<sup>(5)</sup>;
    - (ii) Article 12 of the Domestic Proceedings (Northern Ireland) Order 1980<sup>(6)</sup>;

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(1) 1968 c. 34 (N.I.)  
(2) 1989 c. 41  
(3) 1968 c. 49  
(4) 1969 c. 54  
(5) 1978 NI 15  
(6) 1980 NI 5

(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.

**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(7); 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.

*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—

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(7) 1978 NI 15

(a) a parent or guardian under section 105(3) or 145(1) of the Children and Young Persons Act (Northern Ireland) 1968;<sup>(8)</sup> 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.

#### *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.

(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

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<sup>(8)</sup> 1968 c. 34 (N.I.)

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.

(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—

*Status: This is the original version (as it was originally made).*

- (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<sup>(9)</sup>;
- (b) Article 11 of the Domestic Proceedings (Northern Ireland) Order 1980<sup>(10)</sup>;
- (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.

#### *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<sup>(11)</sup>.

(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);

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<sup>(9)</sup> 1978 NI 15

<sup>(10)</sup> 1980 NI 5

<sup>(11)</sup> 1968 c. 34 (N.I.)

- (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.

#### *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<sup>(12)</sup>;
  - (ii) under section 12 of the Criminal Law Amendment Act 1885<sup>(13)</sup>;
  - (iii) section 6 of the Tenures Abolition Act (Ireland) 1662<sup>(14)</sup>; 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.

*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.

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<sup>(12)</sup> 1886 c. 27

<sup>(13)</sup> 1885 c. 69

<sup>(14)</sup> 1662 c. 19



### *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;
- (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<sup>(15)</sup> (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.

#### *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;

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(15) 1954 c. 21 (N.I.)

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

(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(**16**).

(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(**17**) or section 34 of the Trustee Act (Northern Ireland) 1958(**18**) 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.

#### *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.

#### *Employment of children*

**35.**—(1) This paragraph (which in effect re-enacts a saving relating to section 37(2)(a) of the Children and Young Persons Act (Northern Ireland) 1968 in Part I of Schedule 2 to the Manual Handling Operations Regulations (Northern Ireland) 1992(**19**) applies only in relation to such employment as is permitted under section 1(2) of the Employment of Women, Young Persons and Children Act 1920(**20**).

(2) Article 135 (general restrictions on the employment of children) shall have effect as if for paragraphs (2) and (3) there were substituted the following paragraphs—

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(16) 1977 NI 17

(17) 1928 c. 5 (N.I.)

(18) 1958 c. 23 (N.I.)

(19) S.R. 1992 No. 535

(20) 1920 c. 65

“(2) No child shall be employed—

- (a) to lift, carry or move anything so heavy as to be likely to cause injury to the child;  
or
- (b) in any occupation likely to be injurious to his life, limb, health or education, regard being had to his physical condition.

(3) If any education and library board serves on the employer of any child a copy of a certificate signed by a medical practitioner—

- (a) that the lifting, carrying or moving of any specified weight is likely to cause injury to the child; or
- (b) that any specified occupation is likely to be injurious to the life, limb, health or education of the child,

the certificate shall be admissible as evidence in any subsequent proceedings against the employer in respect of the employment of the child.”.

*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(**21**), 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.