



Children Act 1975

1975 CHAPTER 72

PART I

ADOPTION

The Adoption Services

1 Establishment of Adoption Services

- (1) It is the duty of every local authority to establish and maintain within their area a service designed to meet the needs, in relation to adoption, of—
 - (a) children who have been or may be adopted,
 - (b) parents and guardians of such children, and
 - (c) persons who have adopted or may adopt a child,and for that purpose to provide the requisite facilities, or secure that they are provided by approved adoption societies.
- (2) The facilities to be provided as part of the service maintained under subsection (1) include—
 - (a) temporary board and lodging where needed by pregnant women, mothers or children ;
 - (b) arrangements for assessing children and prospective adopters, and placing children for adoption;
 - (c) counselling for persons with problems relating to adoption.
- (3) The facilities of the service maintained under subsection (1) shall be provided in conjunction with the local authority's other social services and with approved adoption societies in their area, so that help may be given in a co-ordinated manner without duplication, omission or avoidable delay.
- (4) The services maintained under subsection (1) by local authorities in England and Wales may be collectively referred to as "the Adoption Service " and those maintained

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by local authorities in Scotland, as " the Scottish Adoption Service ", and a local authority or approved adoption society may be referred to as an adoption agency.

2 Local authorities' social services

The social services referred to in section 1(3) are the functions of a local authority which stand referred to the authority's social services committee or, in Scotland, social work committee, including, in particular but without prejudice to the generality of the foregoing, a local authority's functions relating to-

- (a) the promotion of the welfare of children by diminishing the need to receive children into care or keep them in care, including (in exceptional circumstances) the giving of assistance in cash ;
- (b) the welfare of children in the care of a local authority ;
- (c) the welfare of children who are foster children within the meaning of the Children Act 1958 ;
- (d) children who are subject to supervision orders made in matrimonial proceedings;
- (e) the provision of residential accommodation for expectant mothers and young children and of day-care facilities ;
- (f) the regulation and inspection of nurseries and child minders;
- (g) care and other treatment of children through court proceedings and children's hearings.

3 Duty to promote welfare of child

In reaching any decision relating to the adoption of a child, a court or adoption agency shall have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.

4 Approval of adoption societies

- (1) A body desiring to act as an adoption society or, if it is already an adoption society, desiring to continue to act as such in England and Wales or in Scotland may, in the manner specified by regulations made by the Secretary of State, apply to the Secretary of State for his approval to its doing so.
- (2) On an application under subsection (1), the Secretary of State shall take into account the matters relating to the applicant specified in subsections (3) to (5) and any other relevant considerations, and if, but only if, he is satisfied that the applicant is likely to make, or, if the applicant is an approved adoption society, is making, an effective contribution to the Adoption Service or, as the case may be, to the Scottish Adoption Service, he shall by notice to the applicant give his approval, which shall be operative from a date specified in the notice or, in the case of a renewal of approval, from the date of the notice.
- (3) In considering the application, the Secretary of State shall have regard, in relation to the period for which approval is sought, to the following—
 - (a) the applicant's adoption programme, including, in particular, its ability to make provision for children who are free for adoption,

- (b) the number and qualifications of its staff,
 - (c) its financial resources, and
 - (d) the organisation and control of its operations.
- (4) Where it appears to the Secretary of State that the applicant is likely to operate extensively within the area of a particular local authority he shall ask the authority whether they support the application, and shall take account of any views about it put to him by the authority.
- (5) Where the applicant is already an approved adoption society or, whether before or after the passing of this Act, previously acted as an adoption society, the Secretary of State, in considering the application, shall also have regard to the record and reputation of the applicant in the adoption field, and the areas within which and the scale on which it is currently operating or has operated in the past.
- (6) If after considering the application the Secretary of State is not satisfied that the applicant is likely to make or, as the case may be, is making an effective contribution to the Adoption Service or, as the case may be, to the Scottish Adoption Service, the Secretary of State shall, subject to section 6(1) and (2), by notice inform the applicant that his application is refused.
- (7) If not withdrawn earlier under section 5, approval given under this section shall last for a period of three years from the date on which it becomes operative, and shall then expire or, in the case of an approved adoption society whose further application for approval is pending at that time, shall expire on the date that application is granted or, as the case may be, refused.

5 Withdrawal of approval

- (1) If, while approval of a body under section 4 is operative, it appears to the Secretary of State that the body is not making an effective contribution to the Adoption Service or, as the case may be, to the Scottish Adoption Service, he shall subject to section 6(3) and (4) by notice to the body withdraw the approval from a date specified in the notice.
- (2) If an approved adoption society fails to provide the Secretary of State with information required by him for the purpose of carrying out his functions under subsection (1), or fails to verify such information in the manner required by him, he may by notice to the society withdraw the approval from a date specified in the notice.
- (3) Where approval is withdrawn under subsection (1) or (2) or expires the Secretary of State may direct the body concerned to make such arrangements as to children who are in its care and other transitional matters as seem to him expedient.

6 Procedure on refusal to approve, or withdrawal of approval from, societies

- (1) Before notifying a body which has applied for approval that the application is refused in accordance with section 4(6) the Secretary of State shall serve on the applicant a notice—
- (a) setting out the reasons why he proposes to refuse the application;
 - (b) informing the applicant that he may make representations in writing to the Secretary of State within 28 days of the date of service of the notice.

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- (2) If any representations are made by the applicant in accordance with subsection (1), the Secretary of State shall give further consideration to the application taking into account those representations.
- (3) The Secretary of State shall, before withdrawing approval of an adoption society in accordance with section 5(1), serve on the society a notice—
 - (a) setting out the reasons why he proposes to withdraw the approval; and
 - (b) informing the society that they may make representations in writing to the Secretary of State within 28 days of the date of service of the notice.
- (4) If any representations are made by the society in accordance with subsection (3), the Secretary of State shall give further consideration to the withdrawal of approval under section 5(1) taking into account those representations.
- (5) This section does not apply where the Secretary of State, after having considered any representations made by the applicant in accordance with this section, proposes to refuse approval or, as the case may be, to withdraw approval for reasons which have already been communicated to the applicant in a notice under this section.

7 Inactive or defunct adoption societies

- (1) If it appears to the Secretary of State that an approved adoption society, or one in relation to which approval has been withdrawn under section 5 or has expired, is inactive or defunct he may, in relation to any child who is or was in the care of the society, direct what appears to him to be the appropriate local authority to take any such action as might have been taken by the society or by the society jointly with the authority; and if apart from this section the authority would not be entitled to take that action, or would not be entitled to take it without joining the society in the action, it shall be entitled to do so.
- (2) Before giving a direction under subsection (1) the Secretary of State shall, if practicable, consult both the society and the authority.

Adoption orders

8 Adoption orders

- (1) An adoption order is an order vesting the parental rights and duties relating to a child in the adopters, made on their application by an authorised court.
- (2) The order does not affect the parental rights and duties so far as they relate to any period before the making of the order.
- (3) The making of the order operates to extinguish—
 - (a) any parental right or duty relating to the child which—
 - (i) is vested in a person (not being one of the adopters) who was the parent or guardian of the child immediately before the making of the order, or
 - (ii) is vested in any other person by virtue of the order of any court; and
 - (b) any duty arising by virtue of an agreement or the order of a court to make payments, so far as the payments are in respect of the child's maintenance for

any period after the making of the order or any other matter comprised in the parental duties and relating to such a period.

- (4) Subsection (3)(b) does not apply to a duty arising by virtue of an agreement—
 - (a) which constitutes a trust, or
 - (b) which expressly provides that the duty is not to be extinguished by the making of an adoption order.
- (5) An adoption order may not be made in relation to a child who is or has been married.
- (6) An adoption order shall not be made in Scotland in relation to a child who is a minor unless with the consent of the minor; except that where the court is satisfied that the minor is incapable of giving his consent to the making of the order, it may dispense with that consent.
- (7) An adoption order may contain such terms and conditions as the court thinks fit.
- (8) An adoption order may be made notwithstanding that the child is an adopted child.
- (9) Schedule 1 contains for England and Wales further provisions about the effect of adoption and related or comparable provisions about legitimation.
- (10) Schedule 2 has effect as respects the status conferred in Scotland by adoption and related matters.

9 Child to live with adopters before order made

- (1) Where—
 - (a) the applicant, or one of the applicants, is a parent, stepparent or relative of the child, or
 - (b) the child was placed with the applicants by an adoption agency or in pursuance of an order of the High Court,an adoption order shall not be made unless the child is at least 19 weeks old and at all times during the preceding 13 weeks had his home with the applicants or one of them.
- (2) Where subsection (1) does not apply, an adoption order shall not be made unless the child is at least twelve months old and at all times during the preceding twelve months had his home with the applicants or one of them.
- (3) An adoption order shall not be made unless the court is satisfied that sufficient opportunities to see the child with the applicant or, in the case of an application by a married couple, both applicants together in the home environment have been afforded—
 - (a) where the child was placed with the applicant by an adoption agency, to that agency, or
 - (b) in any other case, to the local authority within whose area the home is.

10 Adoption by married couple

- (1) Subject to sections 37(1) and 53(1), an adoption order may be made on the application of a married couple where each has attained the age of 21 but an adoption order shall not otherwise be made on the application of more than one person.
- (2) An adoption order shall not be made on the application of a married couple unless—

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- (a) at least one of them is domiciled in a part of the United Kingdom, or in the Channel Islands or the Isle of Man, or
 - (b) the application is for a Convention adoption order and section 24 is complied with.
- (3) Where the application is made to a court in England or Wales and the married couple consist of a parent and step-parent of the child, the court shall dismiss the application if it considers the matter would be better dealt with under section 42 (orders for custody etc.) of the Matrimonial Causes Act 1973.

11 Adoption by one person

- (1) Subject to sections 37(1) and 53(1), an adoption order may be made on the application of one person where he has attained the age of 21 and—
- (a) is not married, or
 - (b) is married and the court is satisfied that—
 - (i) his spouse cannot be found, or
 - (ii) the spouses have separated and are living apart, and the separation is likely to be permanent, or
 - (iii) his spouse is by reason of ill health, whether physical or mental, incapable of making an application for an adoption order.
- (2) An adoption order shall not be made on the application of one person unless—
- (a) he is domiciled in a part of the United Kingdom, or in the Channel Islands or the Isle of Man, or
 - (b) the application is for a Convention adoption order and section 24 is complied with.
- (3) An adoption order shall not be made on the application of the mother or father of the child alone unless the court is satisfied that—
- (a) the other natural parent is dead or cannot be found, or
 - (b) there is some other reason justifying the exclusion of the other natural parent, and where such an order is made the reason justifying the exclusion of the other natural parent shall be recorded by the court.
- (4) Where the application is made to a court in England or Wales and the applicant is a step-parent of the child the court shall dismiss the application if it considers the matter would be better dealt with under section 42 (orders for custody etc.) of the Matrimonial Causes Act 1973.

12 Parental agreement

- (1) An adoption order shall not be made unless—
- (a) the child is free for adoption; or
 - (b) in the case of each parent or guardian of the child the court is satisfied that—
 - (i) he freely, and with full understanding of what is involved, agrees unconditionally to the making of the adoption order (whether or not he knows the identity of the applicants), or
 - (ii) his agreement to the making of the adoption order should be dispensed with on a ground specified in subsection (2).

- (2) The grounds mentioned in subsection (1)(b)(ii) are that the parent or guardian—
 - (a) cannot be found or is incapable of giving agreement;
 - (b) is withholding his agreement unreasonably ;
 - (c) has persistently failed, without reasonable cause to discharge the parental duties in relation to the child;
 - (d) has abandoned or neglected the child ;
 - (e) has persistently ill-treated the child ;
 - (f) has seriously ill-treated the child (subject to subsection (5)).
- (3) Subsection (1) does not apply in any case where the child is not a United Kingdom national and the application for the adoption order is for a Convention adoption order.
- (4) Agreement is ineffective for the purposes of subsection (1)(b)(i) if given by the mother less than six weeks after the child's birth.
- (5) Subsection (2)(f) does not apply unless (because of the ill-treatment or for other reasons) the rehabilitation of the child within the household of the parent or guardian is unlikely.
- (6) A child is free for adoption if he is the subject of an order under section 14 and the order has not been revoked under section 16.

13 Religious upbringing of adopted child

An adoption agency shall in placing a child for adoption have regard (so far as is practicable) to any wishes of the child's parents and guardians as to the religious upbringing of the child.

14 Freeing child for adoption

- (1) Where, on an application by an adoption agency, an authorised court is satisfied in the case of each parent or guardian of the child that—
 - (a) he freely, and with full understanding of what is involved, agrees generally and unconditionally to the making of an adoption order, or
 - (b) his agreement to the making of an adoption order should be dispensed with on a ground specified in section 12(2),the court shall, subject to subsection (5), make an order declaring the child free for adoption.
- (2) No application shall be made under subsection (1) unless—
 - (a) it is made with the consent of a parent or guardian of the child, or
 - (b) the adoption agency is applying for dispensation under subsection (1)(b) of the agreement of each parent or guardian of the child, and the child is in the care of the adoption agency.
- (3) No agreement required under subsection (1)(a) shall be dispensed with under subsection (1)(b) unless the child is already placed for adoption or the court is satisfied that it is likely that the child will be placed for adoption.
- (4) An agreement by the mother of the child is ineffective for the purposes of this section if given less than six weeks after the child's birth.

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- (5) An order under this section shall not be made in Scotland in relation to a child who is a minor unless with the consent of the child ; except that where the court is satisfied that the minor is incapable of giving his consent to the making of the order, it may dispense with that consent.
- (6) On the making of an order under this section, the parental rights and duties relating to the child vest in the adoption agency, and subsections (2) and (3) of section 8 apply as if the order were an adoption order and the agency were the adopters.
- (7) Before making an order under this section the court shall satisfy itself that each parent or guardian who can be found has been given an opportunity of making, if he so wishes, a declaration that he prefers not to be involved in future questions concerning the adoption of the child; and any such declaration shall be recorded by the court.
- (8) Before making an order under this section in the case of an illegitimate child whose father is not its guardian, the court shall satisfy itself in relation to any person claiming to be the father that either—
 - (a) he has no intention of applying for custody of the child under section 9 of the Guardianship of Minors Act 1971 or under section 2 of the Illegitimate Children (Scotland) Act 1930, or
 - (b) if he did apply for custody under either of those sections the application would be likely to be refused.

15 Progress reports to former parent

- (1) This section and section 16 apply to any person ("the former parent") who was required to be given an opportunity of making a declaration under section 14(7) but did not do so.
- (2) Within the 14 days following the date twelve months after the making of the order under section 14, the adoption agency in which the parental rights and duties were vested on the making of the order, unless it has previously by notice to the former parent informed him that an adoption order has been made in respect of the child, shall by notice to the former parent inform him—
 - (a) whether an adoption order has been made in respect of the child, and. (if not)
 - (b) whether the child has his home with a person with whom he has been placed for adoption.
- (3) If at the time when the former parent is given notice under subsection (2) an adoption order has not been made in respect of the child, it is thereafter the duty of the adoption agency to give notice to the former parent of the making of an adoption order (if and when made), and meanwhile to give the former parent notice whenever the child is placed for adoption or ceases to have his home with a person with whom he has been placed for adoption.
- (4) If at any time the former parent by notice makes a declaration to the adoption agency that he prefers not to be involved in future questions concerning the adoption of the child—
 - (a) the agency shall secure that the declaration is recorded by the court which made the order under section 14, and
 - (b) the agency is released from the duty of complying further with subsection (3) as respects that former parent.

16 Revocation of section 14 order

- (1) The former parent, at any time more than twelve months after the making of the order under section 14 when—
 - (a) no adoption order has been made in respect of the child, and
 - (b) the child does not have his home with a person with whom he has been placed for adoption,may apply to the court which made the order for a further order revoking it on the ground that he wishes to resume the parental rights and duties.
- (2) While the application is pending the adoption agency having the parental rights and duties shall not place the child for adoption without the leave of the court.
- (3) Where an order freeing a child for adoption is revoked under this section—
 - (a) the parental rights and duties relating to the child are vested in the individual or, as the case may be, the individuals in whom they vested immediately before that order was made;
 - (b) if the parental rights and duties, or any of them, vested in a local authority or voluntary organisation immediately before the order freeing the child for adoption was made, those rights and duties are vested in the individual, or as the case may be, the individuals in whom they vested immediately before they were vested in the authority or organisation ; and
 - (c) any duty extinguished by virtue of section 8(3)(b) is forth with revived, but the revocation does not affect any right or duty so far as it relates to any period before the date of the revocation.
- (4) Subject to subsection (5) if the application is dismissed on the ground that to allow it would contravene the principle embodied in section 3—
 - (a) the former parent who made the application shall not be entitled to make any further application under subsection (1) in respect of the child, and
 - (b) the adoption agency is released from the duty of complying further with section 15(3) as respects that parent.
- (5) Subsection (4) (a) shall not apply where the court which dismissed the application gives leave to the former parent to make a further application under subsection (1), but such leave shall not be given unless it appears to the court that because of a change in circumstances or for any other reason it is proper to allow the application to be made.

17 Care etc. of child on refusal of adoption order

- (1) Where on an application for an adoption order in relation to a child under the age of 16 the court refuses to make the adoption order then—
 - (a) if it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may order that the child shall be under the supervision of a specified local authority or under the supervision of a probation officer;
 - (b) if it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parents or to any other individual, the court may by order commit the child to the care of a specified local authority.
- (2) Where the court makes an order under subsection (1)(b) the order may require the payment by either parent to the local authority, while it has the care of the child, of

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such weekly or other periodical sum towards the maintenance of the child as the court thinks reasonable.

- (3) Sections 3 and 4 of the Guardianship Act 1973 (which contain supplementary provisions relating to children who are subject to supervision, or in the care of local authorities, by virtue of orders made under section 2 of that Act) apply in relation to an order under this section as they apply in relation to an order under section 2 of that Act.
- (4) In the application of this section to Scotland—
 - (a) the words " or under the supervision of a probation officer " in subsection (1) do not apply;
 - (b) subsection (3) does not apply ; and
 - (c) subsections (2), (4) and (5) of section 11 of the Guardianship Act 1973 apply in relation to an order under this section as they apply in relation to an order under that section.

18 Need to notify local authority of adoption application

- (1) An adoption order shall not be made in respect of a child who was not placed with the applicant by an adoption agency unless the applicant has, at least three months before the date of the order, given notice to the local authority within whose area he has his home of his intention to apply for the adoption order.
- (2) On receipt of such a notice the local authority shall investigate the matter and submit to the court a report of their investigation.
- (3) Under subsection (2), the local authority shall in particular investigate—
 - (a) so far as is practicable, the suitability of the applicant, and any other matters relevant to the operation of section 3 in relation to the application ; and
 - (b) whether the child was placed with the applicant in contravention of section 29 of the 1958 Act.

19 Interim orders

- (1) Where on an application for an adoption order the requirements of sections 12(1) and 18(1) are complied with the court may postpone the determination of the application and make an order vesting the legal custody of the child in the applicants for a probationary period not exceeding two years upon such terms for the maintenance of the child and otherwise as the court thinks fit.
- (2) Where the probationary period specified in an order under subsection (1) is less than two years, the court may by a further order extend the period to a duration not exceeding two years in all.

20 Guardian ad litem and reporting officer

- (1) For the purpose of any application for an adoption order or an order under section 14, 16 or 25, rules shall provide for the appointment, in such cases as are prescribed.—
 - (a) of a person to act as guardian ad litem of the child upon the hearing of the application, with the duty of safeguarding the interests of the child in the prescribed manner;
 - (b) of a person to act as reporting officer for the purpose of witnessing agreements to adoption and performing such other duties as the rules may prescribe.

- (2) A person who is employed—
- (a) in the case of an application for an adoption order, by the adoption agency by whom the child was placed; or
 - (b) in the case of an application under section 14 by the adoption agency by whom the application was made; or
 - (c) in the case of an application under section 16 by the adoption agency with the parental rights and duties relating to the child,
- shall not be appointed to act as guardian ad litem or reporting officer for the purposes of the application but, subject to that, the same person may if the court thinks fit be both guardian ad litem and reporting officer.
- (3) Rules may provide for the reporting officer to be appointed before the application is made.
- (4) In relation to Scotland, references in this section to a guardian ad litem shall be construed as references to a curator ad litem.

21 Hearings of applications etc. in private

- (1) Proceedings in the High Court under this Part may be disposed of in chambers.
- (2) All proceedings in the county court under this Part shall be heard and determined in camera.
- (3) Proceedings in the magistrates' court under this Part shall be domestic proceedings for the purposes of the Magistrates' Courts Act 1952 but section 57(2)(d) of that Act shall not apply in relation to any proceedings under this Part.
- (4) In relation to Scotland, all proceedings before the court under this Part shall be heard and determined in camera unless the court otherwise directs.

22 Making of order

- (1) In the case of—
- (a) an application for an adoption order in relation to a child who is not free for adoption ;
 - (b) an application for an order under section 14,
- rules shall require every person who can be found and whose agreement or consent to the making of the order is required to be given or dispensed with under this Act to be notified of a date and place where he may be heard on the application and of the fact that, unless he wishes or the court requires, he need not attend.
- (2) In the case of an application under section 25 rules shall require every person who can be found, and whose agreement to the making of the order would be required if the application were for an adoption order (other than a Convention adoption order), to be notified as aforesaid.
- (3) Where an application for an adoption order relates to a child placed by an adoption agency, the agency shall submit to the court a report on the suitability of the applicants and any other matters relevant to the operation of section 3, and shall assist the court in any manner the court may direct.

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- (4) The court shall not proceed to hear an application for an adoption order in relation to a child where a previous application for a British adoption order made in relation to the child by the same persons was refused by any court unless—
 - (a) in refusing the previous application the court directed that this subsection should not apply, or
 - (b) it appears to the court that because of a change in circumstances or for any other reason it is proper to proceed with the application.
- (5) The court shall not make an adoption order in relation to a child unless it is satisfied that the applicants have not, as respects the child, contravened section 50 of the 1958 Act (prohibition of certain payments in relation to adoption).
- (6) In the application of this section to Scotland for the reference to hearing an application in subsection (4) there shall be substituted a reference to determining an application.

23 Transfer of parental rights and duties between adoption agencies

On the joint application of an adoption agency in which the parental rights and duties relating to a child who is in Great Britain are vested under section 14(6) or this section and any other adoption agency, an authorised court may if it thinks fit by order transfer the parental rights and duties to the latter agency.

24 Convention adoption orders

- (1) An adoption order shall be made as a Convention adoption order if the application is for a Convention adoption order and the following conditions are satisfied both at the time of the application and when the order is made.
- (2) The child—
 - (a) must be a United Kingdom national or a national of a Convention country, and
 - (b) must habitually reside in British territory or a Convention country, and
 - (c) must not be, or have been, married.
- (3) The applicant or applicants and the child must not all be United Kingdom nationals living in British territory.
- (4) If the application is by a married couple, either—
 - (a) each must be a United Kingdom national or a national of a Convention country, and both must habitually reside in Great Britain, or
 - (b) both must be United Kingdom nationals, and each must habitually reside in British territory or a Convention country,
 and if the applicants are nationals of the same Convention country the adoption must not be prohibited by a specified provision (as defined in subsection (8)) of the internal law of that country.
- (5) If the application is by one person, either—
 - (a) he must be a United Kingdom national or a national of a Convention country, and must habitually reside in Great Britain, or
 - (b) he must be a United Kingdom national, and must habitually reside in British territory or a Convention country,
 and if he is a national of a Convention country the adoption must not be prohibited by a specified provision (as defined in subsection (8)) of the internal law of that country.

- (6) If the child is not a United Kingdom national the order shall not be made—
- (a) except in accordance with the provisions, if any, relating to consents and consultations of the internal law relating to adoption of the Convention country of which the child is a national, and
 - (b) unless the court is satisfied that each person who consents to the order in accordance with that internal law does so with full understanding of what is involved.
- (7) The reference to consents and consultations in subsection (6) does not include a reference to consent by and consultation with the applicant and members of the applicant's family (including his or her spouse), and for the purposes of subsection (6) consents may be proved in the manner prescribed by rules and the court shall be treated as the authority by whom, under the law mentioned in subsection (6), consents may be dispensed with and the adoption in question may be effected; and where the provisions there mentioned require the attendance before that authority of any person who does not reside in Great Britain, that requirement shall be treated as satisfied for the purposes of subsection (6) if—
- (a) that person has been given a reasonable opportunity of communicating his opinion on the adoption in question to the proper officer or clerk of the court, or to an appropriate authority of the country in question, for transmission to the court; and
 - (b) where he has availed himself of that opportunity, his opinion has been transmitted to the court.
- (8) In subsections (4) and (5) " specified provision " means a provision specified in an order of the Secretary of State as one notified to the Government of the United Kingdom in pursuance of the provisions of the Convention which relate to prohibitions on an adoption contained in the national law of the Convention country in question.
- (9) Sections 9 and 10(1) (ascertainment of nationality, and internal law of foreign country) of the Adoption Act 1968 shall apply with any necessary modifications for the purposes of this section as they apply for the purposes of that Act.

25 Adoption of children abroad

- (1) Where on an application made in relation to a child by a person who is not domiciled in England and Wales or Scotland an authorised court is satisfied that he intends to adopt the child under the law of or within the country in which the applicant is domiciled, the court may, subject to the following provisions of this section, make an order vesting in him the parental rights and duties relating to the child.
- (2) The provisions of this Part relating to adoption orders, except sections 8(1), (9) and (10), 10(2), 11(2), 14 to 16, 19, 22(1), 23 and 24, shall apply in relation to orders under this section as they apply in relation to adoption orders subject to the modification that in section 9(1) for " 19 " and " 13 " there are substituted " 32 " and " 26 " respectively.
- (3) Sections 20 to 23 and 24(4) and (5) of the 1958 Act shall apply in relation to an order under this section as they apply in relation to an adoption order except that any entry in the Registers of Births, the Register of Births or the Adopted Children Register which is required to be marked in consequence of the making of an order under this section shall, in lieu of being marked with the word " Adopted " or " Re-adopted " (with or without the addition of the word " (Scotland) " or " (England) ") be marked with the

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words " Proposed Foreign Adoption" or " Proposed Foreign Re-adoption ", as the case may require.

- (4) References in Parts III and IV of the 1958 Act to an adoption order include references to an order under this section, and references in this Act and in the 1958 Act to the placing of children for adoption or to the making of arrangements for adoption include references to the placing of children for adoption abroad or the making of arrangements for adoption abroad.

Amendments of Adoption Act 1958

26 Obtaining of birth certificate by adopted person

- (1) In section 20 of the 1958 Act, in subsection (5), after the word " except " there are inserted the words " in accordance with section 20A of this Act or ".
- (2) The following section is inserted in the 1958 Act after section 20:—

“20A Disclosure of birth records of adopted persons.

- (1) Subject to subsections (4) and (6) of this section the Registrar General shall on an application made in the prescribed manner by an adopted person a record of whose birth is kept by the Registrar General and who has attained the age of 18 years supply to that person on payment of the prescribed fee (if any) such information as is necessary to enable that person to obtain a certified copy of the record of his birth.
- (2) On an application made in the prescribed manner by an adopted person under the age of 18 years a record of whose birth is kept by the Registrar General and who is intending to be married in England or Wales, and on payment of the prescribed fee (if any), the Registrar General shall inform the applicant whether or not it appears from information contained in the registers of live births or other records that the applicant and the person whom he intends to marry may be within the prohibited degrees of relationship for the purposes of the Marriage Act 1949.
- (3) It shall be the duty of the Registrar General and each local authority and approved adoption society to provide counselling for adopted persons who apply for information under subsection (1) of this section.
- (4) Before supplying any information to an applicant under subsection (1) of this section, the Registrar General shall inform the applicant that counselling services are available to him—
- (a) at the General Register Office ; or
 - (b) from the local authority for the area where the applicant is at the time the application is made; or
 - (c) from the local authority for the area where the court sat which made the adoption order relating to the applicant; or
 - (d) if the applicant's adoption was arranged by an adoption society which is approved under section 4 of the Children Act 1975, from that society.

- (5) If the applicant chooses to receive counselling from a local authority or an adoption society under subsection (4) the Registrar General shall send to the authority or society of the applicant's choice the information to which the applicant is entitled under subsection (1).
- (6) The Registrar General shall not supply a person who was adopted before the date on which the Children Act 1975 was passed with any information under subsection (1) of this section unless that person has attended an interview with a counsellor either at the General Register Office or in pursuance of arrangements made by the local authority or adoption society from whom the applicant is entitled to receive counselling in accordance with subsection (4).
- (7) In this section " prescribed " means prescribed by regulations made by the Registrar General.”.

27 Counselling in Scotland for adopted person seeking information about his birth

In section 22 of the 1958 Act—

- (a) the following words are added at the end of subsection (4)—

“or a local authority or an approved adoption society which is providing counselling, under subsection (4A) of this section, for that adopted person.”;

- (b) the following subsections are inserted after subsection (4)—

“(4A) Where the Registrar General for Scotland furnishes an adopted person with information under subsection (4) of this section, he shall advise that person that counselling services are available—

- (a) from the local authority for the area where the adopted person lives ; or
- (b) if the adopted person's adoption was arranged by an adoption society which is approved under section 4 of the Children Act 1975, from that society,

and it shall be the duty of such local authority and approved adoption society to provide counselling for adopted persons who have been furnished with information under subsection (4) and who apply to them for counselling in respect of that information.

(4B) Where an adopted person has arranged to receive counselling under subsection (4A), the Registrar General for Scotland shall, on receipt of a request from the local authority or adoption society which is providing that counselling, and on payment of the appropriate fee, send to the authority or society an extract of the entry relating to the adopted person in the Register of Births.”.

28 Restriction on arranging adoption and placing of children

In section 29 of the 1958 Act.—

- (a) the following subsection is substituted for subsections (1) and (2)—

“(1) A person other than an adoption agency shall not make arrangements for the adoption of a child, or place a child for adoption, unless—

- (a) the proposed adopter is a relative of the child, or

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- (b) he is acting in pursuance of an order of the High Court”;
- (b) the following subsections are inserted after subsection (1)—
- “(2) An adoption society approved under the Children Act 1975 only as respects England and Wales shall not act as an adoption society in Scotland, except to the extent that it considers it necessary to do so in the interests of a person mentioned in section 1(1) of that Act.
- (2A) An adoption society approved under the Children Act 1975 only as respects Scotland shall not act as an adoption society in England or Wales, except to the extent that it considers it necessary to do so in the interests of a person mentioned in section 1(1) of that Act.”;
- (c) in subsection (3)—
- (i) the following is inserted after paragraph (b)—
- “or
- (c) receives a child placed with him in contravention of subsection (1) of this section”;
- (ii) for the words " six months " there are substituted the words " three months " and for the words " one hundred pounds " there are substituted the words " £400 " ;
- (d) the following subsection is substituted for subsection (5)—
- “(5) Section 17 of the Children Act 1975 shall apply where a person is convicted of a contravention of subsection (1) of this section as it applies where an application for an adoption order is refused.”.

29 Restrictions on removal of child pending adoption

The following sections are substituted for section 34 of the 1958 Act—

“34 Restrictions on removal where adoption agreed or application made under section 14 of Children Act 1975.

- (1) While an application for an adoption order is pending in a case where a parent or guardian of the child has agreed to the making of the adoption order (whether or not he knows the identity of the applicant), the parent or guardian is not entitled, against the will of the person with whom the child has his home, to remove the child from the custody of that person except with the leave of the court.
- (2) While an application is pending for an order under section 14 of the Children Act 1975 and—
- (a) the child is in the care of the adoption agency making the application, and
- (b) the application was not made with the consent of each parent or guardian of the child,
- no parent or guardian of the child who did not consent to the application is entitled, against the will of the person with whom the child has his home, to remove the child from the custody of that person except with the leave of the court.

- (3) Any person who contravenes subsection (1) or (2) of this section commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £400 or both.

34A Restrictions on removal where applicant has provided home for five years.

- (1) While an application for an adoption order in respect of a child made by the person with whom the child has had his home for the five years preceding the application is pending, no person is entitled, against the will of the applicant, to remove the child from the applicant's custody except with the leave of the court or under authority conferred by any enactment or on the arrest of the child.
- (2) Where a person (" the prospective adopter") gives notice in writing to the local authority within whose area he has his home that he intends to apply for an adoption order in respect of a child who for the preceding five years has had his home with the prospective adopter, no person is entitled, against the will of the prospective adopter, to remove the child from the prospective adopter's custody, except with the leave of a court or under authority conferred by any enactment or on the arrest of the child, before—
- (a) the prospective adopter applies for the adoption order, or
 - (b) the period of three months from the receipt of the notice by the local authority expires,
- whichever occurs first.
- (3) In any case where subsection (1) or (2) of this section applies, and—
- (a) the child was in the care of a local authority before he began to have his home with the applicant or, as the case may be, the prospective adopter, and
 - (b) the child remains in the care of the authority,
- the authority shall not remove the child from the actual custody of the applicant or of the prospective adopter except in accordance with sections 35 and 36 of this Act or with the leave of the court.
- (4) A local authority which receives such notice as aforesaid in respect of a child whom the authority know to be in the care of another local authority or of a voluntary organisation shall, not more than seven days after the receipt of the notice, inform that other authority or the organisation in writing that they have received the notice.
- (5) Subsection (2) of this section does not apply to any further notice served by the prospective adopter on any local authority in respect of the same child during the period referred to in paragraph (b) of that subsection or within 28 days after its expiry.
- (6) Any person who contravenes subsection (1) or (2) of this section commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £400 or both.
- (7) The Secretary of State may by order made by statutory instrument a draft of which has been approved by each House of Parliament amend subsection (1) or (2) of this section to substitute a different period for the period of five years

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mentioned in that subsection (or the period which, by a previous order under this subsection, was substituted for that period).

- (8) In relation to Scotland, subsection (3) of this section does not apply where the removal of the child is authorised, in terms of Part III of the Social Work (Scotland) Act 1968, by a justice of the peace or a children's hearing.”.

30 Return of child taken away in breach of section 34 or 34A of 1958 Act

- (1) An authorised court may on the application of a person from whose custody a child has been removed in breach of section 34 or 34A of the 1958 Act order the person who has so removed the child to return the child to the applicant.
- (2) An authorised court may on the application of a person who has reasonable grounds for believing that another person is intending to remove a child from the applicant's custody in breach of section 34 or 3 4A of the 1958 Act by order direct that other person not to remove the child from the applicant's custody in breach of the said section 34 or 34A.
- (3) If, in the case of an order made by the High Court under subsection (1), the High Court or, in the case of an order made by a county court under subsection (1), a county court is satisfied that the child has not been returned to the applicant, the court may make an order authorising an officer of the court to search such premises as may be specified in the order for the child and, if the officer finds the child, to return the child to the applicant.
- (4) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that a child to whom an order under subsection (1) relates is in premises specified in the information, he may issue a search warrant authorising a constable to search the premises for the child; and if a constable acting in pursuance of a warrant under this section finds the child, he shall return the child to the person on whose application the order under subsection (1) was made.
- (5) An order under subsection (3) may be enforced in like manner as a warrant for committal.
- (6) Subsections (3), (4) and (5) do not apply to Scotland.

31 Return of child on refusal of adoption order

In section 35 of the 1958 Act, the following subsection is inserted after subsection (5)

—

“(5A) Where an application for an adoption order is refused the court may, if it thinks fit, at any time before the expiry of the period of seven days mentioned in subsection (3) of this section order that period to be extended to a duration, not exceeding six weeks, specified in the order.”.

32 Payment of allowances to adopters

In section 50 (prohibition of certain payments in relation to adoption) of the 1958 Act, the following subsections are inserted at the end—

“(4) If an adoption agency submits to the Secretary of State a scheme for the payment by the agency of allowances to persons who have adopted or intend

to adopt a child where arrangements for the adoption were made, or are to be made, by that agency, and the Secretary of State approves the scheme, this section shall not apply to any payment made in accordance with the scheme.

- (5) The Secretary of State, in the case of a scheme approved by him under subsection (4) of this section, may at any time—
 - (a) make, or approve the making by the agency of, alterations to the scheme ;
 - (b) revoke the scheme.
- (6) The Secretary of State shall, within seven years of the date on which section 32 of the Children Act 1975 comes into force and, thereafter, every five years, publish a report on the operation of the schemes since that date or since the publication of the last report.
- (7) Subject to the following subsection, subsection (4) of this section shall expire on the seventh anniversary of the date on which it comes into force.
- (8) The Secretary of State may by order made by statutory instrument at any time before the said anniversary, repeal subsection (7) of this section.
- (9) An order under subsection (8) of this section shall not be made unless—
 - (a) a report has been published under subsection (6) of this section, and
 - (b) a draft of the order has been laid before Parliament and approved by resolution of each House.
- (10) Notwithstanding the expiry of subsection (4) of this section or the revocation of a scheme approved under this section, subsection (1) of this section shall not apply in relation to any payment made, whether before or after the expiry of subsection (4) or the revocation of the scheme, in accordance with a scheme which was approved under this section to a person to whom such payments were made, where the scheme was not revoked, before the expiry of subsection (4) or, if the scheme was revoked, before the date of its revocation.”.

PART II

CUSTODY

Custodianship orders

33 Custodianship orders

- (1) An authorised court may on the application of one or more persons qualified under subsection (3) make an order vesting the legal custody of a child in the applicant or, as the case may be, in one or more of the applicants if the child is in England or Wales at the time the application is made.
- (2) An order under subsection (1) may be referred to as a custodianship order, and the person in whom legal custody of the child is vested under the order may be referred to as the custodian of the child.
- (3) The persons qualified to apply for a custodianship order are—
 - (a) a relative or step-parent of the child—

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- (i) who applies with the consent of a person having legal custody of the child, and
 - (ii) with whom the child has had his home for the three months preceding the making of the application;
 - (b) any person—
 - (i) who applies with the consent of a person having legal custody of the child, and
 - (ii) with whom the child has had his home for a period or periods before the making of the application which amount to at least twelve months and include the three months preceding the making of the application;
 - (c) any person with whom the child has had his home for a period or periods before the making of the application which amount to at least three years and include the three months preceding the making of the application.
- (4) The mother or father of the child is not qualified under any paragraph of subsection (3).
- (5) A step-parent of the child is not qualified under any paragraph of subsection (3) if in proceedings for divorce or nullity of marriage the child was named in an order made under paragraph (b) or (c) of section 41(1) (arrangements for welfare of children of family) of the Matrimonial Causes Act 1973.
- (6) If no person has legal custody of the child, or the applicant himself has legal custody or the person with legal custody cannot be found, paragraphs (a) and (b) of subsection (3) apply with the omission of sub-paragraph (i).
- (7) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (3)(c) to substitute a different period for the period of three years mentioned in that paragraph (or the period which, by a previous order under this subsection, was substituted for that period).
- (8) Subsection (5) does not apply—
 - (a) if the parent other than the one the step-parent married is dead or cannot be found, or
 - (b) if the order referred to in subsection (5) was made under subsection (1)(c) of section 41 of the Matrimonial Causes Act 1973 and it has since been determined that the child was not a child of the family to whom that section applied.
- (9) For the avoidance of doubt, it is hereby declared that the provisions of section 1 of the Guardianship of Minors Act 1971 apply to applications made under this Part of this Act.
- (10) This section and sections 34 to 46 do not apply to Scotland.

34 Access and maintenance

- (1) An authorised court may, on making a custodianship order or while a custodianship order is in force, by order—
 - (a) on the application of the child's mother or father, make such provision as it thinks fit requiring access to the child to be given to the applicant;
 - (b) on the application of the custodian, require the child's mother or father (or both) to make to the applicant such periodical payments towards the maintenance of the child as it thinks reasonable ;

- (c) on the application of the child's mother or father, revoke an order requiring the applicant to contribute towards the child's maintenance made (otherwise than under this section) by any court;
 - (d) on the application of the child's mother or father or the custodian, vary an order made (otherwise than under this section) by any court requiring the mother or father to contribute towards the child's maintenance—
 - (i) by altering the amount of the contributions;
 - (ii) by substituting the custodian for the person to whom the contributions were ordered to be made.
- (2) References in subsection (1) to the child's mother or father include any person in relation to whom the child was treated as a child of the family (as defined in section 52(1) of the Matrimonial Causes Act 1973) but the court in deciding whether to make an order under subsection (1)(b) against a person who is not the child's mother or father shall have regard (among the circumstances of the case)—
- (a) to whether that person had assumed any responsibility for the child's maintenance and, if he did, to the extent to which and the basis on which he did so, and to the length of time during which he discharged that responsibility;
 - (b) to the liability of any other person to maintain that child.
- (3) No order shall be made under subsection (1)(b) requiring the father of an illegitimate child to make any payments to the child's custodian.
- (4) Subsections (2), (3), (4) and (6) (orders as to supervision, local authority care, maintenance etc. of children) of section 2 of the Guardianship Act 1973 and sections 3 and 4 of that Act (supplementary provisions) shall apply to an application for a custodianship order as they apply to an application under section 9 of the Guardianship of Minors Act 1971, subject to the following modifications, that is to say—
- (a) in section 2(2) (b) and (4)(a) of the Guardianship Act 1973 any reference to a parent of the minor to whom the order relates shall be construed as including a reference to any other individual;
 - (b) section 3(3) of that Act shall have effect as if the words " or the custodian" were inserted after the words " application of either parent ".
- (5) A local authority may make contributions to a custodian towards the cost of the accommodation and maintenance of the child, except where the custodian is the husband or wife of a parent of the child.

35 Revocation and variation of orders

- (1) An authorised court may by order revoke a custodianship order on the application of—
- (a) the custodian, or
 - (b) the mother or father, or a guardian, of the child, or
 - (c) any local authority in England or Wales.
- (2) The court shall not proceed to hear an application made by any person for the revocation of a custodianship order where a previous such application made by the same person was refused by that or any other court unless—
- (a) in refusing the previous application the court directed that this subsection should not apply, or
 - (b) it appears to the court that because of a change in circumstances or for any other reason it is proper to proceed with the application.

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- (3) The custodian of a child may apply to an authorised court for the revocation or variation of any order made under section 34 in respect of that child.
- (4) Any other person on whose application an order under section 34 was made, or who was required by such an order to contribute towards the maintenance of the child, may apply to an authorised court for the revocation or variation of that order.
- (5) Any order made under section 34 in respect of a child who is the subject of a custodianship order shall cease to have effect on the revocation of the custodianship order.
- (6) A custodianship order made in respect of a child, and any order made under section 34 in respect of the child, shall cease to have effect when the child attains the age of 18 years.

36 Care etc. of child on revocation of custodianship order

- (1) Before revoking a custodianship order the court shall ascertain who would have legal custody of the child, if, on the revocation of the custodianship order, no further order were made under this section.
- (2) If the child would not be in the legal custody of any person, the court shall, if it revokes the custodianship order, commit the care of the child to a specified local authority.
- (3) If there is a person who would have legal custody of the child on the revocation of the custodianship order, the court shall consider whether it is desirable in the interests of the welfare of the child for the child to be in the legal custody of that person and—
 - (a) if the court is of the opinion that it would not be so desirable, it shall on revoking the custodianship order commit the care of the child to a specified local authority;
 - (b) if it is of the opinion that while it is desirable for the child to be in the legal custody of that person, it is also desirable in the interests of the welfare of the child for him to be under the supervision of an independent person, the court shall, on revoking the custodianship order, order that the child shall be under the supervision of a specified local authority or of a probation officer.
- (4) Before exercising its functions under this section the court shall, unless it has sufficient information before it for the purpose, request—
 - (a) a local authority to arrange for an officer of the authority, or
 - (b) a probation officer,
 to make to the court a report, orally or in writing, on the desirability of the child returning to the legal custody of any individual, and it shall be the duty of the local authority or probation officer to comply with the request.
- (5) Where the court makes an order under subsection (3)(a) the order may require the payment by either parent to the local authority, while it has the care of the child, of such weekly or other periodical sum towards the maintenance of the child as the court thinks reasonable.
- (6) Sections 3 and 4 of the Guardianship Act 1973 (which contain supplementary provisions relating to children who are subject to supervision, or in the care of local authority, by virtue of orders made under section 2 of that Act) apply in relation to an order under this section as they apply in relation to an order under section 2 of that Act.

- (7) Subsections (2) to (6) of section 6 of the Guardianship Act 1973 shall apply in relation to reports which are requested by magistrates' courts under this section as they apply to reports under subsection (1) of that section.

37 Custodianship order on application for adoption or guardianship

- (1) Where on an application for an adoption order by a relative of the child or by the husband or wife of the mother or father of the child, whether alone or jointly with his or her spouse, the requirements of section 12 or, where the application is for a Convention adoption order, section 24(6) are satisfied, but the court is satisfied—

- (a) that the child's welfare would not be better safeguarded and promoted by the making of adoption order in favour of the applicant, than it would be by the making of a custodianship order in his favour, and
- (b) that it would be appropriate to make a custodianship order in the applicant's favour,

the court shall direct the application to be treated as if it had been made by the applicant under section 33, but if the application was made jointly by the father or mother of the child and his or her spouse, the court shall direct the application to be treated as if made by the father's wife or the mother's husband alone.

- (2) Where on an application for an adoption order made—
- (a) by a person who is neither a relative of the child nor the husband or wife of the mother or father of the child; or
 - (b) by a married couple neither of whom falls within paragraph (a),

the said requirements are satisfied but the court is of opinion that it would be more appropriate to make a custodianship order in favour of the applicant, it may direct the application to be treated as if it had been made by the applicant under section 33.

- (3) Where on an application under section 9 (orders for custody and maintenance on application of mother or father) of the Guardianship of Minors Act 1971 the court is of opinion that legal custody should be given to a person other than the mother or father, it may direct the application to be treated as if it had been made by that person under section 33.

- (4) Where a direction is given under this section the applicant shall be treated (if such is not the case) as if he were qualified to apply for a custodianship order and this Part, except section 40, shall have effect accordingly.

- (5) Subsection (1) does not apply to an application made by a step-parent whether alone or jointly with another person in any case where the step-parent is prevented by section 33(5) from being qualified to apply for a custodianship order in respect of the child.

- (6) Subsections (1) and (2) do not apply to an application for an adoption order made by the child's mother or father alone.

38 Disputes between joint custodians

If two persons have a parental right or duty vested in them jointly by a custodianship order or by virtue of section 44(2) but cannot agree on its exercise or performance, either of them may apply to an authorised court, and the court may make such order regarding the exercise of the right or performance of the duty as it thinks fit.

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39 Reports by local authorities and probation officers

- (1) A court dealing with an application made under this Part, or an application which is treated as if made under section 33, may request—
 - (a) a local authority to arrange for an officer of the authority, or
 - (b) a probation officer,to make to the court a report, orally or in writing, with respect to any specified matter which appears to the court to be relevant to the application, and it shall be the duty of the local authority or probation officer to comply with the request.
- (2) Subsections (2) to (6) of section 6 of the Guardianship Act 1973 shall apply in relation to reports which are requested by magistrates' courts under this section as they apply to reports under subsection (1) of that section.

40 Notice of application to be given to local authority

- (1) A custodianship order shall not be made unless the applicant has given notice of the application for the order to the local authority in whose area the child resides within the seven days following the making of the application, or such extended period as the court or local authority may allow.
- (2) On receipt of a notice given by the applicant under subsection (1) the local authority shall arrange for an officer of the authority to make a report to the court (so far as is practicable) on the matters prescribed under subsection (3) and on any other matter which he considers to be relevant to the application.
- (3) The Secretary of State shall by regulations prescribe matters which are to be included in a report under subsection (2) and, in particular, but without prejudice to the generality of the foregoing, the prescribed matters shall include—
 - (a) the wishes and feelings of the child having regard to his age and understanding and all other matters relevant to the operation of section 1 (principle on which questions relating to custody are to be decided) of the Guardianship of Minors Act 1971 in relation to the application;
 - (b) the means and suitability of the applicant;
 - (c) information of a kind specified in the regulations relating to members of the applicant's household;
 - (d) the wishes regarding the application, and the means, of the mother and father of the child.
- (4) Subsections (2), (3) and (3A) of section 6 of the Guardianship Act 1973 shall apply to a report under this section which is submitted to a magistrates' court.

41 Restriction on removal of child where applicant has provided home for three years

- (1) While an application for a custodianship order in respect of a child made by the person with whom the child has at the time the application is made had his home for a period (whether continuous or not) amounting to at least three years is pending, another person is not entitled, against the will of the applicant, to remove the child from the applicant's custody except with the leave of a court or under authority conferred by any enactment or on the arrest of the child.
- (2) In any case where subsection (1) applies, and

- (a) the child was in the care of a local authority before he began to have his home with the applicant, and
 - (b) the child remains in the care of a local authority,
- the authority in whose care the child is shall not remove the child from the applicant's custody except with the applicant's consent or the leave of a court.
- (3) Any person who contravenes subsection (1) commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £400 or both.
 - (4) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (1) to substitute a different period for the period mentioned in that subsection (or the period which, by a previous order under this subsection, was substituted for that period).

42 Return of child taken away in breach of section 41

- (1) An authorised court may on the application of a person from whose custody a child has been removed in breach of section 41 order the person who has so removed the child to return the child to the applicant.
- (2) An authorised court may on the application of a person who has reasonable grounds for believing that another person is intending to remove a child from the applicant's custody in breach of section 41 by order direct that other person not to remove the child from the applicant's custody in breach of that section.
- (3) If, in the case of an order made by the High Court under subsection (1), the High Court or, in the case of an order made by a county court under subsection (1), a county court is satisfied that the child has not been returned to the applicant, the court may make an order authorising an officer of the court to search such premises as may be specified in the order for the child and, if the officer finds the child, to return the child to the applicant.
- (4) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that a child to whom an order under subsection (1) relates is in premises specified in the information, he may issue a search warrant authorising a constable to search the premises for the child; and if a constable acting in pursuance of a warrant under this section finds the child, he shall return the child to the person on whose application the order under subsection (1) was made.
- (5) An order under subsection (3) may be enforced in like manner as a warrant for committal.

43 Enforcement of orders made by magistrates' courts

- (1) If at a time when the custodian is entitled to actual custody of the child by virtue of a custodianship order made by a magistrates' court any other person has actual custody of him, a copy of the custodianship order may be served on that person and thereupon the order may, without prejudice to any other remedy open to the custodian, be enforced under section 54(3) of the Magistrates' Courts Act 1952 as if it were an order of a magistrates' court requiring that person to give up the child to the custodian.
- (2) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made by a magistrates' court under section 34

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shall give notice of any change of address to such person (if any) as may be specified in the order; and if he fails without reasonable excuse to give such a notice he commits an offence and shall be liable on summary conviction to a fine not exceeding £10.

- (3) An order for the payment of money made by a magistrates' court under section 34 may be enforced in like manner as an affiliation order, and the enactments relating to affiliation orders shall apply accordingly with the necessary modifications.

44 Effect of custodianship order on existing custody

- (1) While a custodianship order has effect in relation to a child the right of any person other than the custodian to legal custody of the child is suspended, but, subject to any further order made by any court, revives on the revocation of the custodianship order.
- (2) Subsection (1) does not apply where the person already having custody is a parent of the child and the person who becomes custodian under the order is the husband or wife of the parent; and in such a case the spouses have the legal custody jointly.

45 Affiliation order on application by custodian

- (1) Where a custodianship order subsists in respect of an illegitimate child, and no affiliation order relating to the child has been made under the Affiliation Proceedings Act 1957, the custodian of the child may apply to a justice of the peace acting for the petty sessions area in which the child or the child's mother resides for a summons to be served under section 1 of that Act.
- (2) The court shall proceed on the application as on a complaint under that section, but the person entitled to any payments under an affiliation order made on the application shall be the custodian.
- (3) An application may not be made under subsection (1)—
- (a) if the custodian is married to the child's mother, or
 - (b) more than three years after the custodianship order was made.

46 Procedure in magistrates' courts

- (1) It is hereby declared that any jurisdiction conferred on a magistrates' court by virtue of this Part is exercisable notwithstanding that the proceedings are brought by or against a person residing outside England and Wales.
- (2) A magistrates' court may, subject to subsection (3), proceed on an application for an order under this Part notwithstanding that the defendant has not been served with the summons, and rules may prescribe matters as to which the court is to be satisfied before proceeding in such a case.
- (3) A magistrates' court shall not—
- (a) make an order under this Part requiring a person to make payments towards the maintenance of a child, or
 - (b) vary an order under this Part so as to increase a person's liability to make payments towards the maintenance of a child,
- unless the person has been served with the summons.
- (4) Rules may make provision as to the persons who are to be made defendants to a complaint for an order under this Part, and where there are two or more defendants to

such a complaint the power of the court under section 55(1) of the Magistrates' Courts Act 1952 (power to award costs etc.) shall be deemed to include power, whatever adjudication the court makes, to order any of the parties to pay the whole or part of the costs of all or any of the parties.

- (5) In this section, " rules " means rules made under section 15 of the Justices of the Peace Act 1949.

Custody in Scotland

47 Granting of custody

- (1) Without prejudice to any existing enactment or rule of law conferring a—
- (a) right to apply for custody of a child ;
 - (b) power to grant custody of a child ;
- any relative, step-parent or foster parent of the child is qualified to apply for, and subject to subsection (2) may be granted, such custody in the same manner as any person so qualified before the commencement of this Act.
- (2) Except in the case of an application under section 2 of the Illegitimate Children (Scotland) Act 1930, custody of a child shall not be granted in any proceedings to a person other than a parent or guardian of the child unless that person—
- (a) being a relative or step-parent of the child, has the consent of a parent or guardian of the child and has had care and possession of the child for the three months preceding the making of the application for custody; or
 - (b) has the consent of a parent or guardian of the child and has had care and possession of the child for a period or periods, before such application, which amounted to at least twelve months and included the three months preceding such application ; or
 - (c) has had care and possession of the child for a period or periods before such application which amounted to at least three years and included the three months preceding such application ; or
 - (d) while not falling within paragraph (a), (b) or (c), can show cause, having regard to section 1 of the Guardianship of Infants Act 1925 (the principle on which questions relating to custody, upbringing etc. of children are to be decided) why an order should be made awarding him custody of the child.
- (3) Nothing in this section shall prejudice any ancillary power of the court in any proceedings relative to custody.
- (4) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (2)(c) to substitute a different period for the period of three years mentioned in that paragraph (or the period which by a previous order under this subsection was substituted for that period).
- (5) In relation to a grant of custody to which this section applies,
- (a) " guardian " has the same meaning as in the 1958 Act;
 - (b) " foster parent" means a person who, at the commencement of the proceedings in which the grant is made, has had care and possession of the child for a period or periods amounting to at least twelve months, whether or not that person continues to have care and possession of the child;

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- (c) " relative " has the same meaning as in the 1958 Act, except that, where the child is illegitimate, " relative " does not include the father of the child.
- (6) The form and manner of any consent required in terms of subsection (2) (a) or (b) may be prescribed by act of sederunt.

48 Miscellaneous provisions relative to custody

- (1) A person making an application relating to the custody of a child shall, so far as practicable and in such manner as may be prescribed by act of sederunt, give notice of that application to each known parent of the child, and for this purpose the father of an illegitimate child shall be regarded as a parent of the child.
- (2) Any order made by virtue of this Part of this Act may be varied or discharged by a subsequent order, either by the Court ex proprio motu or on the application of any person concerned.
- (3) In section 11(1) of the Guardianship Act 1973, for the words from " Where an application " to " relates to the custody of a child " there is substituted " Where an application relating to the custody of a child, other than an application to which Part II of the Matrimonial Proceedings (Children) Act 1958 applies, is made to a court ".
- (4) In section 12(2)(a) of the Guardianship Act 1973, for the words from " Where an application " to " by virtue of section 11 of this Act" there is substituted " Where any application, other than one to which Part II of the Matrimonial Proceedings (Children) Act 1958 applies, is made to a court for custody of a child or for the variation or discharge of any order (including an order made by virtue of section 11 above) relating to the custody of a child ".

49 Notice to local authority of certain custody applications

- (1) Where an applicant for custody of a child is a relative, step-parent or foster parent of the child, an order awarding custody to that applicant shall not except on cause shown be made unless the applicant—
 - (a) in any case where at the time of the application he resided in Scotland, has, within the seven days following the making of the application, given notice thereof to the local authority within whose area he resided at that time;
 - (b) in any other case, has within such time as the court may direct given, to such local authority in Scotland as the court may specify, notice of the making of the application.
- (2) On receipt of a notice under subsection (1) the local authority shall investigate and report to the court on all the circumstances of the child and on the proposed arrangements for the care and upbringing of the child.
- (3) Paragraphs (b) and (c) of subsection (2) of section 12 of the Guardianship Act 1973 shall apply in relation to an investigation and report in terms of this section as they apply in relation to an investigation and report in terms of paragraph (a) of subsection (2) of that section.

50 Payments towards maintenance of children

Without prejudice to any existing powers and duties to make payments in respect of the maintenance of children, where custody of a child has been awarded to a person

other than a parent of the child any local authority may make to that person payments for or towards the maintenance of the child.

51 Restriction on removal of child where applicant has provided home for three years

- (1) Where a person has applied for custody of a child, it shall be an offence, except with the authority of a court or under authority conferred by any enactment or on the arrest of the child, to remove the child from the custody of the applicant against the will of the applicant if—
 - (a) the child has been in the care and possession of that person for a period or periods before the making of the application which amount to at least three years; and
 - (b) the application is pending in any court.
- (2) In any case where subsection (1) applies, and
 - (a) the child was in the care of a local authority before he began to have his home with the applicant, and
 - (b) the child remains in the care of a local authority,the authority in whose care the child is shall not remove the child from the applicant's custody except—
 - (i) with the applicant's consent;
 - (ii) with the leave of a court; or
 - (iii) with the authority, in terms of Part III of the Social Work (Scotland) Act 1968, of a justice of the peace or a children's hearing.
- (3) Any person who contravenes the provisions of subsection (1) commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £400 or both.
- (4) The Secretary of State may by order, a draft of which has been approved by each House of Parliament, amend subsection (1) to substitute a different period for the period mentioned in that subsection (or for the period which, by a previous order under this subsection, was substituted for that period).

52 Return of child taken away in breach of section 51

A court in which an application for custody of a child is pending may—

- (a) on the application of a person from whose custody the child has been removed in breach of section 51, order the person who has so removed the child to return the child to the applicant;
- (b) on the application of a person who has reasonable grounds for believing that another person is intending to remove the child from the applicant's custody in breach of section 51, by order direct that other person not to remove the child from the applicant's custody in breach of that section.

53 Custody order on application for adoption in Scotland

- (1) Without prejudice to the provisions of section 19 (power to make an interim order giving custody), where on an application for an adoption order in respect of a child the applicant is a person qualified to apply for custody of the child, and the court is of opinion—

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- (a) in the case of an applicant who is a relative of the child or a husband or wife of the mother or father of the child (whether applying alone or jointly with his or her spouse)—
 - (i) that the child's welfare would not be better safeguarded and promoted by the making of an adoption order in favour of the applicant than it would be by the making of a custody order in his favour; and
 - (ii) that it would be appropriate to make a custody order in favour of the applicant; or
 - (b) in any other case, that the making of a custody order in favour of the applicant would be more appropriate than the making of an adoption order in his favour, the court shall direct that the application is to be treated as if it had been made for custody of the child; but where such a direction is made the court shall not cease to have jurisdiction by reason only that it would not have had jurisdiction to hear an application by the applicant for custody of the child.
- (2) In the application of this Part of this Act to any case where a direction under subsection (1) has been made—
- (a) for references in section 47(2) to the making of an application for custody there shall be substituted references to the making of an application for an adoption order;
 - (b) for the references in section 49 and paragraph (a) of subsection (1) of section 51 to the making of an application there shall be substituted references to the making of a direction in terms of subsection (1) of this section;
 - (c) in section 51(1) for the words "for custody of" there shall be substituted the words " for an adoption order in respect of ".
- (3) For the purposes of section 11 of the Guardianship Act 1973, any application in respect of which a direction has been made under subsection (1) of this section, is an application for custody of a child.

54 Jurisdiction of Scottish courts in certain applications for custody

- (1) Without prejudice to any existing grounds of jurisdiction, the court shall have jurisdiction in proceedings for custody of a child if at the time of application for such custody—
- (a) the child resides in Scotland ; and
 - (b) the child is domiciled in England and Wales ; and
 - (c) the person applying for custody is a person qualified, in terms of subsections (3) to (8) of section 33 of this Act, to apply in England or Wales for a custodianship order in respect of the child.
- (2) For the purposes of this section, " the court" means—
- (a) the Court of Session ; or
 - (b) the sheriff court of the sheriffdom within which the child resides.

55 Interpretation and extent of sections 47 to 55

- (1) In sections 47 to 54 " child " means a person under the age of sixteen.
- (2) Sections 47 to 54 and this section apply to Scotland only.

PART III

CARE

Children in care of local authorities

56 Restriction on removal of child from care

(1) In section 1 of the Children Act 1948, the following subsections are inserted after subsection (3)—

“(3A) Except in relation to an act done—

- (a) with the consent of the local authority, or
- (b) by a parent or guardian of the child who has given the local authority not less than 28 days' notice of his intention to do it,

subsection (8) (penalty for taking away a child in care) of section 3 of this Act shall apply to a child in the care of a local authority under this section (notwithstanding that no resolution is in force under section 2 of this Act with respect to the child) if he has been in the care of that local authority throughout the preceding six months; and for the purposes of the application of paragraph (b) of that subsection in such a case a parent or guardian of the child shall not be taken to have lawful authority to take him away.

(3B) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (3A) of this section by substituting a different period for the period of 28 days or of six months mentioned in that subsection (or the period which, by a previous order under this subsection, was substituted for that period).”

(2) The following section is inserted after section 33 of the Children Act 1948—

“33A Restriction on removal of child from care of voluntary organisation.

(1) Section 3(8) of this Act shall apply in relation to children who are not in the care of local authorities under section 1 of this Act but who are in voluntary homes or are boarded out, as it applies by virtue of subsection (3A) of the said section 1 to children in the care of the local authority, except that in the case of a child who is not in the care of a local authority the references in subsection (3A) to a local authority shall be construed as references to the voluntary organisation in whose care the child is.

(2) For the purposes of this section—

- (a) a child is boarded out if he is boarded out, by the voluntary organisation in whose care he is, with foster parents to live in their home as a member of their family ;
- (b) " voluntary home" includes a controlled community home and an assisted community home.”.

57 Substitution of s. 2 of Children Act 1948

The following section is substituted for section 2 of the Children Act 1948.

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

“2 Assumption by local authority of parental rights and duties.

- (1) Subject to the provisions of this Part of this Act, if it appears to a local authority in relation to any child who is in their care under the foregoing section—
- (a) that his parents are dead and he has no guardian or custodian; or
 - (b) that a parent of his—
 - (i) has abandoned him, or
 - (ii) suffers from some permanent disability rendering him incapable of caring for the child, or
 - (iii) while not falling within sub-paragraph (ii) of this paragraph, suffers from a mental disorder (within the meaning of the Mental Health Act 1959), which renders him unfit to have the care of the child, or
 - (iv) is of such habits or mode of life as to be unfit to have the care of the child, or
 - (v) has so consistently failed without reasonable cause to discharge the obligations of a parent as to be unfit to have the care of the child ; or
 - (c) that a resolution under paragraph (b) of this subsection is in force in relation to one parent of the child who is, or is likely to become, a member of the household comprising the child and his other parent; or
 - (d) that throughout the three years preceding the passing of the resolution the child has been in the care of a local authority under the foregoing section, or partly in the care of a local authority and partly in the care of a voluntary organisation,
- the local authority may resolve that there shall vest in them the parental rights and duties with respect to that child, and, if the rights and duties were vested in the parent on whose account the resolution was passed jointly with another person, they shall also be vested in the local authority jointly with that other person.
- (2) In the case of a resolution passed under paragraph (b), (c) or (d) of subsection (1) of this section, unless the person whose parental rights and duties have under the resolution vested in the local authority has consented in writing to the passing of the resolution, the local authority, if that person's whereabouts are known to them, shall forthwith after the passing of the resolution serve on him notice in writing of the passing thereof.
- (3) Every notice served by a local authority under subsection (2) of this section shall inform the person on whom the notice is served of his right to object to the resolution and the effect of any objection made by him.
- (4) If, not later than one month after notice is served on a person under subsection (2) of this section, he serves a counter-notice in writing on the local authority objecting to the resolution, the resolution shall, subject to the provisions of subsection (5) of this section, lapse on the expiry of fourteen days from the service of the counter-notice.
- (5) Where a counter-notice has been served on a local authority under subsection (4) of this section, the authority may not later than fourteen days after the receipt by them of the counter-notice complain to a juvenile court

having jurisdiction in the area of the authority, and in that event the resolution shall not lapse until the determination of the complaint; and the court may on the hearing of the complaint order that the resolution shall not lapse by reason of the service of the counter-notice:

Provided that the court shall not so order unless satisfied—

- (a) that the grounds mentioned in subsection (1) of this section on which the local authority purported to pass the resolution were made out, and
 - (b) that at the time of the hearing there continued to be grounds on which a resolution under subsection (1) of this section could be founded, and
 - (c) that it is in the interests of the child to do so.
- (6) While a resolution passed under subsection (1)(b), (c) or (d) of this section is in force with respect to a child, section 1(3) of this Act shall not apply in relation to the person who, but for the resolution, would have the parental rights and duties in relation to the child.
- (7) Any notice under this section (including a counter-notice) may be served by post, so however that a notice served by a local authority under subsection (2) of this section shall not be duly served by post unless it is sent by registered post or recorded delivery service.
- (8) A resolution under this section shall cease to have effect if—
- (a) the child is adopted ;
 - (b) an order in respect of the child is made under section 14 or 25 of the Children Act 1975 ; or
 - (c) a guardian of the child is appointed under section 5 of the Guardianship of Minors Act 1971.
- (9) Where, after a child has been received into the care of a local authority under the foregoing section, the whereabouts of any parent of his have remained unknown for twelve months, then, for the purposes of this section, the parent shall be deemed to have abandoned the child.
- (10) The Secretary of State may by order a draft of which has been approved by each House of Parliament amend subsection (1)(d) of this section to substitute a different period for the period mentioned in that paragraph (or the period which, by a previous order under this subsection, was substituted for that period).
- (11) In this section—
- " parent ", except in subsection (1)(a), includes a guardian or custodian;
 - " parental rights and duties ", in relation to a particular child, means all rights and duties which by law the mother and father have in relation to a legitimate child and his property except the right to consent or refuse to consent to the making of an application under section 14 of the Children Act 1975 and the right to agree or refuse to agree to the making of an adoption order or an order under section 25 of that Act."

58 Supplementary provisions relating to care proceedings

In the Children Act 1948, the following sections are inserted after section 4—

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“4A Appeal to High Court.

An appeal shall lie to the High Court from the making by a juvenile court of an order under section 2(5) or section 4(3) of this Act (orders confirming or terminating local authority resolutions under section 2(1) of this Act), or from the refusal by a juvenile court to make such an order.

4B Guardians ad litem and reports in care proceedings.

- (1) In any proceedings under section 2(5) or 4(3) or 4A of this Act, a juvenile court or the High Court may, where it considers it necessary in order to safeguard the interests of the child to whom the proceedings relate, by order make the child a party to the proceedings and appoint, subject to rules of court, a guardian ad litem of the child for the purposes of the proceedings.
- (2) A guardian ad litem appointed in pursuance of this section shall be under a duty to safeguard the interests of the child in the manner prescribed by rules of court.
- (3) Section 6 of the Guardianship Act 1973 shall apply in relation to complaints under section 2(5) or 4(3) of this Act as it applies in relation to applications under section 3(3) of the said Act of 1973.”.

59 General duty of local authority in care cases

In section 12 of the Children Act 1948, the following subsections are substituted for subsection (1)—

- “(1) In reaching any decision relating to a child in their care, a local authority shall give first consideration to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.
- (1A) If it appears to the local authority that it is necessary, for the purpose of protecting members of the public, to exercise their powers in relation to a particular child in their care in a manner which may not be consistent with their duty under the foregoing subsection, the authority may, notwithstanding that duty, act in that manner.”.

Children in care of voluntary organisations in England and Wales

60 Transfer of parental rights and duties to voluntary organisations

- (1) Where it appears to a local authority as respects a child in the care of a voluntary organisation which is an incorporated body—
 - (a) that the child is not in the care of any local authority; and
 - (b) that a condition specified in section 2(1) of the Children Act 1948 is satisfied; and
 - (c) that it is necessary in the interests of the welfare of the child for the parental rights and duties to be vested in the organisation,

the authority may, subject to subsections (5) and (6), resolve that there shall vest in the organisation the parental rights and duties with respect to that child.

- (2) While a resolution under this section is in force the parental rights and duties shall vest in the organisation in whose care the child is when the resolution is passed.
- (3) If, immediately before the resolution is passed, the parental rights and duties are vested in the parent in relation to whom the resolution is passed jointly with any other person, then on the passing of the resolution the parental rights and duties shall vest jointly in that other person and the organisation in whose care the child is.
- (4) In determining, for the purposes of subsection (1) of this section, whether the condition specified in section 2(1)(b)(i) of the Children Act 1948 is satisfied, if the whereabouts of any parent of the child have remained unknown for twelve months, that parent shall be deemed to have abandoned the child.
- (5) A resolution under subsection (1) may not be passed by a local authority in respect of any child unless—
 - (a) the child is living in the area of the authority either in a voluntary home or with foster parents with whom he has been boarded by the organisation in whose care he is; and
 - (b) that organisation has requested the authority to pass the resolution.
- (6) The parental rights and duties which may vest in an organisation by virtue of this section do not include the right to consent or refuse to consent to the making of an application under section 14 and the right to agree or refuse to agree to the making of an adoption order or an order under section 25 ; and regulations made under section 33(1) of the Children Act 1948 shall apply to the emigration of a child notwithstanding that the parental rights and duties relating to the child are vested in the voluntary organisation.
- (7) Subsection (8) of section 2 of the Children Act 1948 shall apply in relation to a resolution under subsection (1) as if it were a resolution under the said section 2.

61 Duty of local authority to assume parental rights and duties

- (1) If it appears to a local authority, having regard to the interests of the welfare of a child living within their area, the parental rights and duties with respect to whom are by virtue of a resolution under section 60 vested in a voluntary organisation, that it is necessary that the parental rights and duties should no longer be vested in the organisation, the local authority shall resolve that there shall vest in them the parental rights and duties relating to the child.
- (2) The local authority shall within seven days of passing a resolution under subsection (1) by notice in writing inform the organisation and each parent, guardian or custodian of the child whose whereabouts are known to them that the resolution has been passed.

62 Effect of resolutions under sections 60 and 61

- (1) A resolution under subsection (1) of section 60 shall cease to have effect on the passing of a resolution under subsection (1) of section 61.
- (2) Section 6 of the Children Act 1948 shall have effect in relation to a resolution under subsection (1) of section 60 as it has effect in relation to a resolution under section 2 of that Act.

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- (3) A resolution under subsection (1) of section 61 shall be deemed to be a resolution under section 2 of the Children Act 1948 except that sections 2(2) to (7) and 4(3) of that Act shall not apply.

63 Appeals by parents etc.

- (1) Subsections (2) to (5) and (7) of section 2 of the Children Act 1948 shall apply to a resolution under section 60 as they apply to a resolution under the said section 2, with the substitution for the reference in subsection (2) to the vesting of parental rights and duties in the local authority of a reference to the vesting of parental rights and duties in the voluntary organisation.
- (2) An appeal may be made—
- (a) where the complaint relates to a resolution under section 60, by a person deprived of parental rights and duties by the resolution, or
 - (b) where the complaint relates to a resolution under section 61, by a person who but for that resolution and an earlier resolution under section 60 would have parental rights and duties,
- to a juvenile court having jurisdiction in the area of the authority which passed the resolution, on the ground that—
- (i) there was no ground for the making of the resolution, or
 - (ii) that the resolution should in the interests of the child be determined.
- (3) An appeal shall lie to the High Court against the decision of a juvenile court under this section.
- (4) Section 4B of the Children Act 1948 shall apply in relation to proceedings under this section.

Conflict of interest between parent and child

64 Addition of new sections to Children and Young Persons Act 1969

The following heading and sections are inserted after section 32 of the Children and Young Persons Act 1969—

“32A Conflict of interest between parent and child or young person Conflict of Interest between parent and child or young person.

- (1) If before or in the course of proceedings in respect of a child or young person—
- (a) in pursuance of section 1 of this Act, or
 - (b) on an application under section 15(1) of this Act for the discharge of a relevant supervision order or a supervision order made under section 21(2) of this Act on the discharge of a relevant care order; or
 - (c) on an application under section 21(2) of this Act for the discharge of a relevant care order or a care order made under section 15(1) of this Act on the discharge of a relevant supervision order; or
 - (d) on an appeal to the Crown Court under section 2(12) of this Act, or
 - (e) on an appeal to the Crown Court under section 16(8) of this Act against the dismissal of an application for the discharge of a relevant

supervision order or against a care order made under section 15(1) on the discharge of—

- (i) a relevant supervision order; or
 - (ii) a supervision order made under section 21(2) on the discharge of a relevant care order; or
- (f) on an appeal to the Crown Court under section 21(4) of this Act against the dismissal of an application for the discharge of a relevant care order or against a supervision order made under section 21(2) on the discharge of—
- (i) a relevant care order ; or
 - (ii) a care order made under section 15(1) on the discharge of a relevant supervision order,

it appears to the court that there is or may be a conflict, on any matter relevant to the proceedings, between the interests of the child or young person and those of his parent or guardian, the court may order that in relation to the proceedings the parent or guardian is not to be treated as representing the child or young person or as otherwise authorised to act on his behalf.

- (2) If an application such as is referred to in subsection (1)(b) or (c) of this section is unopposed, the court, unless satisfied that to do so is not necessary for safeguarding the interests of the child or young person, shall order that in relation to proceedings on the application no parent or guardian of his shall be treated as representing him or as otherwise authorised to act on his behalf; but where the application was made by a parent or guardian on his behalf the order shall not invalidate the application.
- (3) Where an order is made under subsection (1) or (2) of this section for the purposes of proceedings on an application within subsection (1)(a), (b) or (c) of this section, that order shall also have effect for the purposes of any appeal to the Crown Court arising out of those proceedings.
- (4) The power of the court to make orders for the purposes of an application within subsection (1)(a), (b) or (c) of this section shall also be exercisable, before the hearing of the application, by a single justice.
- (5) In this section—
- " relevant care order " means a care order made under section 1 of this Act;
 - " relevant supervision order " means a supervision order made under section 1 of this Act.

32B Safeguarding of interests of child or young person where section 32A order made.

- (1) Where the court makes an order under section 32A(2) of this Act the court, unless satisfied that to do so is not necessary for safeguarding the interests of the child or young person, shall in accordance with rules of court appoint a guardian ad litem of the child or young person for the purposes of the proceedings. In this subsection " court" includes a single justice.
- (2) Rules of court shall provide for the appointment of a guardian ad litem of the child or young person for the purposes of any proceedings to which an order under section 32A(1) of this Act relates.

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

- (3) A guardian ad litem appointed in pursuance of this section shall be under a duty to safeguard the interests of the child or young person in the manner prescribed by rules of court.”.

65 Legal aid for parents where order made under new section 32A of 1969 Act

In section 28 (power to order legal aid to be given) of the Legal Aid Act 1974—

- (a) in subsection (1), for " subsections (3) and (6)" there is substituted " subsections (3), (6) and (6A) " , and
 (b) the following subsection is inserted after subsection (6)—

“(6A) Where a court makes an order under section 32A of the Children and Young Persons Act 1969 affecting the parent or guardian of a person in relation to any proceedings, it may order that the parent or guardian shall be given legal aid for the purpose of taking such part in the proceedings as may be allowed by rules of court.

In this subsection "guardian" has the same meaning as in the Children and Young Persons Act 1933.”.

66 Safeguarding of interests of children before children's hearings etc. in Scotland

In the Social Work (Scotland) Act 1968 the following section is inserted after section 34—

“34A Safeguarding of interests of children before children's hearings etc.

- (1) In any proceedings—
- (a) before a children's hearing;
 - (b) before the sheriff on an application under section 42(2)(c) of this Act;
 - (c) before the sheriff on an appeal under section 49 or 51 of this Act,
- the chairman (in the case of proceedings referred to in paragraph (a) above) or the sheriff (in any other case)—
- (i) shall consider whether it is necessary for the purpose of safeguarding the interests of the child in the proceedings, because there is or may be a conflict, on any matter relevant to the proceedings, between the interests of the child and those of his parent, to appoint a person to act for that purpose; and
 - (ii) without prejudice to any existing power to appoint a person to represent the interests of the child, may, if he thinks fit, appoint a person to act for the purpose specified in paragraph (i) above.
- (2) The power to make rules under—
- (a) section 35(4) of this Act,
 - (b) section 32 of the Sheriff Courts (Scotland) Act 1971,
- shall include power to make rules providing for—
- (i) the procedure in relation to the disposal of matters arising under this section;

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

- (ii) appointment under subsection (1) of this section, the functions of a person so appointed and any right of such a person to information relating to the proceedings in question.
- (3) The expenses of a person appointed under subsection (1) of this section shall—
 - (a) in so far as reasonably incurred by him in safeguarding the interests of the child in the proceedings, and
 - (b) except in so far as otherwise defrayed in terms of regulations made under section 103(2) of the Children Act 1975,be borne by the local authority for whose area the children's panel from which the relevant children's hearing has been constituted is formed.
- (4) For the purposes of subsection (3) of this section, " relevant children's hearing " means—
 - (a) in the case of proceedings referred to in subsection (1)(a) of this section, the children's hearing;
 - (b) in the case of proceedings referred to in subsection (1)(b) of this section, the children's hearing who have directed the application;
 - (c) in the case of proceedings referred to in subsection (1)(c) of this section, the children's hearing whose decision is being appealed against.”.

Absence from care and children in need of secure accommodation

67 Recovery of children in care of local authorities

- (1) This section applies to a child—
 - (a) who is in the care of a local authority under section 1 of the Children Act 1948 ; and
 - (b) with respect to whom there is in force a resolution under section 2 of that Act; and
 - (c) who—
 - (i) has run away from accommodation provided for him by the local authority under Part II of the said Act; or
 - (ii) has been taken away from such accommodation contrary to section 3(8) of the said Act; or
 - (iii) has not been returned to the local authority as required by a notice served under section 49 of the Children and Young Persons Act 1963 on a person under whose charge and control the child was, in accordance with section 13(2) of the said Act of 1948, allowed to be.
- (2) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that a person specified in the information can produce the child to whom this-section applies, he may issue a summons directed to the person so specified and requiring him to attend and produce the child before a magistrates' court acting for the same petty sessions area as the justice.
- (3) Without prejudice to the powers under subsection (2) above, if a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that a child to whom this section applies is in premises specified in the information, he may issue a search warrant authorising a person named in the warrant, being an officer of

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

the local authority in whose care the child is, to search the premises for the child; and if the child is found, he shall be placed in such accommodation as the local authority may provide for him under Part II of the Children Act 1948.

- (4) A person who, without reasonable excuse, fails to comply with a summons under subsection (2) shall, without prejudice to any liability apart from this subsection, be guilty of an offence and liable on summary conviction to a fine not exceeding £100.

68 Extension of powers under section 32 of Children and Young Persons Act 1969

- (1) Section 32 of the Children and Young Persons Act 1969 (detention of absentees) shall have effect subject to the following provisions of this section.

- (2) In subsection (1) of the said section 32, paragraph (b) shall cease to have effect.

- (3) After subsection (1) of the said section 32, there is inserted the following subsection:—

“(1A) If a child or young person is absent from a place of safety to which he has been taken in pursuance of section 2(5), 16(3) or 28 of this Act without the consent of—

- (a) the person who made the arrangements for his detention in the place of safety in pursuance of the said section 2(5) or 16(3), or
- (b) the person on whose application an authorisation relating to the child or young person has been issued under the said section 28,

he may be arrested by a constable anywhere in the United Kingdom or the Channel Islands without a warrant, and shall, if so arrested, be conducted to the place of safety at the expense of the person referred to in paragraph (a) or (b) (as the case may be) of this subsection.”.

- (4) In subsection (2) of the said section 32, after the words " subsection (1) " there are inserted the words " or (1A) " , and for the words " twenty pounds " there is substituted the word " £100 " .

- (5) After the said subsection (2), the following subsections are inserted—

“(2A) Without prejudice to its powers under subsection (2) of this section, a magistrates' court (within the meaning of that subsection) may, if it is satisfied by information on oath that there are reasonable grounds for believing that a person who is absent as mentioned in subsection (1) or (1A) of this section is in premises specified in the information, issue a search warrant authorising a constable to search the premises for that person.

(2B) A court shall not issue a summons or search warrant under subsection (2) or (2A) of this section in any case where the person who is absent is a person to whom subsection (1A) of this section applies, unless the information referred to in the said subsection (2) or (2A) is given by the person referred to in subsection (1A)(a) or (b) (as the case may be) of this section.”.

- (6) In subsection (3) of the said section 32, for the words " one hundred pounds " there is substituted the word " £400 " .

- (7) In subsection (4) of the said section 32, for the words " subsection (1) " there are substituted the words " subsections (1), (1A) and (2A) " , and for the words " that subsection " there are substituted the words " subsection (1). " .

69 Certificates of unruly character

The court shall not certify under section 22(5) or section 23(2) or (3) of the Children and Young Persons Act 1969 (committals to remand centres or prison) that a child is of so unruly a character that he cannot safely be committed to the care of a local authority unless the conditions prescribed by order made by the Secretary of State are satisfied in relation to that child. In this section, " court" includes a justice.

70 Children of unruly character in Scotland

The following provisions of the Criminal Procedure (Scotland) Act 1975 (which relate to children of unruly character) shall be amended in the manner specified in paragraphs (a) to (c) below—

- (a) in sections 23(1)(b), 24(1), 297(1) and 329(1)(b) of the said Act of 1975 the following words are added at the end—

“; but the court shall not so certify a child unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the child.”;

- (b) in sections 23(3) and 329(3) of the said Act of 1975 the following words are added at the end—

“; but a commitment shall not be so revoked unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the said person.”;

- (c) in sections 24(2) and 297(2) of the said Act of 1975 the following words are added at the end—

“; but a commitment shall not be so revoked unless such conditions as the Secretary of State may by order made by statutory instrument prescribe are satisfied in relation to the child.”.

71 Grants in respect of secure accommodation for children in England and Wales

The following section is inserted after section 64 of the Children and Young Persons Act 1969—

“64A Grants in respect of secure accommodation.

- (1) The Secretary of State may make to local authorities out of moneys provided by Parliament grants of such amount and subject to such conditions as he may with the consent of the Treasury determine in respect of expenditure incurred by the authorities in providing secure accommodation in community homes other than assisted community homes.
- (2) The Secretary of State may with the consent of the Treasury require the local authority to repay the grant, in whole or in part, if the secure accommodation in respect of which the grant was made (including such accommodation in a controlled community home) ceases to be used as such.
- (3) In this section " secure accommodation" means accommodation provided for the purposes of restricting the liberty of children in a community home.”.

72 Grants in respect of secure accommodation for children in Scotland

The following section is inserted after section 59 of the Social Work (Scotland) Act 1968—

“59A Grants in respect of secure accommodation for children.

- (1) The Secretary of State may make to a local authority grants of such amount and subject to such conditions as he may with the consent of the Treasury determine in respect of expenditure incurred by the authority in—
 - (a) providing;
 - (b) joining with another local authority in providing; or
 - (c) contributing by way of grant under section 10(3) of this Act to the provision by a voluntary organisation of,

secure accommodation in residential establishments.
- (2) The conditions subject to which grants are made under subsection (1) of this section may include conditions for securing the repayment in whole or in part of such grants.
- (3) In this section " secure accommodation" means accommodation provided for the purpose of restricting the liberty of children.”.

Further amendments of Social Work (Scotland) Act 1968

73 Amendment of s. 15 of Social Work (Scotland) Act 1968

In section 15 of the Social Work (Scotland) Act 1968 the following subsections are inserted after subsection (3)—

- “(3A) Subsection (8) (penalty for taking away a child in care etc.) of section 17 of this Act shall apply to a child in the care of a local authority under this section, notwithstanding that no resolution is in force under section 16 of this Act with respect to the child, if he has been in the care of that local authority throughout the preceding six months; and for the purposes of the application of paragraph (b) of that subsection in such a case a parent or guardian of the child shall not be taken to have lawful authority to take him away:

Provided that that subsection shall not by virtue of this subsection apply in relation to an act done—

- (a) with the consent of the local authority, or
 - (b) by a parent or guardian of the child who has given the local authority not less than 28 days' notice of his intention to do it.
- (3B) The Secretary of State may by order, a draft of which has been approved by each House of Parliament, amend subsection (3A) of this section by substituting a different period for the period of 28 days or of six months mentioned in that subsection (or for the period which by a previous order under this subsection, was substituted for that period).”.

74 Substitution of s. 16 of Social Work (Scotland) Act 1968

The following section is substituted for section 16 of the Social Work (Scotland) Act 1968—

“16 Resolution by local authority in respect of assumption and vesting of parental rights and powers.

- (1) Subject to the provisions of this Part of this Act, a local authority may resolve—
- (a) that there shall vest in them the relevant parental rights and powers with respect to any child who is in their care under section 15 of this Act; or
 - (b) that there shall vest in a voluntary organisation which is an incorporated body, or a trust within the meaning of section 2(a) of the Trusts (Scotland) Act 1921, the relevant parental rights and powers with respect to any child who is in the care of that organisation,
- if it appears to the local authority—
- (i) that the parents of the child are dead and that he has no guardian ; or
 - (ii) that there exists in respect of a parent or guardian of the child (the said parent or guardian being hereafter in this Part of this Act referred to as the person on whose account the resolution was passed) any of the circumstances specified in subsection (2) of this section; or
 - (iii) that a resolution under this subsection is in force in terms of sub-paragraph (ii) above in relation to one parent of the child and that parent is, or is likely to become, a member of the household comprising the child and his other parent; or
 - (iv) that throughout the three years preceding the passing of the resolution the child has been in the care of a local authority under section 15 of this Act, or in the care of a voluntary organisation or partly the one and partly the other.
- (2) The circumstances referred to in sub-paragraph (ii) of subsection (1) of this section are that the person on whose account the resolution was passed—
- (a) has abandoned the child ; or
 - (b) suffers from some permanent disability rendering him incapable of caring for the child ; or
 - (c) while not falling within paragraph (b) of this subsection, suffers from a mental disorder (within the meaning of the Mental Health (Scotland) Act 1960) which renders him unfit to have the care of the child; or
 - (d) is of such habits or mode of life as to be unfit to have the care of the child; or
 - (e) has so persistently failed without reasonable cause to discharge the obligations of a parent or guardian as to be unfit to have the care of the child.
- (3) In this section " the relevant parental rights and powers " means all the rights and powers in relation to the child (other than the right to consent or refuse to consent to the making of an application under section 14 or 25 of the Children Act 1975 and the right to agree or refuse to agree to the making of an adoption order)—

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- (a) where the resolution was passed by virtue of circumstances specified in sub-paragraph (i) of subsection (1) of this section, which the deceased parents would have if they were still living;
 - (b) where the resolution was passed by virtue of circumstances specified in sub-paragraph (ii) of that subsection, of the person on whose account the resolution was passed ;
 - (c) where the resolution was passed by virtue of circumstances specified in sub-paragraph (iii) of that subsection, of the parent other than the one on whose account the previous resolution was passed;
 - (d) where the resolution was passed by virtue of circumstances specified in sub-paragraph (iv) of that subsection, of the parents or guardian of the child.
- (4) A local authority shall not pass a resolution under paragraph (b) of subsection (1) of this section unless—
- (a) it is satisfied that the child is not in the care of any local authority under any enactment; and
 - (b) it is satisfied that it is necessary in the interests of the welfare of the child for the parental rights and powers to be vested in the voluntary organisation ; and
 - (c) the child is living in the area of the local authority either in a residential establishment or with foster parents with whom he has been boarded out by the voluntary organisation in whose care he is ; and
 - (d) that organisation has requested the local authority to pass the resolution.
- (5) In the case of a resolution passed under subsection (1) of this section by virtue of circumstances specified in sub-paragraph (ii), (iii) or (iv) thereof, unless the person whose parental rights and powers have under the resolution vested in the local authority or in the voluntary organisation as the case may be, has consented in writing to the passing of the resolution, the local authority, if that person's whereabouts are known to them, shall forthwith after the passing of the resolution serve on him notice in writing of the passing thereof.
- (6) Every notice served by a local authority under subsection (5) of this section shall inform the person on whom the notice is served of his right to object to the resolution and of the effect of any objection made by him.
- (7) If, not later than one month after notice is served on a person under subsection (5) of this section, he serves a counter-notice in writing on the local authority objecting to the resolution, the resolution shall, subject to the provisions of subsection (8) of this section, lapse on the expiry of fourteen days from the service of the counter-notice.
- (8) Where a counter-notice has been served on a local authority under subsection (7) of this section, the authority may, not later than fourteen days after the receipt by them of the counter-notice, make a summary application in respect thereto to the sheriff having jurisdiction in the area of the authority, and in that event the resolution shall not lapse until the determination of the application; and the sheriff may, on the hearing of the application, order that the resolution shall not lapse by reason of the service of the counter-notice:

Provided that the sheriff shall not so order unless satisfied—

- (a) that it is in the interests of the child to do so; and
 - (b) that the grounds mentioned in subsection (1) of this section on which the local authority purported to pass the resolution were made out; and
 - (c) that at the time of the hearing there continued to be grounds on which a resolution under subsection (1) of this section could be founded.
- (9) While a resolution passed under subsection (1) of this section by virtue of circumstances specified in sub-paragraph (ii), (iii) or (iv) thereof is in force with respect to a child, that part of subsection (3) of section 15 of this Act from the words " and nothing in this section shall authorise" onwards shall not apply in relation to the person who, but for the resolution, would have the relevant parental rights and powers in relation to the child.
- (10) Any notice under this section (including a counter-notice) may be served by post, but a notice served by a local authority under subsection (5) of this section shall not be duly served by post unless it is sent by registered post or recorded delivery service.
- (11) A resolution under this section shall cease to have effect if—
- (a) the child becomes the subject of an adoption order within the meaning of Schedule 2 to the Children Act 1975 ; or
 - (b) an order in respect of the child is made under section 14 or section 25 of the Children Act 1975; or
 - (c) a person is appointed, under section 4(2A) of the Guardianship of Infants Act 1925, to be the guardian of the child ; or
 - (d) it is a resolution under paragraph (b) of subsection (1) of this section and a resolution is passed under subsection (1) of section 16A of this Act in respect of the child.
- (12) If the whereabouts of any parent or guardian of a child have remained unknown for twelve months, and throughout that period the child has been in the care of a local authority under section 15 of this Act, or in the care of a voluntary organisation, or partly the one and partly the other, then for the purposes of this section that parent or guardian shall be deemed to have abandoned the child.
- (13) The Secretary of State may by order, a draft of which has been approved by each House of Parliament, amend sub-paragraph (iv) of subsection (1) of this section to substitute a different period for the period of three years mentioned in that sub-paragraph (or for the period which, by a previous order under this subsection, was substituted for that period).”.

75 Duty of local authority in Scotland to assume parental rights and powers vested in a voluntary organisation

The following section is inserted after section 16 of the Social Work (Scotland) Act 1968—

“16A Duty of local authority to assume parental rights and powers vested in a voluntary organisation.

- (1) If it appears to a local authority, having regard to the interests of the welfare of a child living within their area, the parental rights and powers in respect of whom are by virtue of a resolution under section 16(1)(b) of this Act (hereafter

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

in this section referred to as " the earlier resolution ") vested in a voluntary organisation, that it is necessary that the said parental rights and powers should no longer be vested in the organisation, the local authority shall resolve that the said parental rights and powers shall vest in them ; and the said parental rights and powers shall so vest from the date of the resolution under this subsection.

- (2) The local authority shall, within seven days of passing a resolution under subsection (1) of this section, by notice in writing inform—
 - (a) the organisation who but for that resolution ; and
 - (b) any person, in so far as that person's whereabouts are known to them, who, but for that resolution and the earlier resolution, would have the parental rights and powers in respect of the child, of the passing thereof.
- (3) On a summary application being made for the determining of a resolution under subsection (1) of this section by a person who but for that resolution and the earlier resolution would have the parental rights and powers in respect of the child, the sheriff having jurisdiction where the applicant resides may order that—
 - (a) the resolution under subsection (1) of this section shall continue to have effect; or
 - (b) the resolution under subsection (1) of this section shall cease to have effect and that the earlier resolution shall again take effect; or
 - (c) the resolution under subsection (1) of this section shall cease to have effect and that the parental rights and powers in respect of the child shall again vest in the applicant; or
 - (d) the resolution under subsection (1) of this section shall continue to have effect, but that either for a fixed period or until the sheriff, or if the order so provides, the local authority, otherwise directs, the local authority shall allow the care of the child to be taken over by, and the child to be under the control of, the applicant.
- (4) In hearing an application under subsection (3) of this section the sheriff may consider whether there was any ground for the making of the earlier resolution, and if he is satisfied that there was no ground for the making of that earlier resolution he shall make an order under subsection (3)(c) of this section.
- (5) In this section " the parental rights and powers " means all the rights and powers in relation to the child which in accordance with the earlier resolution were vested in the voluntary organisation.
- (6) While a resolution under subsection (1) of this section is in force with respect to a child, the child shall be deemed to have been received into and to be in the care of the local authority by virtue of section 15 of this Act, and subsections (2) to (5) of that section shall apply accordingly; except that where the earlier resolution was passed by virtue of circumstances specified in subparagraph (ii), (iii) or (iv) of subsection (1) of section 16 of this Act, that part of subsection (3) of section 15 of this Act from the words " and nothing in this section shall authorise " onwards shall not apply in relation to the person who but for the earlier resolution and the resolution under subsection (1) of this section, would have the parental rights and powers in relation to the child.
- (7) Subsection (11)(a), (b) and (c) of section 16, subsections (3) and (4) to (9) of section 17 and subsections (1), (2), (4) and (4A) of section 18 of this Act

shall apply to a resolution under this section as they apply to a resolution under section 16(1)(a) of this Act.

- (8) A notice served by a local authority under subsection (2) of this section shall not be duly served by post unless it is sent by registered post or recorded delivery service.”.

76 Return of child taken away in breach of section 17(8) or (9) of Social Work (Scotland) Act 1968

In section 17 of the Social Work (Scotland) Act 1968 (effect of assumption of parental rights) the following subsection is inserted after subsection (9)—

- “(10) Where an offence under subsection (8) or (9) of this section has been or is believed to have been committed, a constable, or any person authorised by any court or by any justice of the peace, may take and return the child to the local authority or voluntary organisation in whom are vested the parental rights and powers relating to the child.”.

77 Making of adoption orders where local authority have parental rights

In section 18 of the Social Work (Scotland) Act 1968 the following subsection is inserted after subsection (4)—

- “(4A) A court may entertain an application under—
- (a) section 8 of the Children Act 1975 for an adoption order in respect of a child ;
 - (b) section 14 of the Children Act 1975 for an order declaring a child free for adoption ;
 - (c) section 25 of the Children Act 1975 for an order vesting the parental rights and duties relating to a child;

notwithstanding that, by virtue of a resolution under section 16 of this Act, a local authority or a voluntary organisation have parental rights with respect to him.”.

78 Safeguarding of interests of children in proceedings in Scotland relating to the assumption of parental rights

In the Social Work (Scotland) Act 1968 the following section is inserted after section 18—

“18A Safeguarding of interests of children in proceedings relating to the assumption of parental rights.

- (1) In any proceedings under section 16(8), 16A(3) or 18(3) of this Act, the sheriff—
- (a) shall consider whether it is necessary to appoint a person for the purpose of safeguarding the interests of the child in the proceedings ; and
 - (b) without prejudice to any existing power to appoint a person to represent the interests of the child, may, if he thinks fit, appoint a person to act for the purpose specified in paragraph (a) above.

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

- (2) The power to make rules under section 32 of the Sheriff Courts (Scotland) Act 1971 shall include power to make rules providing for—
- (a) the procedure in relation to the disposal of matters arising under this section;
 - (b) appointment under subsection (1) of this section, the functions of a person so appointed and any right of such a person to information relating to the proceedings in question.”.

79 Amendment of section 20 of Social Work (Scotland) Act 1968

The following subsection is substituted for subsection (1) of section 20 of the Social Work (Scotland) Act 1968—

- “(1) Where a child is in the care of a local authority under any enactment, the local authority shall, in reaching any decision relating to the child, give first consideration to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.”.

80 Review of case of child in care in Scotland

In the Social Work (Scotland) Act 1968 the following section is inserted after section 20—

“20A Review of case of child in care.

- (1) Without prejudice to their general duty under section 20(1) of this Act, it shall be the duty of a local authority who have at any time had a child in their care throughout the preceding six months and have not during that period held a review of his case, to review his case as soon as is practicable after the expiration of that period and, if a supervision requirement is in force with respect to him, the local authority shall consider in the course of the review whether to refer his case to their reporter for review of that requirement by a children's hearing.
- (2) The Secretary of State may by regulations—
- (a) amend subsection (1) of this section by—
 - (i) substituting a different period for the period of six months mentioned in that subsection (or for any period which, by previous regulations under this subsection, was substituted for that period);
 - (ii) specifying different periods in respect of the first review under that subsection occurring after a child has been taken into care, and in respect of subsequent such reviews ;
 - (b) make provision as to the manner in which cases are to be reviewed under this section ;
 - (c) make provision as to the considerations to which the local authority are to have regard in reviewing cases under this section.”.

81 Restriction on removal of child from care of voluntary organisation

The following section is inserted after section 25 of the Social Work (Scotland) Act 1968—

“25A Restriction on removal of child from care of voluntary organisation.

- (1) Section 17(8) of this Act shall apply in relation to a child who is not in the care of a local authority under section 15 of this Act but who is in the care of a voluntary organisation, as it applies by virtue of subsection (3A) of the said section 15 to a child in the care of a local authority except that, in the case of a child who is not in the care of a local authority, references in subsection (3 A) to a local authority shall be construed as references to the voluntary organisation in whose care the child is.
- (2) For the purposes of this section, a child is in the care of a voluntary organisation if the voluntary organisation is providing accommodation for the child in a residential establishment or has boarded out the child.”

82 Power of reporters to conduct proceedings under Social Work (Scotland) Act 1968

The following section is inserted after section 36 of the Social Work (Scotland) Act 1968—

“36A Power of reporters to conduct proceedings before a sheriff.

The Secretary of State and the Lord Advocate may, by regulations—

- (a) empower officers or any officer or class of officers appointed under section 36 of this Act, whether or not they are advocates or solicitors, to conduct before a sheriff—
 - (i) any proceedings which, under this Act are heard by the sheriff in chambers;
 - (ii) any application under section 37 or 40 of this Act in relation to a warrant;
- (b) prescribe such requirements as they think fit as to qualifications, training or experience necessary for any officer to be so empowered.”

83 Amendment of section 37 of Social Work (Scotland) Act 1968

In section 37 of the Social Work (Scotland) Act 1968—

- (a) the following subsection is inserted after subsection (1)—

“(1A) Where a local authority receive information suggesting that a child may be in need of compulsory measures of care, they shall—

- (a) cause enquiries to be made into the case unless they are satisfied that such enquiries are unnecessary; and
 - (b) if it appears to them that the child may be in need of compulsory measures of care, give to the reporter such information about the child as they may have been able to discover.”;
- (b) for subsection (2) there is substituted—

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

“(2) A constable or any person authorised by any court or by any justice of the peace may take to a place of safety any child—

- (a) in respect of whom any of the offences mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1975 has been or is believed to have been committed; or
- (b) who is a member of the same household as a child in respect of whom such an offence has been or is believed to have been committed ; or
- (c) who is, or is likely to become, a member of the same household as a person who has committed or is believed to have committed such an offence ; or
- (d) in respect of whom an offence under section 21(1) of the Children and Young Persons (Scotland) Act 1937 has been or is believed to have been committed ; or
- (e) who is likely to be caused unnecessary suffering or serious impairment of health because there is, or is believed to be, in respect of the child a lack of parental care,

and any child so taken to a place of safety or any child who has taken refuge in a place of safety may be detained there until arrangements can be made for him to be brought before a children's hearing under the following provisions of this Part of this Act; and, where a child is so detained, the constable or the person authorised as aforesaid or the occupier of the place of safety shall forthwith inform the reporter of the case.”;

- (c) in subsection (5), after " renewed " there is inserted " by a children's hearing " ;
- (d) the following subsections are inserted after subsection (5)—

“(5A) Where a warrant has been renewed under subsection (5) of this section but it appears to the reporter—

- (a) that the children's hearing will not be able to dispose of the child's case before the expiry of the period of detention required by the warrant as renewed ; and
- (b) that further detention of the child is necessary in the child's own interest,

the reporter may apply to the sheriff for a warrant requiring the child to be detained in a place of safety for such a period not exceeding twenty-one days as may be necessary and the sheriff may issue such a warrant if he is satisfied that such detention is necessary in the child's own interest.

(5B) On cause shown a warrant authorising detention under subsection (5A) of this section may be renewed by the sheriff on one occasion only, for the period mentioned in that subsection on the application of the reporter.”.

84 Amendment of section 40 of Social Work (Scotland) Act 1968

In section 40 of the Social Work (Scotland) Act 1968—

- (a) for subsection (7) there is substituted—

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

- “(7) Where a children's hearing before whom a child is brought are unable to dispose of his case and—
- (a) have reason to believe that the child may not attend at any hearing of his case, or at any proceedings arising from the case or may fail to comply with a requirement under section 43(4) of this Act; or
 - (b) are satisfied that detention of the child is necessary in his own interest,
- they may issue a warrant requiring the child to be detained in a place of safety for such a period not exceeding twenty-one days as may be necessary.”;
- (b) for subsection (8) there is substituted—
- “(8) On cause shown a warrant authorising detention under subsection (7) of this section may be renewed by a children's hearing on one occasion only, for the period mentioned in that subsection, on the application of the reporter.”;
- (c) the following subsections are inserted after subsection (8)—
- “(8A) Where a warrant has been renewed under subsection (8) of this section but it appears to the reporter—
- (a) that the children's hearing will not be able to dispose of the child's case before the expiry of the period of detention required by the warrant as renewed; and
 - (b) that further detention of the child is necessary in the child's own interest,
- the reporter may apply to the sheriff for a warrant requiring the child to be detained in a place of safety for such a period not exceeding twenty-one days as may be necessary, and the sheriff may issue such a warrant if he is satisfied that such detention is necessary in the child's own interest.
- (8B) On cause shown, a warrant authorising detention under subsection (8A) of this section may be renewed by the sheriff on one occasion only, for the period mentioned in that subsection, on the application of the reporter.”.

PART IV

FURTHER AMENDMENTS OF LAW OF ENGLAND AND WALES

Explanation of concepts

85 Parental rights and duties

- (1) In this Act, unless the context otherwise requires, " the parental rights and duties " means as respects a particular child (whether legitimate or not), all the rights and duties which by law the mother and father have in relation to a legitimate child and his property; and references to a parental right or duty shall be construed accordingly and shall include a right of access and any other element included in a right or duty.

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

- (2) Subject to section 1(2) of the Guardianship Act 1973 (which relates to separation agreements between husband and wife), a person cannot surrender or transfer to another any parental right or duty he has as respects a child.
- (3) Where two or more persons have a parental right or duty jointly, any one of them may exercise or perform it in any manner without the other or others if the other or, as the case may be, one or more of the others have not signified disapproval of its exercise or performance in that manner.
- (4) From the death of a person who has a parental right or duty jointly with one other person, or jointly with two or more other persons, that other person has the right or duty exclusively or, as the case may be, those other persons have it jointly.
- (5) Where subsection (4) does not apply on the death of a person who has a parental right or duty, that right or duty lapses, but without prejudice to its acquisition by another person at any time under any enactment.
- (6) Subsections (4) and (5) apply in relation to the dissolution of a body corporate as they apply in relation to the death, of an individual.
- (7) Except as otherwise provided by or under any enactment, while the mother of an illegitimate child is living she has the parental rights and duties exclusively.

86 Legal custody

In this Act, unless the context otherwise requires, " legal custody " means, as respects a child, so much of the parental rights and duties as relate to the person of the child (including the place and manner in which his time is spent); but a person shall not by virtue of having legal custody of a child be entitled to effect or arrange for his emigration from the United Kingdom unless he is a parent or guardian of the child.

87 Actual custody

- (1) A person has actual custody of a child if he has actual possession of his person, whether or not that possession is shared with one or more other persons.
- (2) While a person not having legal custody of a child has actual custody of the child he has the like duties in relation to the child as a custodian would have by virtue of his legal custody.
- (3) In this Act, unless the Context otherwise requires, references to the person with whom a child has his home refer to the person who, disregarding absence of the child at a hospital or boarding school and any other temporary absence, has actual custody of the child.

88 Child in care of voluntary organisation

A child is in the care of a voluntary organisation if—

- (a) the organisation has actual custody of him, or
- (b) having had actual custody of him, the organisation has transferred that custody to an individual who does not have legal custody of him.

89 Amendment of Interpretation Act 1889

(1) In the Interpretation Act 1889 after section 19 there is inserted the following section—

“19A Meaning of expressions relating to children.

(1) In any Act passed after the Children Act 1975, unless the contrary intention appears—

- (a) the expression "the parental rights and duties ",
 - (b) the expression " legal custody " (as respects a child), and
 - (c) references to the person with whom a child has his home,
- shall be construed in accordance with Part IV of the Children Act 1975.

(2) This section does not extend to Scotland or Northern Ireland.”

Reports in guardianship and matrimonial proceedings

90 Procedure in guardianship proceedings

(1) The following subsections are substituted for subsections (2) and (3) of section 6 of the Guardianship Act 1973 :—

“(2) A report made in pursuance of subsection (1) above to a magistrates' court shall be made to the court at a hearing of the application unless it is in writing in which case—

- (a) a copy of the report shall be given to each party to the proceedings or to his counsel or solicitor either before or during a hearing of the application ; and
- (b) if the court thinks fit, the report, or such part of the report as the court requires, shall be read aloud at a hearing of the application.

(3) A magistrates' court may and, if requested to do so at the hearing by a party to the proceedings or his counsel or solicitor, shall, require the officer by whom the report was made to give evidence of or with respect to the matters referred to in the report and if the officer gives such evidence, any party to the proceedings may give or call evidence with respect to any such matter or any matter referred to in the officer's evidence.

(3A) A magistrates' court may take account of—

- (a) any statement contained in a report made at a hearing of the application or of which copies have been given to the parties or their representatives in accordance with subsection (2)(a) above ; and
- (b) any evidence given by the officer under subsection (3) above,

in so far as the statement or evidence is, in the opinion of the court, relevant to the application, notwithstanding any enactment or rule of law to the contrary.”

(2) The following subsection is added after subsection (5) of the said section 6—

“(6) A single justice may request a report under subsection (1) of this section before the hearing of the application, but in such a case the report shall be made to the court which hears the application, and the foregoing provisions of this section shall apply accordingly.”

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

91 Procedure in matrimonial proceedings

(1) The following subsections are substituted for subsections (3) and (4) of section 4 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960—

“(3) A report made in pursuance of subsection (2) of this section shall be made to the court at a hearing of the complaint unless it is in writing in which case—

- (a) a copy of the report shall be given to each party to the proceedings or to his counsel or solicitor either before or during a hearing of the complaint; and
- (b) if the court thinks fit, the report, or such parts of the report as the court requires, shall be read aloud at a hearing of the complaint.

(4) The court may and, if requested to do so at the hearing by a party to the proceedings or his counsel or solicitor, shall, require the officer by whom the report was made to give evidence on or with respect to the matters referred to in the report and if the officer gives such evidence, any party to the proceedings may give or call evidence on or with respect to any such matter or any matter referred to in the officer's evidence.

(4A) Subject to the next following subsection, the court may take account of—

- (a) any statement contained in a report made at a hearing of the complaint or of which copies have been given to the parties or their representatives in accordance with subsection (3)(a) of this section ; and
- (b) any evidence given by the officer under subsection (4) of this section, in so far as the statement or evidence relates to the matters specified by the court under subsection (2) of this section, notwithstanding any enactment or rule of law to the contrary.”.

(2) In Subsection (5) of the said section 4, for "subsection (4) " there is substituted " subsections (4) and (4A) ".

Registration of births

92 Registration of births of abandoned children

The following section is inserted after section 3 of the Births and Deaths Registration Act 1953—

“3A Registration of births of abandoned children.

- (1) Where the place and date of birth of a child who was abandoned are unknown to, and cannot be ascertained by, the person who has charge of the child, that person may apply to the Registrar General for the child's birth to be registered under this section.
- (2) On an application under this section the Registrar General shall enter in a register maintained at the General Register Office—
 - (a) as the child's place of birth, if the child was found by the applicant or by any person from whom (directly or indirectly) the applicant took charge of the child, the registration district mid sub-district where the child was found, or, in any other case, where the child was abandoned ;

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- (b) as the child's date of birth, the date which, having regard to such evidence as is produced to him, appears to him to be the most likely date of birth of the child, and
 - (c) such other particulars as may be prescribed.
- (3) The Registrar General shall not register a child's birth under this section if—
- (a) he is satisfied that the child was not born in England or Wales ; or
 - (b) the child has been adopted in pursuance of a court order made in the United Kingdom, the Isle of Man or the Channel Islands ; or
 - (c) subject to subsection (5) below, the child's birth is known to have been previously registered under this Act.
- (4) If no entry can be traced in any register of births relating to a person who has attained the age of 18 and has not been adopted as aforesaid, that person may apply to the Registrar General for his birth to be registered under this section.
- (5) On the application of—
- (a) a person having the charge of a child whose birth had been registered under this Act by virtue of the proviso to section 1 of this Act (as originally enacted), or
 - (b) any such child who has attained the age of 18 years,
- the Registrar General shall re-register the birth of the child under this section, and shall direct the officer having custody of the register of births in which the entry relating to the child was previously made to enter in the margin of the register a reference to the re-registration of the birth.”

93 Registration of father of illegitimate child

- (1) At the end of paragraph (b) of section 10 of the Births and Deaths Registration Act of 1953 (which makes provision for the registration of fathers of illegitimate children) there is added “or
- (c) at the request of the mother (which shall be made in writing) on production of—
 - (i) a certified copy of an order made under section 4 of the Affiliation Proceedings Act 1957 naming that person as the putative father of the child, and
 - (ii) if the child has attained the age of 16 years, the written consent of the child to the registration of that person as his father.”
- (2) After the said section 10 there is inserted the following section—

“10A Re-registration of births of illegitimate children.

- (1) Where the birth of an illegitimate child has been registered under this Act but no person has been registered as the child's father, the registrar shall re-register the birth so as to show a person as the father—
- (a) at the joint request of the mother and of that person; or
 - (b) at the request of the mother on production of—
 - (i) a declaration in the prescribed form made by the mother stating that that person is the father of the child ; and

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- (ii) a statutory declaration made by that person acknowledging himself to be the father of the child ; or
- (c) at the request of the mother (which shall be made in writing) on production of—
 - (i) a certified copy of an order made under section 4 of the Affiliation Proceedings Act 1957 naming that person as the putative father of that child, and
 - (ii) if the child has attained the age of 16 years, the written consent of the child to the registration of that person as his father;

but no birth shall be re-registered under this section except in the prescribed manner and with the authority of the Registrar General.
- (2) On the re-registration of a birth under this section—
 - (a) the registrar and the mother shall sign the register;
 - (b) in the case of a request under paragraph (a) of subsection (1) of this section, the other person making the request shall also sign the register; and
 - (c) if the re-registration takes place more than three months after the birth, the superintendent registrar shall also sign the register.”.
- (3) In section 9 of the said Act of 1953 (which enables information required to be given to the registrar to be given to other persons) after subsection (3) there are added the following subsections—
 - “(4) A request made under section 10 of this Act may be included in a declaration under subsection (1) of this section, and, if the request is made under paragraph (b) or (c) of that section, the documents required by that paragraph to be produced shall be produced to the officer in whose presence the declaration is made and sent by him with the declaration to the registrar.
 - (5) A request made under section 10A of this Act instead of being made to the registrar may be made by making and signing in the presence of and delivering to a prescribed officer a statement in the prescribed form and producing to the officer any documents required to be produced by that section, and—
 - (a) the officer shall send the request together with those documents, if any, to the registrar who shall with the authority of the Registrar General re-register the birth as if the request had been made to him; and
 - (b) the person or persons who sign the statement shall be deemed to have signed the register as required by subsection (2) of that section.”.

Extent of Part IV

94 Extent of Part IV

This Part does not extend to Scotland.

PART V

MISCELLANEOUS AND SUPPLEMENTAL

Foster children

95 Visiting of foster children

- (1) In section 1 of the Children Act 1958 (visiting of foster children), the words " so far as appears to the authority to be appropriate " shall cease to have effect, and for the words " from time to time " there are substituted the words " in accordance with regulations made under section 2A of this Act " .
- (2) In section 1A of the Children Act 1958 (visiting of foster children in Scotland) the words " where the local authority consider such a course to be necessary or expedient for the purposes of this section," shall cease to have effect, and for the words " from time to time" there are substituted the words " in accordance with regulations made under section 2A of this Act. " .
- (3) The following section is inserted in the said Act after section 2—

“2A Visits to foster children.

- (1) The Secretary of State may make regulations requiring foster children in a local authority's area to be visited by an officer of the local authority on specified occasions or within specified periods of time.
- (2) Every person who is maintaining a foster child within the area of a local authority on the date on which regulations made under subsection (1) of this section come into operation, and who before that date has not given notice in respect of the child to the local authority under section 3(1) of this Act, shall within eight weeks of that date give written notice that he is maintaining the child to the local authority.
- (3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.
- (4) In section 3 of the said Act, as it applies to England and Wales, (duty of persons maintaining foster children to notify local authority)—
 - (a) in subsection (5A), for the words " one or more foster children " there are substituted the words " a foster child " , and for the words " foster children" and " any foster children " there are substituted the words " that foster child " ;
 - (b) in subsection (5B) for the words " foster children " there are substituted the words " a foster child " , and for the words " any of them as a " there is substituted the word " that " ; and
 - (c) the following subsection is added at the end—
 - “(8) Subsection (2A) of this section shall cease to have effect on the date regulations made under section 2A of this Act come into operation.”.

96 Notification by parents

(1) The following section is inserted in the Children Act 1958 after section 3—

“3A Notification by parents.

- (1) The Secretary of State may by regulations made by statutory instrument make provision for requiring parents whose children are or are going to be maintained as foster children to give to the local authority for the area where the children are, or are going to be, living as foster children, such information about the fostering as may be specified in the regulations.
- (2) Regulations under this section—
 - (a) may include such incidental and supplementary provisions as the Secretary of State thinks fit;
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament”.
- (2) In section 14 of the said Act (offences), in subsection (1)(a), after the words " this Part of this Act" there are inserted the words " or under regulations made under section 3A of this Act.

97 Advertisements relating to foster children

(1) In section 37 of the Children Act 1958 the following subsections are inserted after subsection (1)—

- “(1A) The Secretary of State may by regulations prohibit the parent or guardian of any child from publishing or causing to be published an advertisement indicating that foster parents are sought for the child.
- (1B) The Secretary of State may by regulations prohibit—
 - (a) a member of a class of persons specified in the regulations, or
 - (b) a person other than a person, or other than a member of a class of persons, specified in the regulations,from publishing or causing to be published any advertisement indicating that he is willing to undertake, or to arrange for, the care and maintenance of a child.
- (1C) Regulations made under this section—
 - (a) may make different provision for different cases or classes of cases, and
 - (b) may exclude certain cases or classes of cases, and shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”.
- (2) In subsection (2) of the said section 37, after the words " this section " there are inserted the words " or of regulations made under this section ".

Inquiries

98 Inquiries in England and Wales

- (1) The Secretary of State may cause an inquiry to be held into any matter relating to—
 - (a) the functions of the social services committee of a local authority, in so far as those functions relate to children ;
 - (b) the functions of an adoption agency ;
 - (c) the functions of a voluntary organisation in so far as those functions relate to voluntary homes;
 - (d) a home maintained by the Secretary of State for the accommodation of children who are in the care of local authorities and are in need of the particular facilities and services provided in the: home;
 - (e) the detention of a child under section 53 of the Children and Young Persons Act 1933.
- (2) The Secretary of State may, before an inquiry is commenced, direct that it shall be held in private, but where no such direction has been given, the person holding the inquiry may if he thinks fit hold it or any part of it in private.
- (3) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section.
- (4) In this section—
 - " functions " includes powers and duties which a person has otherwise than by virtue of any enactment;
 - " voluntary home " means a home or other institution for the boarding, care and maintenance of poor children which is supported wholly or partly by voluntary contributions, but does not include a mental nursing home or residential home for mentally disordered persons within the meaning of Part III of the Mental Health Act 1959.
- (5) This section does not apply to Scotland.

99 Inquiries in Scotland

- (1) In Scotland the Secretary of State may cause an inquiry to be held into any matter relating to—
 - (a) the functions of a local authority under the Social Work (Scotland) Act 1968 in so far as the matter relates to children;
 - (b) the functions of a local authority under the enactments specified in paragraph (a) of section 1(4) and paragraphs (b) to (e) and (h) of section 2(2) of the Social Work (Scotland) Act 1968 ;
 - (c) the functions of an adoption society ;
 - (d) the functions of a voluntary organisation in so far as those functions relate to establishments to which sections 61 to 68 of the Social Work (Scotland) Act 1968 apply and in so far as the matter relates to children ; or
 - (e) the detention of a child under—
 - (i) section 57 or 58A of the Children and Young Persons (Scotland) Act 1937 ; or

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- (ii) section 206 or 413 of the Criminal Procedure (Scotland) Act 1975.
- (2) The Secretary of State may, before an inquiry is commenced, direct that it shall be held in private, but where no such direction has been given, the person holding the inquiry may if he thinks fit hold it or any part of it in private.
- (3) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section.
- (4) In this section " functions " includes powers and duties exercisable otherwise than by virtue of any enactment.

Supplemental

100 Courts

- (1) In this Act " authorised court", as respects an application for an order relating to a child, shall be construed as follows.
- (2) If the child is in England or Wales when the application is made, the following are authorised courts—
 - (a) the High Court;
 - (b) the county court within whose district the child is and, in the case of an application under section 14, any county court within whose district a parent or guardian of the child is ;
 - (c) any other county court prescribed by rules made under section 102 of the County Courts Act 1959 ;
 - (d) a magistrates' court within whose area the child is and, in the case of an application under section 14, a magistrates' court within whose area a parent or guardian of the child is.
- (3) If the child is in Scotland when the application is made, the following are authorised courts—
 - (a) the Court of Session ;
 - (b) the sheriff court of the sheriffdom within which the child is.
- (4) If, in the case of an application for an adoption order or an order under section 14, the child is not in Great Britain when the application is made, the following are authorised courts;—
 - (a) the High Court;
 - (b) the Court of Session.
- (5) In the case of a Convention adoption order paragraphs (b), (c) and (d) of subsection (2) or, as the case may be, paragraph (b) of subsection (3) do not apply.
- (6) In the case of an order under section 25, paragraph (d) of subsection (2) does not apply.
- (7) Subsection (2) applies in the case of an application for an order under section 34, 35 or 38 relating to a child who is subject to a custodianship order whether or not the child is in England or Wales and for the purposes of such an application the following are also authorised courts—

- (a) the court which made the custodianship order and, where that court is a magistrates' court, any other magistrates' court acting for the same petty session area;
 - (b) the county court within whose district the applicant is;
 - (c) a magistrates' court within whose area the applicant is;
 - (d) where the application is made under section 35 and the child's mother or father or custodian is the petitioner or respondent in proceedings for a decree of divorce, nullity or judicial separation which are pending in a court in England or Wales, that court.
- (8) Subsection (2) does not apply in the case of an application under section 30 or 42 but for the purposes of such an application the following are authorised courts—
- (a) if there is pending in respect of the child an application for an adoption order or an order under section 14 or a custodianship order, the court in which that application is pending;
 - (b) in any other case, the High Court, the county court within whose district the applicant lives and the magistrates' court within whose area the applicant lives.
- (9) Subsections (3) and (8) do not apply in the case of an application under section 30 in Scotland but for the purposes of such an application the following are authorised courts—
- (a) if there is pending in respect of the child an application for—
 - (i) an adoption order ; or
 - (ii) an order under section 14,the court in which that application is pending ;
 - (b) in any other case—
 - (i) the Court of Session ;
 - (ii) the sheriff court of the sherriffdom within which the applicant resides.

101 Appeals etc.

- (1) Where any application has been made under this Act to a county court, the High Court may, at the instance of any party to the application, order the application to be removed to the High Court and there proceeded with on such terms as to costs as it thinks proper.
- (2) Subject to subsection (3), where on an application to a magistrates' court under this Act the court makes or refuses to make an order, an appeal shall lie to the High Court.
- (3) Where an application is made to a magistrates' court under this Act, and the court considers that the matter is one which would more conveniently be dealt with by the High Court, the magistrates' court shall refuse to make an order, and in that case no appeal shall lie to the High Court.

102 Evidence of agreement and consent

- (1) Any agreement or consent which is required by Part I, except section 24(6), or Part II to be given to the making of any order or application for an order may be given in writing, and, if the document Signifying the agreement or consent is—
 - (a) in the case of an adoption order or an application for an order under section 14, witnessed in accordance with rules, or

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(b) in the case of an application made under Part II, witnessed in accordance with rules of court,
it shall be admissible in evidence without further proof of the signature of the person by whom it was executed.

(2) A document signifying such agreement or consent which purports to be witnessed in accordance with rules or, as the case may be, with rules of court shall be presumed to be so witnessed, and to have been executed and witnessed on the date and at the place specified in the document, unless the contrary is proved.

(3) In the application of this section to Scotland—

- (a) for " made under Part II" there is substituted " to which Part II applies ";
- (b) for " admissible in evidence" there is substituted " sufficient evidence ";
- (c) for " rules of court" there is substituted " act of sederunt ".

103 Panel for guardians ad litem and reporting officers

(1) The Secretary of State may by regulations make provision for the establishment of a panel of persons from whom—

- (a) guardians ad litem and reporting officers may in accordance with rules or rules of court be appointed for the purposes of—
 - (i) section 20 of this Act;
 - (ii) section 32B of the Children and Young Persons Act 1969;
 - (iii) section 4B of the Children Act 1948 ;
- (b) persons may be appointed for the purposes of section 18A or 34A of the Social Work (Scotland) Act 1968.

(2) Regulations under subsection (1) may provide for the expenses incurred by members of the panel to be defrayed by local authorities.

(3) In relation to Scotland, the reference in subsection (1) to guardians ad litem shall be construed as a reference to curators ad litem.

104 Saving for powers of High Court

Nothing in this Act shall restrict or affect the jurisdiction of the High Court to appoint or remove guardians, or otherwise in respect of children.

105 Periodic review of Act

The Secretary of State shall, within three years of the first of the dates appointed by order by the Secretary of State under section 108(2) and, thereafter, every five years lay before Parliament a report on the operation of those sections of the Act which are in force at that time ; and the Secretary of State shall institute such research as is necessary to provide the information for these reports.

106 Regulations and orders

(1) Where a power to make regulations or orders is exercisable by the Secretary of State by virtue of this Act, regulations or orders made in the exercise of that power shall be made by statutory instrument and may—

- (a) make different provision in relation to different cases or classes of case, and

- (b) exclude certain cases or classes of case.
- (2) A statutory instrument containing regulations made by the Secretary of State under section 103 shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any power conferred on the Secretary of State by this Act to make orders includes a power to vary or revoke an order so made.

107 Interpretation

- (1) In this Act, unless the context otherwise requires—
 - " adoption order " means an order under section 8(1);
 - " adoption society " has the same meaning as in the 1958 Act;
 - " approved adoption society " means an adoption society approved under Part I;
 - " area ", in relation to a magistrates' court, means the commission area (within the meaning of section 1 of the Administration of Justice Act 1973) for which the court is appointed;
 - " authorised court " shall be construed in accordance with section 100;
 - " British adoption order " means an adoption order, or any provision for the adoption of a child effected under the law of Northern Ireland or any British territory outside the United Kingdom ;
 - " British territory " means, for the purposes of any provision of this Act, any of the following countries, that is to say, the United Kingdom, the Channel Islands, the Isle of Man and a colony, being a country designated for the purposes of that provision by order of the Secretary of State or, if no country is so designated, any of those countries ;
 - " child ", except where used to express a relationship, means a person who has not attained the age of 18 ;
 - " the Convention " means the Convention relating to the adoption of children concluded at The Hague on 15th November 1965 and signed on behalf of the United Kingdom on that date ;
 - " Convention adoption order " means an adoption order made as mentioned in section 24(1);
 - " Convention country " means any country outside British territory, being a country for the time being designated by an order of the Secretary of State as a country in which, in his opinion, the Convention is in force;
 - " guardian " means—
 - (a) a person appointed by deed or will in accordance with the provisions of the Guardianship of Infants Acts 1886 and 1925 or the Guardianship of Minors Act 1971 or by a court of competent jurisdiction to be the guardian of the child, and
 - (b) in relation to the adoption of an illegitimate child, includes the father where he has custody of the child by virtue of an order under section 9 of the Guardianship of Minors Act 1971, or under section 2 of the Illegitimate Children (Scotland) Act 1930;
 - " home " shall be construed in accordance with section 87(3);

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

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

" notice " means a notice in writing;

" relative " has the same meaning as in the 1958 Act;

" rules " means, in England and Wales, rules made under section 9(3) of the 1958 Act or made by virtue of section 9(4) of the 1958 Act under section 15 of the Justices of the Peace Act 1949 ;

" the 1958 Act " means the Adoption Act 1958 ;

" United Kingdom national " means, for the purposes of any provision of this Act, a citizen of the United Kingdom and Colonies satisfying such conditions, if any, as the Secretary of State may by order specify for the purposes of that provision ;

" voluntary organisation " means a body, other than a public or local authority, the activities of which are not carried on for profit.

(2) In this Act, in relation to Scotland, unless the context otherwise requires—

" actual custody " means care and possession ;

" legal custody " means custody ;

" local authority " means a regional or islands council; and

" rules " means rules made by act of sederunt.

(3) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(4) In this Act, except where otherwise indicated—

(a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered, and

(b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered, and

(c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered.

108 Amendments, repeals, commencement and transitory provisions

(1) Subject to the following provisions of this section—

(a) the enactments specified in Schedule 3 shall have effect subject to the amendments specified in that Schedule (being minor amendments or amendments consequential on the preceding provisions of this Act), and

(b) the enactments specified in Schedule 4 are repealed to the extent shown in column 3 of that Schedule.

(2) This Act, except the provisions specified in subsections (3) and (4), shall come into force on such date as the Secretary of State may by order appoint and different dates may be appointed for, or for different purposes of, different provisions.

(3) Sections 71, 72 and 82, this section, section 109 and paragraph 57 of Schedule ,3 shall come into force on the passing of this Act.

(4) The following provisions of this Act shall come into force on 1st January 1976—

- (a) sections 3, 8(9) and (10), 13, 59, 83 to 91, 94, 98, 99, 100 and 103 to 107 ;
 - (b) Schedules 1 and 2 ;
 - (c) in Schedule 3, paragraphs 1, 2, 3, 4, 6, 8, 9, 13(6) 15, 17, 18, 19, 20, 21(1) (2) and (4), 22 to 25, 27(b), 29, 33, 34 (b), 35, 36 (b), 38, 39 (c) (d) and (e), 40, 43, 48, 49, 51 (a), 52 (f) (ii) and (g) (ii), 54, 55, 58 to 63, 65 to 70, 75 (3), 77, 78, 81 and 83 ;
 - (d) Parts I, II and III of Schedule 4.
- (5) Until the date appointed under subsection (2) for sections 4 to 7, in this Act and in the 1958 Act " adoption agency" means a local authority or a registered adoption society within the meaning of the 1958 Act.
- (6) Until the date so appointed for section 12, section 5(1) of the 1958 Act shall, in relation to an application made after 31st December 1975 for an adoption order, have effect with the addition at the end of paragraph (b) of the following words "or
- (c) has seriously ill-treated the child and that (whether because of the ill-treatment or for other reasons) the rehabilitation of the child within the household of that person is unlikely."
- (7) Until the date so appointed for section 18, section 21A of the Children and Young Persons Act 1969 shall have effect as if for references to section 25 there were substituted references to section 53 of the 1958 Act.
- (8) An order under subsection (2) may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions or any provision of this Act then in force or any provision of the 1958 Act as appear to him to be necessary or expedient in consequence of the partial operation of this Act.

109 Short title and extent

- (1) This Act may be cited as the Children Act 1975.
- (2) This Act, except—
- (a) section 68;
 - (b) paragraphs 10, 11 and 63 of Schedule 3 ; and
 - (c) Schedule 4 in so far as it repeals—
 - (i) the words " or adoption " in section 9(5) of the Adoption Act 1968, and
 - (ii) the references in that Act to section 19 of the Adoption Act 1958,does not extend to Northern Ireland.
- (3) Subsection (1) of section 68 extends to the Channel Islands.