

SCHEDULES

SCHEDULE 10

AMENDMENTS OF ADOPTION LEGISLATION

PART I

AMENDMENTS OF ADOPTION ACT 1976 (c. 36)

- 1 In section 2 (local authorities' social services) for the words from “relating to” to the end there shall be substituted—
 - “(a) under the Children Act 1989, relating to family assistance orders, local authority support for children and families, care and supervision and emergency protection of children, community homes, voluntary homes and organisations, registered children’s homes, private arrangements for fostering children, child minding and day care for young children and children accommodated by health authorities and local education authorities or in residential care, nursing or mental nursing homes or in independent schools; and
 - (b) under the National Health Service Act 1977, relating to the provision of care for expectant and nursing mothers.”
- 2 In section 11 (restrictions on arranging adoptions and placing of children) for subsection (2) there shall be substituted—

“(2) An adoption society which is—

 - (a) approved as respects Scotland under section 3 of the Adoption (Scotland) Act 1978; or
 - (b) registered as respects Northern Ireland under Article 4 of the Adoption (Northern Ireland) Order 1987,

but which is not approved under section 3 of this Act, shall not act as an adoption society in England and Wales except to the extent that the society considers it necessary to do so in the interests of a person mentioned in section 1 of the Act of 1978 or Article 3 of the Order of 1987.”
- 3 (1) In section 12 (adoption orders), in subsection (1) for the words “vesting the parental rights and duties relating to a child in” there shall be substituted “giving parental responsibility for a child to”.
(2) In subsection (2) of that section for the words “the parental rights and duties so far as they relate” there shall be substituted “parental responsibility so far as it relates”.
(3) In subsection (3) of that section for paragraph (a) there shall be substituted—
 - “(a) the parental responsibility which any person has for the child immediately before the making of the order;
 - (aa) any order under the Children Act 1989”;

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and in paragraph (b) for the words from “for any period” to the end there shall be substituted “or upbringing for any period after the making of the order.”

- 4 For section 14(1) (adoption by married couple) there shall be substituted—
- “(1) An adoption order shall not be made on the application of more than one person except in the circumstances specified in subsections (1A) and (1B).
- (1A) An adoption order may be made on the application of a married couple where both the husband and the wife have attained the age of 21 years.
- (1B) An adoption order may be made on the application of a married couple where—
- (a) the husband or the wife—
- (i) is the father or mother of the child; and
- (ii) has attained the age of 18 years:
- and
- (b) his or her spouse has attained the age of 21 years.”
- 5 (1) In section 16 (parental agreement), in subsection (1) for the words from “in England” to “Scotland)” there shall be substituted—
- “(i) in England and Wales, under section 18;
- (ii) in Scotland, under section 18 of the Adoption (Scotland) Act 1978; or
- (iii) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987.”
- (2) In subsection (2)(c) of that section for the words “the parental duties in relation to” there shall be substituted “his parental responsibility for”.
- 6 (1) In section 18 (freeing child for adoption), after subsection (2) there shall be inserted—
- “(2A) For the purposes of subsection (2) a child is in the care of an adoption agency if the adoption agency is a local authority and he is in their care.”
- (2) In subsection (5) of that section, for the words from “the parental rights” to “vest in” there shall be substituted “parental responsibility for the child is given to”, and for the words “and (3)” there shall be substituted “to (4)”.
- (3) For subsections (7) and (8) of that section there shall be substituted—
- “(7) Before making an order under this section in the case of a child whose father does not have parental responsibility for him, the court shall satisfy itself in relation to any person claiming to be the father that—
- (a) he has no intention of applying for—
- (i) an order under section 4(1) of the Children Act 1989, or
- (ii) a residence order under section 10 of that Act, or
- (b) if he did make any such application, it would be likely to be refused.
- (8) Subsections (5) and (7) of section 12 apply in relation to the making of an order under this section as they apply in relation to the making of an order under that section.”

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- 7 In section 19(2) (progress reports to former parents) for the words “in which the parental rights and duties were vested” there shall be substituted “to which parental responsibility was given”.
- 8 (1) In section 20 (revocation of section 18 order), in subsections (1) and (2) for the words “the parental rights and duties”, in both places where they occur, there shall be substituted “parental responsibility”.
- (2) For subsection (3) of that section there shall be substituted—
- “(3) The revocation of an order under section 18 (“a section 18 order”) operates—
- (a) to extinguish the parental responsibility given to the adoption agency under the section 18 order;
 - (b) to give parental responsibility for the child to—
 - (i) the child’s mother; and
 - (ii) where the child’s father and mother were married to each other at the time of his birth, the father; and
 - (c) to revive—
 - (i) any parental responsibility agreement,
 - (ii) any order under section 4(1) of the Children Act 1989, and
 - (iii) any appointment of a guardian in respect of the child (whether made by a court or otherwise),extinguished by the making of the section 18 order.
- (3A) Subject to subsection (3)(c), the revocation does not—
- (a) operate to revive—
 - (i) any order under the Children Act 1989, or
 - (ii) any duty referred to in section 12(3)(b),extinguished by the making of the section 18 order; or
 - (b) affect any person’s parental responsibility so far as it relates to the period between the making of the section 18 order and the date of revocation of that order.”
- 9 For section 21 (transfer of parental rights and duties between adoption agencies) there shall be substituted—

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

- (1) On an application to which this section applies, an authorised court may vary an order under section 18 so as to give parental responsibility for the child to another adoption agency (“the substitute agency”) in place of the agency for the time being having parental responsibility for the child under the order (“the existing agency”).
- (2) This section applies to any application made jointly by—
 - (a) the existing agency; and
 - (b) the would-be substitute agency.
- (3) Where an order under section 18 is varied under this section, section 19 shall apply as if the substitute agency had been given responsibility for the child on the making of the order.”

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

- 10 (1) In section 22 (notification to local authority of adoption application), after subsection (1) there shall be inserted the following subsections—
- “(1A) An application for such an adoption order shall not be made unless the person wishing to make the application has, within the period of two years preceding the making of the application, given notice as mentioned in subsection (1).
- (1B) In subsections (1) and (1A) the references to the area in which the applicant or person has his home are references to the area in which he has his home at the time of giving the notice.”
- (2) In subsection (4) of that section for the word “receives” there shall be substituted “receive” and for the words “in the care of” there shall be substituted “looked after by”.
- 11 In section 25(1) (interim orders) for the words “vesting the legal custody of the child in” there shall be substituted “giving parental responsibility for the child to”.
- 12 In—
- (a) section 27(1) and (2) (restrictions on removal where adoption agreed or application made under section 18); and
- (b) section 28(1) and (2) (restrictions on removal where applicant has provided home for 5 years),
- for the words “actual custody”, in each place where they occur, there shall be substituted “home”.
- 13 After section 27(2) there shall be inserted—
- “(2A) For the purposes of subsection (2) a child is in the care of an adoption agency if the adoption agency is a local authority and he is in their care.”
- 14 (1) After section 28(2) there shall be inserted—
- “(2A) The reference in subsections (1) and (2) to any enactment does not include a reference to section 20(8) of the Children Act 1989”.
- (2) For subsection (3) of that section there shall be substituted—
- “(3) In any case where subsection (1) or (2) applies and—
- (a) the child was being looked after by a local authority before he began to have his home with the applicant or, as the case may be, the prospective adopter, and
- (b) the child is still being looked after by a local authority,
- the authority which are looking after the child shall not remove him from the home of the applicant or the prospective adopter except in accordance with section 30 or 31 or with the leave of a court.”
- (3) In subsection (5) of that section—
- (a) for the word “receives” there shall be substituted “receive”; and
- (b) for the words “in the care of another local authority or of a voluntary organisation” there shall be substituted “looked after by another local authority”.
- 15 In section 29 (return of child taken away in breach of section 27 or 28) for subsections (1) and (2) there shall be substituted—

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- “(1) An authorised court may, on the application of a person from whose home a child has been removed in breach of—
- (a) section 27 or 28,
 - (b) section 27 or 28 of the Adoption (Scotland) Act 1978, or
 - (c) Article 28 or 29 of the Adoption (Northern Ireland) Order 1987,
- order the person who has so removed the child to return the child to the applicant.
- (2) An authorised court may, on the application of a person who has reasonable grounds for believing that another person is intending to remove a child from his home in breach of—
- (a) section 27 or 28,
 - (b) section 27 or 28 of the Adoption (Scotland) Act 1978, or
 - (c) Article 28 or 29 of the Adoption (Northern Ireland) Order 1987,
- by order direct that other person not to remove the child from the applicant’s home in breach of any of those provisions.”
- 16 (1) In section 30 (return of children placed for adoption by adoption agencies), in subsection (1) there shall be substituted—
- (a) for the words “delivered into the actual custody of” the words “placed with”;
 - (b) in paragraph (a) for the words “retain the actual custody of the child” the words “give the child a home”; and
 - (c) in paragraph (b) for the words “actual custody” the word “home”.
- (2) In subsection (3) of that section for the words “in his actual custody” there shall be substituted “with him”.
- 17 (1) In section 31 (application of section 30 where child not placed for adoption), in subsection (1) for the words from “child”, where it first occurs, to “except” there shall be substituted “child—
- (a) who is (when the notice is given) being looked after by a local authority; but
 - (b) who was placed with that person otherwise than in pursuance of such arrangements as are mentioned in section 30(1),
- that section shall apply as if the child had been placed in pursuance of such arrangements”.
- (2) In subsection (2) of that section for the words “for the time being in the care of” there shall be substituted “(when the notice is given) being looked after by”.
- (3) In subsection (3) of that section—
- (a) for the words “remains in the actual custody of” there shall be substituted “has his home with”; and
 - (b) for the words “section 45 of the Child Care Act 1980” there shall be substituted “Part III of Schedule 2 to the Children Act 1989”.
- (4) At the end of that section there shall be added—
- “(4) Nothing in this section affects the right of any person who has parental responsibility for a child to remove him under section 20(8) of the Children Act 1989”.

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- 18 (1) In section 32 (meaning of “protected child”), in subsection (2) for the words “section 37 of the Adoption Act 1958” there shall be substituted—
- “(a) section 32 of the Adoption (Scotland) Act 1978; or
 - (b) Article 33 of the Adoption (Northern Ireland) Order 1987.”
- (2) In subsection (3) of that section for paragraph (a) there shall be substituted—
- “(a) he is in the care of any person—
 - (i) in any community home, voluntary home or registered children’s home;
 - (ii) in any school in which he is receiving full-time education;
 - (iii) in any health service hospital”;
- and at the end of that subsection there shall be added—
- “(d) he is in the care of any person in any home or institution not specified in this subsection but provided, equipped and maintained by the Secretary of State.”
- (3) After that subsection there shall be inserted—
- “(3A) In subsection (3) “community home”, “voluntary home”, “registered children’s home”, “school” and “health service hospital” have the same meaning as in the Children Act 1989.”
- (4) For subsection (4) of that section there shall be substituted—
- “(4) A protected child ceases to be a protected child—
- (a) on the grant or refusal of the application for an adoption order;
 - (b) on the notification to the local authority for the area where the child has his home that the application for an adoption order has been withdrawn;
 - (c) in a case where no application is made for an adoption order, on the expiry of the period of two years from the giving of the notice;
 - (d) on the making of a residence order, a care order or a supervision order under the Children Act 1989 in respect of the child;
 - (e) on the appointment of a guardian for him under that Act;
 - (f) on his attaining the age of 18 years; or
 - (g) on his marriage,
- whichever first occurs.
- (5) In subsection (4)(d) the references to a care order and a supervision order do not include references to an interim care order or interim supervision order.”
- 19 (1) In section 35 (notices and information to be given to local authorities), in subsection (1) for the words “who has a protected child in his actual custody” there shall be substituted “with whom a protected child has his home”.
- (2) In subsection (2) of that section for the words “in whose actual custody he was” there shall be substituted “with whom he had his home”.
- 20 (1) In section 51 (disclosure of birth records of adopted children), in subsection (1) for the words “subsections (4) and (6)” there shall be substituted “what follows”.
- (2) For subsections (3) to (7) of that section there shall be substituted—

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- “(3) Before supplying any information to an applicant under subsection (1), the Registrar General shall inform the applicant that counselling services are available to him—
- (a) if he is in England and Wales—
 - (i) at the General Register Office;
 - (ii) from the local authority in whose area he is living;
 - (iii) where the adoption order relating to him was made in England and Wales, from the local authority in whose area the court which made the order sat; or
 - (iv) from any other local authority;
 - (b) if he is in Scotland—
 - (i) from the regional or islands council in whose area he is living;
 - (ii) where the adoption order relating to him was made in Scotland, from the council in whose area the court which made the order sat; or
 - (iii) from any other regional or islands council;
 - (c) if he is in Northern Ireland—
 - (i) from the Board in whose area he is living;
 - (ii) where the adoption order relating to him was made in Northern Ireland, from the Board in whose area the court which made the order sat; or
 - (iii) from any other Board;
 - (d) if he is in the United Kingdom and his adoption was arranged by an adoption society—
 - (i) approved under section 3,
 - (ii) approved under section 3 of the Adoption (Scotland) Act 1978,
 - (iii) registered under Article 4 of the Adoption (Northern Ireland) Order 1987,from that society.
- (4) Where an adopted person who is in England and Wales—
- (a) applies for information under —
 - (i) subsection (1), or
 - (ii) Article 54 of the Adoption (Northern Ireland) Order 1987,or
 - (b) is supplied with information under section 45 of the Adoption (Scotland) Act 1978,
- it shall be the duty of the persons and bodies mentioned in subsection (5) to provide counselling for him if asked by him to do so.
- (5) The persons and bodies are—
- (a) the Registrar General;
 - (b) any local authority falling within subsection (3)(a)(ii) to (iv);
 - (c) any adoption society falling within subsection (3)(d) in so far as it is acting as an adoption society in England and Wales.

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- (6) If the applicant chooses to receive counselling from a person or body falling within subsection (3), the Registrar General shall send to the person or body the information to which the applicant is entitled under subsection (1).
- (7) Where a person—
- (a) was adopted before 12th November 1975, and
 - (b) applies for information under subsection (1),
- the Registrar General shall not supply the information to him unless he has attended an interview with a counsellor arranged by a person or body from whom counselling services are available as mentioned in subsection (3).
- (8) Where the Registrar General is prevented by subsection (7) from supplying information to a person who is not living in the United Kingdom, he may supply the information to any body which—
- (a) the Registrar General is satisfied is suitable to provide counselling to that person, and
 - (b) has notified the Registrar General that it is prepared to provide such counselling.
- (9) In this section—
- “a Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972; and
- “prescribed” means prescribed by regulations made by the Registrar General.”

21 After section 51 there shall be inserted—

“51A Adoption Contact Register

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

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- (5) The Registrar General shall, on payment of such fee as may be prescribed, enter in Part II of the register the name and address of any person who fulfils the conditions in subsection (6) and who gives notice that he wishes to contact an adopted person.
- (6) The conditions are that—
- (a) a record of the adopted person’s birth is kept by the Registrar General; and
 - (b) the person giving notice under subsection (5) has attained the age of 18 years and has satisfied the Registrar General that—
 - (i) he is a relative of the adopted person; and
 - (ii) he has such information as is necessary to enable him to obtain a certified copy of the record of the adopted person’s birth.
- (7) The Registrar General shall, on receiving notice from any person named in an entry in the register that he wishes the entry to be cancelled, cancel the entry.
- (8) Any notice given under this section must be in such form as may be determined by the Registrar General.
- (9) The Registrar General shall transmit to an adopted person whose name is entered in Part I of the register the name and address of any relative in respect of whom there is an entry in Part II of the register.
- (10) Any entry cancelled under subsection (7) ceases from the time of cancellation to be an entry for the purposes of subsection (9).
- (11) The register shall not be open to public inspection or search and the Registrar General shall not supply any person with information entered in the register (whether in an uncancelled or a cancelled entry) except in accordance with this section.
- (12) The register may be kept by means of a computer.
- (13) In this section—
- (a) “relative” means any person (other than an adoptive relative) who is related to the adopted person by blood (including half-blood) or marriage;
 - (b) “address” includes any address at or through which the person concerned may be contacted; and
 - (c) “prescribed” means prescribed by the Secretary of State.”
- 22 (1) In section 55 (adoption of children abroad), in subsection (1) after the word “Scotland” there shall be inserted “or Northern Ireland” and for the words “vesting in him the parental rights and duties relating to the child” there shall be substituted “giving him parental responsibility for the child”.
- (2) In subsection (3) of that section for the words “word “(Scotland)”” there shall be substituted “words “(Scotland)” or “(Northern Ireland)””.
- 23 (1) In section 56 (restriction on removal of children for adoption outside Great Britain),
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- (a) in subsections (1) and (3) for the words “transferring the actual custody of a child to”, in both places where they occur, there shall be substituted “placing a child with”; and
 - (b) in subsection (3)(a) for the words “in the actual custody of” there shall be substituted “with”.
- (2) In subsection (1) of that section—
- (a) for the words from “or under” to “abroad)” there shall be substituted “section 49 of the Adoption (Scotland) Act 1978 or Article 57 of the Adoption (Northern Ireland) Order 1987”; and
 - (b) for the words “British Islands” there shall be substituted “United Kingdom, the Channel Islands and the Isle of Man”.
- 24 (1) In section 57 (prohibition on certain payments) in subsection (1)(c), for the words “transfer by that person of the actual custody of a child” there shall be substituted “handing over of a child by that person”.
- (2) In subsection (3A)(b) of that section, for the words “in the actual custody of” there shall be substituted “with”.
- 25 After section 57 there shall be inserted—

“57A Permitted allowances

- (1) The Secretary of State may make regulations for the purpose of enabling adoption agencies to pay allowances to persons who have adopted, or intend to adopt, children in pursuance of arrangements made by the agencies.
- (2) Section 57(1) shall not apply to any payment made by an adoption agency in accordance with the regulations.
- (3) The regulations may, in particular, make provision as to—
 - (a) the procedure to be followed by any agency in determining whether a person should be paid an allowance;
 - (b) the circumstances in which an allowance may be paid;
 - (c) the factors to be taken into account in determining the amount of an allowance;
 - (d) the procedure for review, variation and termination of allowances; and
 - (e) the information about allowances to be supplied by any agency to any person who is intending to adopt a child.
- (4) Any scheme approved under section 57(4) shall be revoked as from the coming into force of this section.
- (5) Section 57(1) shall not apply in relation to any payment made—
 - (a) in accordance with a scheme revoked under subsection (4) or section 57(5)(b); and
 - (b) to a person to whom such payments were made before the revocation of the scheme.
- (6) Subsection (5) shall not apply where any person to whom any payments may lawfully be made by virtue of subsection (5) agrees to receive (instead

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- of such payments) payments complying with regulations made under this section.”
- 26 (1) In section 59 (effect of determination and orders made in Scotland and overseas in adoption proceedings), in subsection (1) for the words “Great Britain” there shall be substituted “the United Kingdom”.
- (2) For subsection (2) of that section there shall be substituted—
- “ (2) Subsections (2) to (4) of section 12 shall apply in relation to an order freeing a child for adoption (other than an order under section 18) as if it were an adoption order; and, on the revocation in Scotland or Northern Ireland of an order freeing a child for adoption, subsections (3) and (3A) of section 20 shall apply as if the order had been revoked under that section.”
- 27 In section 60 (evidence of adoption in Scotland and Northern Ireland), in paragraph (a) for the words “section 22(2) of the Adoption Act 1958” there shall be substituted “section 45(2) of the Adoption (Scotland) Act 1978” and in paragraph (b) for the words from “section 23(4)” to “in force” there shall be substituted “Article 63(1) of the Adoption (Northern Ireland) Order 1987”.
- 28 In section 62(5)(b) (courts), for the words from “section 8” to “child” there shall be substituted—
- “ (i) section 12 or 18 of the Adoption (Scotland) Act 1978; or
 (ii) Article 12, 17 or 18 of the Adoption (Northern Ireland) Order 1987”.
- 29 After section 65 (guardians ad litem and reporting officers) there shall be inserted—
- “65A Panels for selection of guardians ad litem and reporting officers**
- (1) The Secretary of State may by regulations provide for the establishment of panels of persons from whom guardians ad litem and reporting officers appointed under rules made under section 65 must be selected.
- (2) The regulations may, in particular, make provision—
- (a) as to the constitution, administration and procedures of panels;
 - (b) requiring two or more specified local authorities to make arrangements for the joint management of a panel;
 - (c) for the defrayment by local authorities of expenses incurred by members of panels;
 - (d) for the payment by local authorities of fees and allowances for members of panels;
 - (e) as to the qualifications for membership of a panel;
 - (f) as to the training to be given to members of panels;
 - (g) as to the co-operation required of specified local authorities in the provision of panels in specified areas; and
 - (h) for monitoring the work of guardians ad litem and reporting officers.
- (3) Rules of court may make provision as to the assistance which any guardian ad litem or reporting officer may be required by the court to give to it.”
- 30 (1) Section 72(1) (interpretation) shall be amended as follows.

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- (2) In the definition of “adoption agency” for the words from “section 1” to the end there shall be substituted “—
- (a) section 1 of the Adoption (Scotland) Act 1978; and
 - (b) Article 3 of the Adoption (Northern Ireland) Order 1987.”
- (3) For the definition of “adoption order” there shall be substituted—
- ““adoption order”—
- (a) means an order under section 12(1); and
 - (b) in sections 12(3) and (4), 18 to 20, 27, 28 and 30 to 32 and in the definition of “British adoption order” in this subsection includes an order under section 12 of the Adoption (Scotland) Act 1978 and Article 12 of the Adoption (Northern Ireland) Order 1987 (adoption orders in Scotland and Northern Ireland respectively); and
 - (c) in sections 27, 28 and 30 to 32 includes an order under section 55, section 49 of the Adoption (Scotland) Act 1978 and Article 57 of the Adoption (Northern Ireland) Order 1987 (orders in relation to children being adopted abroad).”
- (4) For the definition of “British adoption order” there shall be substituted—
- ““British adoption order” means—
- (a) an adoption order as defined in this subsection, and
 - (b) an order under any provision for the adoption of a child effected under the law of any British territory outside the United Kingdom.”
- (5) For the definition of “guardian” there shall be substituted—
- ““guardian” has the same meaning as in the Children Act 1989.”
- (6) In the definition of “order freeing a child for adoption” for the words from “section 27(2)” to the end there shall be substituted “sections 27(2) and 59 includes an order under—
- (a) section 18 of the Adoption (Scotland) Act 1978; and
 - (b) Article 17 or 18 of the Adoption (Northern Ireland) Order 1987”.
- (7) After the definition of “overseas adoption” there shall be inserted—
- “parent” means, in relation to a child, any parent who has parental responsibility for the child under the Children Act 1989;
- “parental responsibility” and “parental responsibility agreement” have the same meaning as in the Children Act 1989.
- (8) After the definition of “United Kingdom national” there shall be inserted—
- ““upbringing” has the same meaning as in the Children Act 1989.”
- (9) For section 72(1A) there shall be substituted the following subsections—
- “(1A) In this Act, in determining with what person, or where, a child has his home, any absence of the child at a hospital or boarding school and any other temporary absence shall be disregarded.
 - (1B) In this Act, references to a child who is in the care of or looked after by a local authority have the same meaning as in the Children Act 1989.”

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31 For section 74(3) and (4) (extent) there shall be substituted—
“(3) This Act extends to England and Wales only.”