

## SCHEDULES

### SCHEDULE 1

Section 8(2)

#### CHILDREN LOOKED AFTER BY LOCAL AUTHORITIES: SUPPLEMENTARY AND CONSEQUENTIAL PROVISIONS

##### *The 1989 Act*

- 1 In section 17(5)(a) of the 1989 Act (facilitation of provision by others of services local authority provide under provisions of Part 3 of that Act)—
  - (a) for “the authority have power” substitute “it is a function of the authority”;
  - and
  - (b) for “23” substitute “22A to 22C”.
- 2 (1) Section 59 of that Act (accommodation by voluntary organisations) is amended as follows.
  - (2) In subsection (1)(aa), for “an appropriate children’s home” substitute “a children’s home in respect of which a person is registered under Part 2 of the Care Standards Act 2000”.
  - (3) In subsection (1A) for “local authority” substitute “voluntary organisation”.
  - (4) In subsection (2) omit the words from “and” to the end.
  - (5) In subsection (3) omit the words from “and” to the end.
  - (6) After subsection (3) insert—

“(3A) Regulations under subsection (2) or (3) may in particular make provision which (with any necessary modifications) is similar to that which may be made under section 22C by virtue of any of paragraphs 12B, 12E and 12F of Schedule 2.”
  - (7) For subsection (5) substitute—

“(5A) Regulations under subsection (4) may, in particular—

    - (a) apply with modifications any provision of section 25A or 25B;
    - (b) make provision which (with any necessary modifications) is similar to any provision which may be made under section 25A, 25B or 26.”
- 3 (1) Section 105(1) of that Act (interpretation of certain expressions) is amended as follows.
  - (2) Omit the definition of “appropriate children’s home”.
  - (3) For the definition of “children’s home” substitute—

““children’s home” has the same meaning as it has for the purposes of the Care Standards Act 2000 (see section 1 of that Act);”.

(4) For the definition of “local authority foster parent” substitute—

““local authority foster parent” has the meaning given in section 22C(12);”.

4 In Part 2 of Schedule 2 to that Act (children looked after by local authorities) for paragraphs 12 to 14 substitute—

*“Regulations as to conditions under which child in care is allowed to live with parent, etc*

12A Regulations under section 22C may, in particular, impose requirements on a local authority as to—

- (a) the making of any decision by a local authority to allow a child in their care to live with any person falling within section 22C(3) (including requirements as to those who must be consulted before the decision is made and those who must be notified when it has been made);
- (b) the supervision or medical examination of the child concerned;
- (c) the removal of the child, in such circumstances as may be prescribed, from the care of the person with whom the child has been allowed to live;
- (d) the records to be kept by local authorities.

*Regulations as to placements of a kind specified in section 22C(6)(d)*

12B Regulations under section 22C as to placements of the kind specified in section 22C(6)(d) may, in particular, make provision as to—

- (a) the persons to be notified of any proposed arrangements;
- (b) the opportunities such persons are to have to make representations in relation to the arrangements proposed;
- (c) the persons to be notified of any proposed changes in arrangements;
- (d) the records to be kept by local authorities;
- (e) the supervision by local authorities of any arrangements made.

*Placements out of area*

12C Regulations under section 22C may, in particular, impose requirements which a local authority must comply with—

- (a) before a child looked after by them is provided with accommodation at a place outside the area of the authority; or
- (b) if the child’s welfare requires the immediate provision of such accommodation, within such period of the accommodation being provided as may be prescribed.

*Avoidance of disruption in education*

12D (1) Regulations under section 22C may, in particular, impose requirements which a local authority must comply with before making any decision concerning a child’s placement if he is in the fourth key stage.

- (2) A child is “in the fourth key stage” if he is a pupil in the fourth key stage for the purposes of Part 6 or 7 of the Education 2002 (see section 82 and 103 of that Act).

*Regulations as to placing of children with local authority foster parents*

- 12E Regulations under section 22C may, in particular, make provision—
- (a) with regard to the welfare of children placed with local authority foster parents;
  - (b) as to the arrangements to be made by local authorities in connection with the health and education of such children;
  - (c) as to the records to be kept by local authorities;
  - (d) for securing that where possible the local authority foster parent with whom a child is to be placed is—
    - (i) of the same religious persuasion as the child; or
    - (ii) gives an undertaking that the child will be brought up in that religious persuasion;
  - (e) for securing the children placed with local authority foster parents, and the premises in which they are accommodated, will be supervised and inspected by a local authority and that the children will be removed from those premises if their welfare appears to require it.
- 12F (1) Regulations under section 22C may, in particular, also make provision—
- (a) for securing that a child is not placed with a local authority foster parent unless that person is for the time being approved as a local authority foster parent by such local authority as may be prescribed;
  - (b) establishing a procedure under which any person in respect of whom a qualifying determination has been made may apply to the appropriate national authority for a review of that determination by a panel constituted by that national authority.
- (2) A determination is a qualifying determination if—
- (a) it relates to the issue of whether a person should be approved, or should continue to be approved, as a local authority foster parent; and
  - (b) it is of a prescribed description.
- (3) Regulations made by virtue of sub-paragraph (1)(b) may include provision as to—
- (a) the duties and powers of a panel;
  - (b) the administration and procedures of a panel;
  - (c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for appointment);
  - (d) the payment of fees to members of a panel;
  - (e) the duties of any person in connection with a review conducted under the regulations;
  - (f) the monitoring of any such reviews.

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- (4) Regulations made by virtue of sub-paragraph (3)(e) may impose a duty to pay to the appropriate national authority such sum as that national authority may determine; but such a duty may not be imposed upon a person who has applied for a review of a qualifying determination.
- (5) The appropriate national authority must secure that, taking one financial year with another, the aggregate of the sums which become payable to it under regulations made by virtue of sub-paragraph (4) does not exceed the cost to it of performing its independent review functions.
- (6) The appropriate national authority may make an arrangement with an organisation under which independent review functions are performed by the organisation on the national authority's behalf.
- (7) If the appropriate national authority makes such an arrangement with an organisation, the organisation is to perform its functions under the arrangement in accordance with any general or special directions given by that national authority.
- (8) The arrangement may include provision for payments to be made to the organisation by the appropriate national authority.
- (9) Payments made by the appropriate national authority in accordance with such provision shall be taken into account in determining (for the purpose of sub-paragraph (5)) the cost to that national authority of performing its independent review functions.
- (10) Where the Welsh Ministers are the appropriate national authority, sub-paragraphs (6) and (8) also apply as if references to an organisation included references to the Secretary of State.
- (11) In this paragraph—
  - “financial year” means a period of twelve months ending with 31st March;
  - “independent review function” means a function conferred or imposed on a national authority by regulations made by virtue of sub-paragraph (1)(b);
  - “organisation” includes a public body and a private or voluntary organisation.

12G Regulations under section 22C may, in particular, also make provision as to the circumstances in which local authorities may make arrangements for duties imposed on them by the regulations to be discharged on their behalf.”

- 5 In paragraph 21(5) of that Schedule (liability to contribute towards maintenance of looked after child) for “allowed by the authority (under section 23(5)) to live with” substitute “living with, under arrangements made by the authority in accordance with section 22C.”.
- 6 In paragraph 9 of Schedule 8 (accommodation of children during school holidays) in the second sentence of sub-paragraph (1) for “an appropriate children's home” substitute “a children's home in respect of which a person is registered under Part 2 of the Care Standards Act 2000”.

- 7 In paragraph 2(1) of Schedule 9A (exemption of certain establishments from Part 10A), in paragraph (a) for “an appropriate children’s home” substitute “a children’s home in respect of which a person is registered under Part 2 of the Care Standards Act 2000”.

*Criminal Justice Act 1991 (c. 53)*

- 8 (1) Section 61 of the Criminal Justice Act 1991 (provision by local authorities of secure accommodation) is amended as follows.
- (2) In subsection (2) for “an appropriate children’s home” substitute “a children’s home in respect of which a person is registered under Part 2 of the Care Standards Act 2000”.
- (3) In subsection (5) omit the words from “and” to the end.

*Children (Scotland) Act 1995 (c. 36)*

- 9 In section 26 of the Children (Scotland) Act 1995 (manner in which accommodation is to be provided) for subsection (2)(b)(i) substitute—
- “(i) a local authority in England and Wales could place the child in a placement falling within section 22C(6)(c) of the Children Act 1989;”.

*Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)*

- 10 In paragraph 5A(3) of Schedule 6 to the Powers of Criminal Courts (Sentencing) Act 2000 (requirement in supervision order to live with local authority foster parent for specified period) for “23(2)(a)” substitute “22C”.

*Care Standards Act 2000 (c. 14)*

- 11 In section 22 of the Care Standards Act 2000 (regulation of establishments and agencies), in subsection (2)(e), for “23(2)(a)” substitute “22C”.
- 12 In section 31 of that Act (inspection of establishments and agencies by authorised persons), in subsection (3)(b), for “23(2)(a)” substitute “22C”.
- 13 In section 43(1) (local authority services: meaning of “relevant adoption functions” and “relevant fostering functions” for paragraph (b) substitute—
- “(b) “relevant fostering functions” means functions under section 22C of the 1989 Act in connection with placements with local authority foster parents or regulations under paragraph 12E(a), (b), (d) or (e) or 12F.”

*Adoption and Children Act 2002 (c. 38)*

- 14 In Schedule 6 to the Adoption and Children Act 2002 (glossary giving certain expressions used in that Act the meaning given by the Children Act 1989 (c. 41)), in the entry relating to “local authority foster parent” for “23(3)” substitute “22C(12)”.

*Sexual Offences Act 2003 (c. 42)*

- 15 In section 21 of the Sexual Offences Act 2003 (positions of trust) in subsection (3) (a) for “under section 23(2)” substitute “in accordance with section 22C(6)”.
- 16 In section 27 of that Act (family relationships) in subsection (5)(c) for sub-paragraph (i) substitute “—
- (i) he is a person with whom the child has been placed under section 22C of the Children Act 1989 in a placement falling within subsection (6)(a) or (b) of that section (placement with local authority foster parent),
  - (ia) he is a person with whom the child has been placed under section 59(1)(a) of that Act (placement by voluntary organisation),”.

*Children Act 2004 (c. 31)*

- 17 In section 49(1)(a) of the Children Act 2004 (payments to local authority foster parents) for “23(2)(a)” substitute “22C”.

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

- 18 (1) Section 806 of the Income Tax (Trading and Other Income) Act 2005 (meaning of providing foster care) is amended as follows.
- (2) In subsection (3)(a) for “23(2)(a)” substitute “22C”.
- (3) In subsection (5)—
- (a) after paragraph (c) omit “and”; and
  - (b) after paragraph (d) insert “; and
  - (e) an individual with whom the child is placed under a placement falling within section 22C(6)(d) of the Children Act 1989.”

*Childcare Act 2006 (c. 21)*

- 19 (1) Section 18 of the Childcare Act 2006 (meaning of childcare) is amended as follows.
- (2) For subsection (5)(a)(i) substitute—
- “(i) a children’s home in respect of which a person is registered under Part 2 of the Care Standards Act 2000,”.
- (3) In subsection (8)—
- (a) in paragraph (a) omit ““appropriate children’s home”,”; and
  - (b) in paragraph (b) after ““care home”,” insert ““children’s home”,”.

*Safeguarding Vulnerable Groups Act 2006 (c. 47)*

- 20 In section 53(7)(a) of the Safeguarding Vulnerable Groups Act 2006 (meaning of foster parent) omit “of section 23(2)(a)”.

*Criminal Justice and Immigration Act 2008*

- 21 In paragraph 18(3) of Schedule 1 to the Criminal Justice and Immigration Act 2008 (fostering requirements in youth rehabilitation orders) for “23(2)(a)” substitute “22C”.

SCHEDULE 2

Section 8(3)

TRANSITORY MODIFICATIONS OF SCHEDULE 2 TO THE 1989 ACT

- 1 Paragraph 12 of Schedule 2 to the 1989 Act (regulations as to placing of children with local authority foster parents) has effect as if paragraphs (d) and (g) were omitted.
- 2 That Schedule has effect as if, after paragraph 12, there were inserted—
- “12A (1) Regulations under section 23(2)(a) may, in particular, also make provision—
- (a) for securing that a child is not placed with a local authority foster parent unless that person is for the time being approved as a local authority foster parent by such local authority as may be prescribed;
  - (b) establishing a procedure under which any person in respect of whom a qualifying determination has been made may apply to the appropriate national authority for a review of that determination by a panel constituted by that national authority.
- (2) A determination is a qualifying determination if—
- (a) it relates to the issue of whether a person should be approved, or should continue to be approved, as a local authority foster parent; and
  - (b) it is of a prescribed description.
- (3) Regulations made by virtue of sub-paragraph (1)(b) may include provision as to—
- (a) the duties and powers of a panel;
  - (b) the administration and procedures of a panel;
  - (c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for appointment);
  - (d) the payment of fees to members of a panel;
  - (e) the duties of any person in connection with a review conducted under the regulations;
  - (f) the monitoring of any such reviews.
- (4) Regulations made by virtue of sub-paragraph (3)(e) may impose a duty to pay to the appropriate national authority such sum as that national authority may determine; but such a duty may not be imposed upon a person who has applied for a review of a qualifying determination.
- (5) The appropriate national authority must secure that, taking one financial year with another, the aggregate of the sums which become payable to it

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under regulations made by virtue of sub-paragraph (4) does not exceed the cost to it of performing its independent review functions.

- (6) The appropriate national authority may make an arrangement with an organisation under which independent review functions are performed by the organisation on the national authority's behalf.
- (7) If the appropriate national authority makes such an arrangement with an organisation, the organisation is to perform its functions under the arrangement in accordance with any general or special directions given by that national authority.
- (8) The arrangement may include provision for payments to be made to the organisation by the appropriate national authority.
- (9) Payments made by the appropriate national authority in accordance with such provision shall be taken into account in determining (for the purpose of sub-paragraph (5)) the cost to that national authority of performing its independent review functions.
- (10) Where the Welsh Ministers are the appropriate national authority, sub-paragraphs (6) and (8) also apply as if references to an organisation included references to the Secretary of State.
- (11) In this paragraph—
  - “financial year” means a period of twelve months ending with 31st March;
  - “independent review function” means a function conferred or imposed on a national authority by regulations made by virtue of sub-paragraph (1)(b);
  - “organisation” includes a public body and a private or voluntary organisation.

12B Regulations under section 23(2)(a) may, in particular, also make provision as to the circumstances in which local authorities may make arrangements for duties imposed on them by the regulations to be discharged on their behalf.”

### SCHEDULE 3

Section 39

#### MINOR AND SUPPLEMENTARY AMENDMENTS TO THE 1989 ACT

- 1 The 1989 Act is amended in accordance with this Schedule.
- 2 In section 17(4) for “Secretary of State” substitute “appropriate national authority”.
- 3 In section 17A(1) for “Secretary of State” substitute “appropriate national authority”.
- 4 In section 17B(1) for “Secretary of State” substitute “appropriate national authority”.
- 5 In section 21(3), after “Secretary of State” insert “, the Welsh Ministers”.
- 6 In section 22(7)—
  - (a) for “Secretary of State” substitute “appropriate national authority”;



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- (b) for “he” substitute “the appropriate national authority”;
  - (c) for “the authority” substitute “the local authority”.
- 7 (1) Section 23 is amended as follows.
  - (2) In subsection (2), in paragraphs (a) and (f)(ii) for “Secretary of State” substitute “appropriate national authority”.
  - (3) In subsection (2A)—
    - (a) for the words “the Secretary of State”, in the first place where they occur, substitute “an appropriate national authority”;
    - (b) for those words in the second place where they occur, substitute “that national authority”.
  - (4) In subsection (5) for “Secretary of State” substitute “appropriate national authority”.
  - (5) In subsection (6) for “Secretary of State” substitute “appropriate national authority”.
- 8 (1) Section 23A is amended as follows.
  - (2) In subsection (3) for “Secretary of State” substitute “appropriate national authority”.
  - (3) In subsection (5)—
    - (a) for “Secretary of State” substitute “appropriate national authority”;
    - (b) for “he” substitute “the appropriate national authority”.
- 9 (1) Section 23B is amended as follows.
  - (2) In subsection (5) for “Secretary of State” substitute “appropriate national authority”.
  - (3) In subsection (7) for “The authority” substitute “The local authority”.
  - (4) In subsection (10) for “Secretary of State” substitute “appropriate national authority”.
- 10 In section 23D, in subsections (1) and (2), for “Secretary of State” substitute “appropriate national authority”.
- 11 In section 23E(2) for “Secretary of State” substitute “appropriate national authority”.
- 12 In section 24(5)(za) for “Secretary of State” substitute “appropriate national authority”.
- 13 In section 24B(6) for “Secretary of State” substitute “appropriate national authority”.
- 14 In section 24D, in subsections (1A) and (2), for “Secretary of State” substitute “appropriate national authority”.
- 15 In section 25, in subsections (2) and (7), for “Secretary of State” substitute “appropriate national authority”.
- 16 (1) Section 26 is amended as follows.
  - (2) In subsection (1) for “Secretary of State” substitute “appropriate national authority”.
  - (3) In subsection (2D) for “National Assembly for Wales” substitute “Welsh Ministers”.
  - (4) In each of subsections (3A), (3B), (3C), (4A), (5) and (6) for “Secretary of State” substitute “appropriate national authority”.

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- 17 In section 26ZB(1) for “Secretary of State” substitute “Welsh Ministers”.
- 18 In section 26A, in each of subsections (3)(a) and (4), for “Secretary of State” substitute “appropriate national authority”.
- 19 In section 27(3)(e) for “Secretary of State” substitute “appropriate national authority”.
- 20 In section 29(8)(c) after “Secretary of State” insert “, the Welsh Ministers”.
- 21 (1) Section 30 is amended as follows.
- (2) In subsection (2) for “Secretary of State” substitute “determining authority”.
- (3) After subsection (2) insert—
- “(2A) For the purposes of subsection (2) “the determining authority” is—
- (a) in a case where all the local authorities concerned are in Wales, the Welsh Ministers;
- (b) in any other case, the Secretary of State.
- (2B) In a case where—
- (a) the determining authority is the Secretary of State, and
- (b) one or more of the local authorities concerned are in Wales,
- the Secretary of State must consult the Welsh Ministers before making a determination for the purposes of subsection (2).”
- (4) In subsection (4) for “Secretary of State” substitute “appropriate national authority”.
- 22 After section 30 insert—
- “30A Meaning of appropriate national authority**
- In this Part “the appropriate national authority” means—
- (a) in relation to England, the Secretary of State; and
- (b) in relation to Wales, the Welsh Ministers.”
- 23 (1) Section 59 is amended as follows.
- (2) In subsection (1A)—
- (a) for the words “the Secretary of State”, in the first place where they occur, substitute “an appropriate national authority”; and
- (b) for those words in the second place where they occur, substitute “that national authority”.
- (3) In subsection (2) for “Secretary of State” substitute “appropriate national authority”.
- (4) In subsection (3) for “Secretary of State” substitute “appropriate national authority”.
- (5) In subsection (4) for “Secretary of State” substitute “appropriate national authority”.
- (6) After subsection (6) add—
- “(7) In this Part “appropriate national authority” means—
- (a) in relation to England, the Secretary of State; and
- (b) in relation to Wales, the Welsh Ministers.”
- 24 In section 62(3) for “Secretary of State” substitute “appropriate national authority”.

- 25 (1) Section 104 is amended as follows.
- (2) In subsection (2) after “108(2)” insert “or one containing regulations which fall within subsection (3B) or (3C)”.
- (3) Omit subsection (2A).
- (4) For subsection (3) substitute—
- “(3A) An order under section 4(1B) or 17(4) or regulations which fall within subsection (3B) or (3C) shall not be made by the Secretary of State unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (3B) Regulations fall within this subsection if they are the first regulations to be made by the Secretary of State in the exercise of the power conferred by section 23C(5B)(b).
- (3C) Regulations fall within this subsection if they are the first regulations to be made by the Secretary of State in the exercise of the power conferred by paragraph 6(2) of Schedule 2.”
- (5) In subsection (4)(c) omit—
- (a) the word “such”;
- (b) the words “as the person making it considers expedient”.

26 After section 104 insert—

**“104A Regulations and orders made by the Welsh Ministers under Part 3 etc.**

- (1) Any power of the Welsh Ministers under Part 3, Part 7 or section 86A to make an order or regulations shall be exercisable by statutory instrument.
- (2) Any such statutory instrument, except one made under section 17(4) or one containing regulations which fall within subsection (4) or (5), shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (3) An order under section 17(4) or regulations which fall within subsection (4) or (5) shall not be made by the Welsh Ministers unless a draft of the statutory instrument containing the order or regulations has been laid before and approved by a resolution of the National Assembly for Wales.
- (4) Regulations fall within this subsection if they are the first regulations to be made by the Welsh Ministers in the exercise of the power conferred by section 23C(5B)(b).
- (5) Regulations fall within this subsection if they are the first regulations to be made by the Welsh Ministers in the exercise of the power conferred by paragraph 6(2) of Schedule 2.”

- 27 (1) Schedule 2 is amended as follows.
- (2) In paragraph 17(7) for “Secretary of State” substitute “appropriate national authority”.
- (3) In paragraph 19B, in sub-paragraphs (3) and (7), for “Secretary of State” substitute “appropriate national authority”.

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- (4) In paragraph 20(1)(a) for “Secretary of State” substitute “appropriate national authority”.
- (5) In paragraph 25—
- (a) for “Secretary of State” substitute “appropriate national authority”;
- (b) for “they” substitute “a local authority”.
- 28 In paragraph 7 of Schedule 5 for “Secretary of State” substitute “appropriate national authority”.

## SCHEDULE 4

Section 42

## REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Children Act 1989 (c. 41)	<p>Section 12(5) and (6).</p> <p>In section 17(6), the words “, in exceptional circumstances,”.</p> <p>Section 23B(4) to (7).</p> <p>In section 26, subsections (2)(k) and (2A) to (2D).</p> <p>Section 45(9).</p> <p>In section 59—</p> <p style="padding-left: 2em;">(a) in subsection (2) the words from “and” to the end;</p> <p style="padding-left: 2em;">(b) in subsection (3) the words from “and” to the end.</p> <p>In section 91(10), the words “or 12(5)”.</p> <p>In section 104—</p> <p style="padding-left: 2em;">(a) subsection (2A);</p> <p style="padding-left: 2em;">(b) in subsection (3), the words “or 17(4)”;</p> <p style="padding-left: 2em;">(c) in subsection (4)(c), the word “such” and the words “as the person making it considers expedient”.</p> <p>In section 105(1), the definition of “appropriate children’s home”.</p> <p>In Schedule 2—</p> <p style="padding-left: 2em;">(a) in paragraph 6(1), the word “and” immediately preceding paragraph (b);</p> <p style="padding-left: 2em;">(b) paragraph 17.</p>
Criminal Justice Act 1991 (c. 53)	<p>In section 61(5), the words from “and” to the end.</p>
Care Standards Act 2000 (c. 14)	<p>In section 5(1A), the word “and” immediately preceding paragraph (e).</p>

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
	In section 21— (a) in subsection (1), the word “or” immediately preceding paragraph (b); (b) in subsection (5), the words “against a decision or order”.
Adoption and Children Act 2002 (c. 38)	In section 12— (a) in subsection (1), the words “a panel constituted by”; (b) in paragraph (a) of subsection (3), the words from “(including” to the end of that paragraph.  In section 118, subsections (1)(c) and (2).
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In section 806(5), the word “and” after paragraph (c).
Childcare Act 2006 (c. 21)	In section 18(8)(a), the words ““appropriate children’s home””.
Education and Inspections Act 2006 (c. 40)	In section 148(2), the words “(in accordance with subsection (1))”.
Safeguarding Vulnerable Groups Act 2006 (c. 47)	In section 53(7)(a), the words “of section 23(2)(a)”.
This Act	Part 1.  Sections 11 to 13.