

CHILDREN AND YOUNG PERSONS ACT 2001

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AN ACT

to re-enact Parts I and II of the Family Law Act 1991; to reform the law relating to children; to provide for social services for children in danger and in need; to provide for the regulation of children's homes, fostering, child minding and day care; to make new provision for human fertilisation, embryology and surrogacy; and for connected purposes.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

PART 1

GENERAL PROVISIONS

General principle

1. Welfare of the child

P1989/41/1 & 11, 1991/3/1 & 11

- (1) When a court determines any question with respect to —
 - (a) the upbringing of a child, or
 - (b) the administration of a child's property or the application of any income arising from it,

the welfare of that child shall be the court's paramount consideration.

- (2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

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(3) Subject to subsections (1) and (2), a court in any proceedings referred to in subsection (2) shall seek, so far as practicable, to promote the upbringing of children by their families; and for this purpose "family", in relation to a child, includes any individual who has parental responsibility for him and any person with whom he has been living.

(4) When determining whether or not to make, vary or revoke an order under section 11, a care order or a supervision order, and if so, in what manner, the court shall have regard to all the circumstances of the case including, in particular —

- (a) the ascertainable wishes and feelings of the child (considered in the light of his age and understanding) and of his parents, any other individual who has parental responsibility for him and any other person whose wishes and feelings the court considers to be relevant;
- (b) his physical, emotional and (where relevant) educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs.

(5) Where a court is considering whether or not to make one or more orders under this Part or Part 2, 4 or 5 with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

Parental responsibility

2. Meaning of 'parental responsibility'

P1989/41/2 & 3, 1991/3/1

(1) In this Act, and in any enactment passed or made after the 19th March 1991, "parental responsibility", in relation to a child, —

- (a) means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property; and
- (b) includes the rights, powers and duties which a guardian of the child's estate appointed to act generally would have had in relation to the child and his property, including in particular the right to receive or recover in his own name, for the benefit of the child, property of whatever description and wherever situated which the child is entitled to receive or recover.

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(2) More than one person may have parental responsibility for a child at the same time.

(3) A person who has parental responsibility for a child at any time does not cease to have that responsibility solely because some other person subsequently acquires parental responsibility for the child.

(4) The fact that a person has parental responsibility for a child does not entitle him to act in any way which would be incompatible with an order made with respect to the child under this Act or any other enactment.

(5) The fact that a person has, or does not have, parental responsibility for a child does not affect —

(a) any obligation which he may have in relation to the child (such as a statutory duty to maintain the child); or

(b) any rights which, in the event of the child's death, he or any other person may have in relation to the child's property.

(6) If a person has care of a child but does not have parental responsibility for him, he may (subject to the provisions of this Act) do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.

3. Parental responsibility for children

P1989/41/2, 1991/3/3

(1) The mother and father of a child who is a marital child each have parental responsibility for the child.

(2) The mother of a child who is not a marital child has parental responsibility for the child, but the father does not have parental responsibility for the child unless he acquires it in accordance with this Act.

(3) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; but nothing in this Part shall be taken as affecting the operation of any enactment requiring the consent of more than one person in a matter affecting the child.

(4) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another, but may arrange for some or all of it to be met by one or more persons acting on his behalf (who may be a person who already has parental responsibility for the child).

(5) The making of any such arrangement does not affect any liability of the person making it which may arise from any failure to meet any part of his parental responsibility for the child.

4. Acquisition of parental responsibility by natural father

P1989/41/4, 1991/3/4

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(1) The court may, on the application of the father of a child who is not a marital child, order that he shall have parental responsibility for the child.

(2) The father and mother of a child who is not a marital child may by agreement (a "parental responsibility agreement") provide for the father to have parental responsibility for the child, but no such agreement shall have effect for the purposes of this Act unless —

- (a) it is made in the form prescribed by rules of court, and
- (b) where rules of court are made prescribing the manner in which such agreements must be recorded, it is recorded in the prescribed manner.

(3) Subject to section 16(1), an order under subsection (1) may only be revoked, and a parental responsibility agreement may only be terminated, by an order of the court made on the application —

- (a) of any person who has parental responsibility for the child, or
- (b) with the leave of the court, of the child himself.

(4) The court shall not grant leave under subsection (3)(b) unless it is satisfied that the child has sufficient understanding to make the proposed application.

(5) A parental responsibility agreement continues in force until the child reaches the age of 18, unless it is terminated earlier.

(6) In this section "the court" means the High Court or a court of summary jurisdiction, and any power to vary or revoke an order under this section may be exercised by the court whether the order was made by that or any other court.

Marital children

5. Meaning of 'marital child'

P1987/42/1, 1991/3/5

(1) In this Act, and in any enactment passed or made after the 19th March 1991, references (however expressed) to any relationship between 2 persons shall, unless the contrary intention appears, be construed without regard to whether either of them, or any person through whom the relationship is deduced, is or was a marital child.

(2) In this Act, and in any such enactment, "marital child" means —

- (a) a person whose parents were married to each other at the time of his birth or (if the marriage has been terminated before his birth) at the time of the act of intercourse resulting in his birth;

- (b) a person who is treated as legitimate by virtue of section 1 of the Legitimacy Act 1985¹;
- (c) a person legitimated or recognised as legitimated by the customary law of the Island, under section 2 or 3 of the Legitimacy Act 1985, or by a legitimation (whether or not by virtue of the subsequent marriage of his parents) recognised by the law of the Island and effected under the law of any other country;
- (d) an adopted person; or
- (e) any other person who is treated in law as legitimate.

Guardianship

6. Appointment of guardian by High Court

P1989/41/5, 1991/3/6

(1) On an application by any individual the High Court may by order appoint him to be a child's guardian, if the child has no parent with parental responsibility for him.

(2) On an application by any individual the High Court may by order appoint him to be a child's guardian, if a residence order has been made with respect to the child in favour of a parent or guardian of his who has died while the order was in force (unless the residence order was also made in favour of another parent of the child who is still living).

(3) The power conferred by subsection (1) or (2) may also be exercised in any family proceedings in the High Court if the Court considers that the order should be made although no application has been made for it.

(4) A person appointed guardian of a child under this section has parental responsibility for the child.

(5) No guardian of a child may be appointed otherwise than in accordance with this section or section 7.

7. Appointment of guardian by parent etc.

P1989/41/5 & 6, 1991/3/7

(1) A parent who has parental responsibility for a child of his who is under the age of 18 may appoint another person to be the child's guardian in the event of his death.

(2) A guardian of a child may appoint another person to take his place as the child's guardian in the event of his death.

(3) An appointment under this section shall not have effect unless it is made in writing, dated and signed by the person making it or —

¹ 1985 c.10

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- (a) in the case of an appointment made by a will which is not signed by the testator, it is signed at the direction of the testator in accordance with the requirements of section 3 of the Wills Act 1985; or
 - (b) in any other case, it is signed at the direction of the person making it, in his presence and in the presence of 2 witnesses who each attest the signature.
- (4) A person appointed guardian of a child under this section has parental responsibility for the child.
- (5) Where —
- (a) on the death of a person making an appointment under this section, the child concerned has no parent with parental responsibility for him; or
 - (b) immediately before the death a residence order in favour of that person was in force with respect to the child (unless the residence order was also made in favour of a parent of the child who is still living),

the appointment takes effect on the death of that person.

- (6) Where —
- (a) on the death of a person making an appointment under this section, the child concerned has a parent with parental responsibility for him; and
 - (b) immediately before the death no residence order in favour of that person was in force with respect to the child,

the appointment takes effect when the child no longer has a parent who has parental responsibility for him.

- (7) A person appointed guardian under this section may disclaim his appointment, but no such disclaimer has effect unless —
- (a) it is in writing, signed and made within a reasonable time after his first knowing that the appointment has taken effect, and
 - (b) where rules of court prescribe the manner in which such disclaimers are to be recorded, it is recorded in the prescribed manner.
- (8) Nothing in this section prevents an appointment under this section being made by 2 or more persons acting jointly.

8. Termination of appointment

P1989/41/6, P1995/41/4, 1991/3/8, 1996/5/4

- (1) An appointment of a guardian under section 6 or 7 may be brought to an end at any time by order of the High Court made —

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- (a) on the application of any person who has parental responsibility for the child, or
- (b) with the leave of the Court, on the application of the child concerned, or
- (c) in any family proceedings, if the Court considers that it should be brought to an end even though no application has been made.

(2) An appointment under section 7 revokes an earlier such appointment (including one made in an unrevoked will or codicil) made by the same person in respect of the same child, unless it is clear (whether by express provision in the later appointment or by any necessary implication) that the purpose of the later appointment is to appoint an additional guardian.

(3) An appointment under section 7 (including one made in an unrevoked will or codicil) is revoked if the person who made the appointment revokes it in writing, dated and signed either —

- (a) by him; or
- (b) at his direction, in his presence and in the presence of 2 witnesses who each attest the signature.

(4) An appointment under section 7 (including one made in an unrevoked will or codicil) is revoked if the person appointed is the spouse of the person who made the appointment and either —

- (a) a decree of the High Court dissolves or annuls the marriage, or
- (b) the marriage is dissolved or annulled and the divorce or annulment is entitled to recognition in the Island by virtue of the Recognition of Divorces etc. Act 1987,

unless a contrary intention appears by the appointment.

(5) An appointment under section 7 (other than one made in a will or codicil) is revoked if the person who made the appointment, with the intention of revoking it, destroys the instrument by which it was made or has some other person destroy it in his presence.

(6) An appointment under section 7 made in a will or codicil is revoked if the will or codicil is revoked.

(7) An appointment under section 6 or 7, unless it is brought to an end earlier, continues in force until the child reaches the age of 18.

Supplemental

9. Duration of orders

1991/3/22

No order under this Part with respect to a child continues in force after the child has reached the age of 18.

10. Restriction on further applications

1991/3/25

On disposing of any application for an order under this Part, a court may (whether or not it makes any other order in the proceedings) order that no application for an order under this Part of any specified kind may be made with respect to the child concerned by any person named in the order without the leave of the court (that is, the leave of any court having jurisdiction to hear the application in question).

PART 2

ORDERS WITH RESPECT TO CHILDREN

11. Orders with respect to children

P1989/41/8, 1991/3/9

(1) The orders which the court may make with respect to a child under this section are as follows —

- (a) a "residence order", that is, an order settling the arrangements to be made as to the person with whom the child is to live;
- (b) a "contact order", that is, an order requiring the person with whom the child lives or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other;
- (c) an order that, in meeting parental responsibility for the child, no step which could be taken by a parent in meeting his parental responsibility for the child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court;
- (d) an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for the child;
- (e) an order varying or revoking a previous order under paragraph (a), (b), (c) or (d).

(2) The court may make any order under this section on the application of a person who is entitled to apply for the order, or has obtained the leave of the court to do so.

(3) The court may make any order under this section in any family proceedings in which a question arises with respect to the welfare of a child —

- (a) on the application of a person who is entitled to apply for the order, or has obtained the leave of the court to do so; or
- (b) if the court considers that the order should be made even though no such application has been made.

12. S.11 orders: further provisions

P1989/41/9-11 & 105(3), 1991/3/10 & 34(2)

(1) The following persons are entitled to apply for any order under section 11 with respect to a child —

- (a) any parent or guardian of the child;
- (b) any person in whose favour a residence order has been made with respect to the child.

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(2) The following persons are entitled to apply for a residence order or a contact order with respect to a child —

- (a) any party to a marriage (whether or not subsisting) in relation to whom the child is a child of the family;
- (b) any person with whom the child has lived for a period of at least 3 years (which need not be continuous but must not have begun more than 5 years before, or ended more than 3 months before, the making of the application);
- (c) where a residence order is in force with respect to the child, any person who has the consent of each person in whose favour the order was made;
- (d) where the child is in the care of the Department of Health and Social Security ("the Department"), any person who has the consent of the Department;
- (e) in any case not mentioned in paragraph (c) or (d), any person who has the consent of each person (if any) having parental responsibility for the child;
- (f) any person falling within a category of person prescribed by rules of court in relation to the kind of order in question.

(3) The following persons are entitled to apply for an order under section 11(1)(e) with respect to a child —

- (a) any person on whose application the order to be revoked or varied was made;
- (b) in the case of a contact order, the person named in the order.

(4) No application may be made by the Department for a residence order or a contact order.

(5) Where the court has power to make an order under section 11, it may do so at any time during the course of the proceedings in question even though it is not in a position to dispose finally of those proceedings.

(6) Where a residence order is made in favour of 2 or more persons who do not themselves all live together, the order may specify the periods during which the child is to live in the different households concerned.

(7) An order under section 11 may —

- (a) contain directions about how it is to be carried into effect;
- (b) impose conditions to be complied with by any person —
 - (i) in whose favour the order is made, or
 - (ii) who is a parent of the child concerned, or
 - (iii) who is not a parent of his but has parental responsibility for him, or
 - (iv) with whom the child is living,and to whom the conditions are expressed to apply;

- (c) be made to have effect for a specified period, or contain provisions which are to have effect for a specified period;
- (d) make such incidental, supplemental or consequential provision as the court thinks fit.

(8) References in this Act to the person in whose favour a residence order is made shall be construed as references to the person named in the order as the person with whom the child concerned is to live.

13. Leave to apply for s.11 order

P1989/41/11, 1991/3/11

(1) Where the person applying for leave to make an application for an order under section 11 is not the child concerned, the court shall, in deciding whether or not to grant such leave, have particular regard to —

- (a) the nature of the proposed application;
- (b) the applicant's connection with the child;
- (c) any risk there might be of the proposed application disrupting the child's life to such an extent that he would be harmed by it; and
- (d) where the child is placed with the applicant as a foster parent by the Department, the Department's plans for the child's future and the wishes and feelings of his parents.

(2) Where the person applying for leave to make an application for an order under section 11 is the child concerned, the court shall not grant such leave unless it is satisfied that he has sufficient understanding to make the proposed application.

14. Restrictions on making s.11 orders

P1989/41/9, 1991/3/12

(1) No court shall make any order under section 11, other than a residence order, with respect to a child who is in the care of the Department.

(2) No court shall make a residence order or a contact order in favour of the Department.

(3) No court shall make an order referred to in section 11(1)(c) or (d) —

- (a) with a view to achieving a result which could be achieved by a residence order or a contact order; or
- (b) so as to require a child to be placed in the care of the Department, or put under the supervision of the Department or a probation officer; or
- (c) so as to require a child to be accommodated by or on behalf of the Department.

- (4) No court shall —
 - (a) make any order under section 11, other than one varying or revoking such an order, with respect to a child who has reached the age of 16, or
 - (b) make any order under section 11 which is to have effect for a period ending after he has reached that age,

unless it is satisfied that the circumstances of the case are exceptional.

15. Duration of orders

P1989/41/11 & 91, 1991/3/13 & 22

(1) Except as provided by Schedule 1, no order under this Part with respect to a child continues in force after the child has reached the age of 18.

(2) Any order under section 11 with respect to a child ceases to have effect on the making of a care order with respect to him.

(3) Any order under section 11 with respect to a child remains in force until he reaches the age of 16, unless —

- (a) it is made at a time when he has reached that age (in which case it remains in force until he reaches the age of 18), or
 - (b) it is to have effect beyond that age by virtue of section 14(4)(b).
- (4) Where —
- (a) a residence order has been made with respect to a child; and
 - (b) as a result of the order the child lives, or is to live, with one of 2 parents who each have parental responsibility for him,

the residence order shall cease to have effect if the parents live together for a continuous period of more than 6 months.

(5) A contact order which requires the parent with whom a child lives to allow the child to visit, or otherwise have contact with, his other parent shall cease to have effect if the parents live together for a continuous period of more than 6 months.

16. Effect of residence order

P1989/41/12 & 13, 1991/3/14

(1) Where a court makes a residence order in favour of the father of a child it shall, if he would not otherwise have parental responsibility for the child, also make an order under section 4 giving him that responsibility; and the order shall not be revoked while the residence order remains in force.

(2) Where a court makes a residence order in favour of any person who is not a parent or guardian of the child concerned, he shall have parental responsibility for the child while the residence order remains in force.

(3) Where a person has parental responsibility for a child by virtue of subsection (2), he shall not have the right —

- (a) to agree, or refuse to agree, to the making of an adoption order, or an order under section 43 of the Adoption Act 1984², with respect to the child; or
- (b) to appoint a guardian for the child.

(4) Where a residence order is in force with respect to a child, no person may —

- (a) cause the child to be known by a new surname, or
- (b) remove the child from the Island,

without either the written consent of every person who has parental responsibility for the child or the leave of the court; but this subsection does not prevent the person in whose favour the order is made removing the child from the Island for a period of less than one month.

(5) When making a residence order with respect to a child, the court may grant the leave required by subsection (4)(b), either generally or for specified purposes.

17. Enforcement of certain residence orders

P1989/41/14, 1991/3/26

Where —

- (a) a residence order made by a court of summary jurisdiction in favour of any person is in force with respect to a child, and
- (b) any other person is in breach of the arrangements settled by the order, and
- (c) a copy of the order has been served on that other person,

the order may, without prejudice to any other remedy which may be available, be enforced under section 102 of the Summary Jurisdiction Act 1989 as if it were an order of a court of summary jurisdiction requiring that other person to give up the child to the person in favour of whom the residence order is made.

18. Financial provision orders

1991/3/15

Schedule 1 shall have effect for the purpose of enabling the court to make financial provision for children in certain family proceedings.

² 1984 c.14

19. Jurisdiction

1991/3/24

(1) Subject to the following provisions of this section and to section 49(2) of the Summary Jurisdiction Act 1989, in this Part "the court" means the High Court or a court of summary jurisdiction, and any power to vary, revoke or revive an order may be exercised by the court as respects an order made by that or any other court.

(2) Any powers of a court of summary jurisdiction under this Part are exercisable even though any party to the proceedings is residing outside the Island, except that it shall not entertain an application under paragraph 9 of Schedule 1 unless both the parties to the agreement in question are resident in the Island.

(3) A court of summary jurisdiction may not entertain any application involving the administration or application of any property belonging to or held in trust for a child or the income thereof.

(4) A court of summary jurisdiction may not make any order under paragraph 1 of Schedule 1 other than —

- (a) an order under paragraph 1(1)(a) or (c), or
- (b) an order varying, revoking or reviving an order under paragraph 1(1)(a).

(5) The amount of any lump sum to be paid by a lump sum order made by a court of summary jurisdiction shall not exceed £1,000 or such larger amount as may for the time being be fixed for the purposes of section 2(3) of the Domestic Proceedings Act 1983³; but a court of summary jurisdiction may make a lump sum order not exceeding that amount even though the parent was required to pay a lump sum by a previous order under this Part.

(6) A court of summary jurisdiction may not make any order under paragraph 9 of Schedule 1 except —

- (a) in a case where the agreement contains no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the child;
- (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments;

and may not in any case make an order on an application under paragraph 10 of that Schedule.

(7) Where an application is made to a court of summary jurisdiction for an order under this Part, and the court considers that the matter is one which would be more conveniently dealt with by the High Court, the

³ 1983 c.13

court shall refuse to make the order, and no appeal shall lie from that refusal; but the court may exercise its powers under paragraph 8 of Schedule 1 to make interim orders.

(8) In any proceedings in the High Court relating to or comprising the same subject matter as an application which is refused under subsection (7), the application shall, if the High Court so orders, be reheard and determined by a court of summary jurisdiction.

20. Wardship

P1989/41/100, 1991/3/20

(1) Subject to subsection (2), no child shall be made a ward of court except by virtue of an order to that effect made by the High Court.

(2) Where application is made for an order under subsection (1) in respect of a child, the child shall become a ward of court on the making of the application, but shall cease to be a ward of court at the expiration of such period as may be prescribed by rules of court, unless within that period an order has been made in accordance with that application.

(3) The High Court may, on an application in that behalf or of its own motion, order that a child who is a ward of court shall cease to be a ward of court.

(4) The High Court shall not exercise its inherent jurisdiction with respect to children —

- (a) so as to require a child to be placed in the care, or put under the supervision, of the Department;
- (b) so as to require a child to be accommodated by or on behalf of the Department;
- (c) so as to make a child who is the subject of a care order a ward of court; or
- (d) for the purpose of conferring on the Department power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

(5) No application for any exercise of that jurisdiction may be made by the Department unless the Department has obtained the leave of the High Court, which may not be granted unless the Court is satisfied that —

- (a) the result which the Department wish to achieve could not be achieved through the making of any order —
 - (i) made otherwise than in the exercise of that jurisdiction, and
 - (ii) for which the Department is entitled to apply (assuming that any requisite leave were granted); and

- (b) there is reasonable cause to believe that, if that jurisdiction is not exercised with respect to the child, he will suffer, or be likely to suffer, significant harm.
- (6) The making of a care order with respect to a child who is a ward of court brings the wardship to an end.

21. Restriction on further applications

On disposing of any application for an order under this Part, a court may (whether or not it makes any other order in the proceedings) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without the leave of the court (that is, the leave of any court having jurisdiction to hear the application in question).

PART 3

GENERAL FUNCTIONS OF DEPARTMENT

General

22. General duties of Department

(1) In exercising its functions under this Act, the Department shall seek, so far as practicable, to promote the upbringing of children by their families; and for this purpose "family", in relation to a child, includes any individual who has parental responsibility for him and any person with whom he has been living.

(2) In exercising its functions under this Act with respect to the upbringing of a child, the welfare of that child shall be the Department's paramount consideration.

(3) Without prejudice to subsections (1) and (2), in exercising its functions under this Act, the Department shall take reasonable steps designed to reduce the need to bring —

- (a) proceedings for care and supervision orders with respect to children;
- (b) criminal proceedings against children;
- (c) any family or other proceedings with respect to children which might lead to them being placed in the Department's care; or
- (d) proceedings under the inherent jurisdiction of the High Court with respect to children.

23. Functions of Department in relation to children in danger or need

(1) The Department shall, in accordance with the following provisions of this Act, take such steps as appear to it to be appropriate to safeguard and promote the welfare of children who are suffering, or likely to suffer, significant harm.

(2) The Department may provide, or arrange with voluntary organisations or other persons for the provision of, all or any of the services specified in subsection (3) for the purpose of —

- (a) performing its duty under subsection (1), and
 - (b) safeguarding and promoting the welfare of children who are in need.
- (3) The services referred to in subsection (2) are —
- (a) accommodation for children who require it in the circumstances specified in section 25;
 - (b) day care;
 - (c) advice, guidance and counselling;
 - (d) occupational, social, cultural or recreational facilities;
 - (e) home help;
 - (f) assistance with travelling to and from home for the purpose of taking advantage of any service provided under subsection (2) or any similar service;
 - (g) publishing information about any service provided under subsection (2) or any similar service.

(4) Any public authority other than the Department may, in the exercise of its statutory functions, co-operate with the Department in the provision by the Department of any of the services specified in subsection (3).

(5) For the purposes of this Act a child is in need if —

- (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services under this Part; or
- (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
- (c) he is disabled.

(6) For the purposes of this Act —

"development" means physical, intellectual, emotional, social and behavioural development;

"disabled" means blind, deaf, dumb, suffering from mental disorder of any kind, or substantially and permanently handicapped by illness,

injury or congenital deformity or such other disability as may be prescribed;

"harm" means ill-treatment or the impairment of health or development; and where the question of whether harm suffered by a child is significant turns on his health or development, his health or development shall be compared with that which could reasonably be expected of a similar child;

"health" means physical or mental health;

"ill-treatment" includes sexual abuse and forms of ill-treatment which are not physical.

24. Duties of Department where it looks after children

P1989/41/22

(1) For the purposes of this Act the Department is looking after a child where —

- (a) he is in the care of the Department, or
- (b) the Department provides accommodation (other than accommodation in a health service hospital) for him under this Act or any other enactment for a continuous period of more than 24 hours.

(2) Without prejudice to its duty to provide accommodation under section 25(1), where the Department is looking after a child it shall —

- (a) safeguard and promote his welfare;
- (b) maintain him (apart from providing accommodation for him);
- (c) advise, assist and befriend him with a view to promoting his welfare after he ceases to be looked after by the Department; and
- (d) make use of such services available for children cared for by their own parents as appear to the Department reasonable in his case.

(3) Where the Department is looking after or proposing to look after a child, it shall —

- (a) before making any decision with respect to him, so far as reasonably practicable, ascertain the wishes and feelings regarding the matter to be decided of —
 - (i) the child,
 - (ii) his parents,
 - (iii) any other individual who has parental responsibility for him, and
 - (iv) any other person whose wishes and feelings the Department considers to be relevant; and

- (b) in making any such decision, give due consideration —
 - (i) (having regard to his age and understanding) to such wishes and feelings of his as it has been able to ascertain,
 - (ii) to such wishes and feelings of any person mentioned in paragraph (a)(ii), (iii) or (iv) as it has been able to ascertain,
 - (iii) to the child's religious persuasion.
- (4) The Department may disregard any requirement of subsection (2) or (3) with respect to any child whom it is looking after, if it is satisfied that it is necessary to do so in order to protect the public from serious injury.
- (5) Schedule 2 makes further provision for children looked after by the Department.
- (6) Schedule 3 makes provision in connection with contributions towards the maintenance of children who are being looked after by the Department.

Provision of accommodation for children

25. Provision of accommodation

- (1) The Department shall provide accommodation for a child in the following circumstances —
 - (a) where he is in the care of the Department;
 - (b) where he is in need because —
 - (i) no person has parental responsibility for him, or
 - (ii) he is lost or has been abandoned,
 - (iii) a person who has been caring for him is prevented from providing him with suitable accommodation or care;
 - (c) where —
 - (i) he is removed or kept away from home under Part 5, or
 - (ii) the Department is requested to receive him under section 45 or under section 41(6) of the Police Powers and Procedures Act 1998⁴, or
 - (iii) he is remanded under section 76 to accommodation provided by the Department;
 - (d) he is the subject of a supervision order imposing a residence requirement under paragraph 5 of Schedule 9.
- (2) The Department may provide accommodation for a child if it considers that to do so would safeguard or promote his welfare.

⁴ 1998 c.9

(3) Subject to subsections (5) and (6), the Department may not provide accommodation for a child under subsection (1)(b) or (2) if any person objects who —

- (a) has parental responsibility for him, and
- (b) is willing and able to provide accommodation for him, or to arrange for accommodation to be provided for him.

(4) Subject to subsections (5) and (6), any person who has parental responsibility for a child may at any time remove him from accommodation provided by or on behalf of the Department under subsection (1)(b) or (2).

- (5) Subsections (3) and (4) do not apply while any person —
- (a) in whose favour a residence order is in force with respect to the child, or
 - (b) who has care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children,

agrees to the child being looked after in accommodation provided by or on behalf of the Department; and where there is more than one such person, all of them must agree.

(6) Subsections (3) and (4) do not apply where a child who has reached the age of 16 agrees to being provided with accommodation under this section.

(7) The powers of the Department to provide accommodation under this Act are without prejudice to any functions of the Department under any other enactment.

26. Manner in which accommodation may be provided

P1989/41/23

- (1) The Department may provide accommodation for a child by —
- (a) placing him with —
 - (i) a family,
 - (ii) a relative of his, or
 - (iii) any other suitable person,on such terms as to payment by the Department and otherwise as the Department may determine;
 - (b) maintaining him in a home provided and managed by the Department;
 - (c) maintaining him in a registered children's home; or
 - (c) making such other arrangements as seem appropriate to the Department.

(2) Unless it would not be reasonably practicable or consistent with his welfare, the Department shall make arrangements so that any child whom it is looking after can live with —

- (a) a parent of his, or
- (b) another individual who has parental responsibility for him, or
- (c) where he is in the care of the Department and a residence order was in force with respect to him immediately before the care order was made, a person with whom he was to live under the residence order, or
- (d) a relative, friend or other person connected with him.

(3) Unless it would not be reasonably practicable or consistent with his welfare, the Department shall secure that —

- (a) any accommodation provided by it for a child is near his home,
- (b) where the Department are also providing accommodation for a brother or sister of his, they are accommodated together,
- (c) where the child is disabled, the accommodation is not unsuitable for his needs.

27. Secure accommodation

XX p.89/93A, 1993/18/8

(1) Subject to the provisions of this section and section 76(4), a child who is being looked after by the Department may not be placed, and, if placed, may not be kept, in accommodation provided for the purpose of restricting liberty ("secure accommodation") unless it appears—

- (a) that —
 - (i) he has a history of absconding and is likely to abscond from any other description of accommodation; and
 - (ii) if he absconds, he will suffer, or be likely to suffer, significant harm; or
- (b) that if he is kept in any other kind of accommodation he is likely to injure himself or other persons.

(2) A child may not be kept in secure accommodation after the end of such period as may be prescribed, unless a juvenile court has by an order made on the application of the Department authorised him to be kept there.

(3) Subject to subsection (5), on an application under subsection (2) the court —

- (a) shall make the order applied for if (and only if) it is satisfied that —
 - (i) the condition specified in subsection (1)(a) or (b), and
 - (ii) such further conditions as may be prescribed,

are fulfilled; and

- (b) shall in the order specify the maximum period (which shall not exceed such period as may be prescribed) for which he may be kept in secure accommodation without a further order under subsection (2).

(4) If the court adjourns the hearing of an application under subsection (2), it may make an interim order permitting the child to be kept during the period of the adjournment in secure accommodation.

- (5) The court shall not make an order under subsection (2) unless

—

- (a) it is satisfied that the Department has taken all such steps as are reasonable and practicable to notify any person who has parental responsibility for the child of the Department's intention to make the application; and

- (b) where the child is not legally represented in that court, he has been informed of his right to apply for legal aid and given an opportunity to do so, and has refused or failed to apply.

- (6) This section —

- (a) does not apply to a child remanded under section 76 to accommodation provided by the Department;

- (b) does not apply to any prescribed description of children; and

- (b) has effect in relation to children of a prescribed description subject to such modifications as may be prescribed.

(7) The making of an order under this section does not prejudice any power of any court to make any other order or to give directions relating to the child to whom the order relates.

Supplemental

28. Regulations

- (1) The Department may make regulations with respect to —

- (a) the exercise of its functions under this Act; and

- (b) the activities of voluntary organisations, official foster parents and others under arrangements made by the Department with them for the provision of services specified in section 23(3).

- (2) Regulations under this section may in particular prescribe —

- (a) the notice to be given to any child and to other persons of action taken or intended to be taken by the Department or any body or person referred to in subsection (1)(b) with respect to the child;

- (b) the procedure to be followed in connection with any such action;

- (c) the records of any such action to be maintained by the Department or such a body or person.

29. Investigations

P1989/41/37

(1) Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care order or a supervision order to be made with respect to him, the court may direct the Department to undertake the investigation of his circumstances.

(2) Where the court gives a direction under this section the Department shall, when undertaking the investigation, consider whether it should —

- (a) apply for a care order or a supervision order with respect to the child, or
- (b) take any other action with respect to him.

(3) Where the Department undertakes an investigation under this section and decides not to apply for a care order or a supervision order with respect to the child concerned, it shall inform the court of —

- (a) its reasons for so deciding, and
- (b) any other action which it has taken, or proposes to take, with respect to the child;

and shall so inform the court before the end of the period of 8 weeks beginning with the date of the direction, or such shorter period as the court may direct.

30. Reports

P1989/41/7, 1991/3/23

(1) When considering any question with respect to a child under this Act the court may ask the Department to arrange for an officer of the Department, or ask a probation officer, to make to the court a report, orally or in writing, with respect to any specified matter appearing to the court to be relevant to the application, and the Department or the probation officer, as the case may be, shall comply with the request.

(2) A report made in pursuance of subsection (1) 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 advocate either before or during a hearing of the application; and

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(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) The court may and, if requested to do so at the hearing by a party to the proceedings or his advocate, 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.

(4) The court may take account of —

(a) any statement contained in a report made at a hearing of an application or of which copies have been given to the parties or their advocates in accordance with subsection (2)(a); and

(b) any evidence given by the officer under subsection (3),

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.

PART 4

CARE AND SUPERVISION

31. Care and supervision orders

P1989/41/31

(1) On the application of the Department with respect to a child a court may make an order —

- (a) placing the child in the care of the Department (a "care order"); or
- (b) putting him under the supervision of the Department or, with the consent of the Department, of a probation officer (a "supervision order").

(2) A court may not make a care order or a supervision order unless it is satisfied —

- (a) that the child is suffering, or likely to suffer, significant harm; and
- (b) that the harm is or will be attributable to —
 - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
 - (ii) the child's being beyond parental control.

(3) No care order or supervision order may be made with respect to a child who has reached the age of 17 (or 16, in the case of a child who is married).

(4) An application under this section may be made on its own or in any family proceedings.

(5) The court may —

- (a) on an application for a care order, make a supervision order; or
- (b) on an application for a supervision order, make a care order.

(6) In this section "court" means —

- (a) in relation to an application made in family proceedings, the court in which those proceedings are taking place;
- (b) otherwise, a juvenile court.

32. Effect of care order

P1989/41/33

(1) Where a care order is made with respect to a child, it is the duty of the Department to receive the child into its care and to keep him in its care while the order remains in force.

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(2) While a care order is in force with respect to a child, the Department shall —

- (a) have parental responsibility for him, and
- (b) have the power to determine the extent to which a parent or guardian of the child may meet his parental responsibility for him, subject to —
 - (i) the following provisions of this section, and
 - (ii) any right, duty, power, responsibility or authority which a parent or guardian has in relation to him and his property by virtue of an enactment other than this section.

(3) The Department may not exercise its power under subsection (2)(b) unless it is satisfied that it is necessary to do so in order to safeguard or promote the welfare of the child.

(4) Nothing in subsection (2)(b) prevents a parent or guardian of the child who has care of him from doing what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting his welfare.

(5) While a care order is in force with respect to a child, the Department shall not —

- (a) cause him to be brought up in any religious persuasion other than that in which he would have been brought up if the order had not been made; or
- (b) have the right —
 - (i) to agree or refuse to agree to the making of an adoption order, or an order under section 43 of the Adoption Act 1984, with respect to him; or
 - (ii) to appoint a guardian for him.

(6) While a care order is in force with respect to a child, no person may —

- (a) cause him to be known by a new surname; or
- (b) remove him from the Island,

without either the written consent of every person who has parental responsibility for him or the leave of a juvenile court.

(7) Subsection (6)(b) does not —

- (a) prevent the removal of such a child by the Department for a period of less than one month, or
- (b) apply to arrangements for such a child to live outside the Island (which are governed by paragraph 6 of Schedule 2).

33. Parental contact etc. with children in care

P1989/41/34

(1) Where a child is in the care of the Department, the Department shall, subject to the provisions of this section, allow the child reasonable contact with —

- (a) his parents;
- (b) any guardian of his;
- (c) where there was a residence order in force with respect to him immediately before the care order came into force, the person in favour of whom the order was made; and
- (d) where, immediately before the care order was made, an individual had care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children, that individual.

(2) On an application made by the Department or the child, the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and any named person.

(3) On an application made by —

- (a) any person mentioned in subsection (1)(a) to (d), or
- (b) any person who has obtained the leave of the court to make the application,

the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and that person.

(4) On an application made by the Department or the child, the court may make an order authorising the Department to refuse to allow contact between the child and any person mentioned in subsection (1)(a) to (d) and named in the order.

(5) When making a care order with respect to a child, or in any family proceedings in connection with a child who is in the care of the Department, the court may make an order under this section, even though no application for such an order has been made with respect to him, if it considers that the order should be made.

(6) The Department may refuse to allow the contact that would otherwise be required by virtue of subsection (1) or an order under this section if —

- (a) it is satisfied that it is necessary to do so in order to safeguard or promote the welfare of the child, and
- (b) the refusal is decided upon as a matter of urgency and does not last for more than 7 days.

(7) An order under this section may impose such conditions as the court considers appropriate.

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(8) The court may vary or revoke any order made under this section on the application of the Department, the child concerned or the person named in the order.

(9) An order under this section may be made either at the same time as the care order itself or later.

(10) Before making a care order with respect to any child the court shall —

(a) consider the arrangements which the Department has made, or proposes to make, for affording any person contact with him, and

(b) invite the parties to the proceedings to comment on those arrangements.

(11) In this section "the court" means —

(a) where the care order in question was made by a court other than a juvenile court, that court or a juvenile court;

(b) in any other case, a juvenile court;

but where the care order was made by a court on the determination of an appeal from another court, it shall be treated for the purpose of this subsection as made by the latter court.

34. Supervision orders

P1989/41/35

(1) While a supervision order is in force with respect to a child it is the duty of the supervisor —

(a) to advise, assist and befriend him;

(b) to take such steps as are reasonably necessary to give effect to the order; and

(c) where the order is not wholly complied with, or the supervisor considers that the order may no longer be necessary, to consider whether or not to apply to the court for its variation or revocation.

(2) Schedule 4 makes further provision with respect to supervision orders.

35. Interim orders

P1989/41/38

(1) A court may by virtue of this section make a care order or a supervision order (an "interim order") —

(a) where any proceedings in the court on an application for a care order or a supervision order are adjourned, or

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(b) where in any family proceedings the court gives a direction under section 29(1).

(2) A court shall not make an interim order unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 31(2).

(3) Where, in any proceedings on an application for a care order or a supervision order, a court makes a residence order with respect to the child concerned, it shall also make a supervision order, being an interim order, with respect to him unless it is satisfied that his welfare will be satisfactorily safeguarded without an interim order being made.

(4) An interim order shall have effect for such period as may be specified in the order, but shall in any event cease to have effect on whichever of the following happens first —

(a) the expiry of 8 weeks beginning with the date on which the order is made;

(b) if the order is the second or subsequent such order made with respect to the same child in the same proceedings, the expiry of 4 weeks beginning the date on which the order is made, or (if later) the expiry of 8 weeks beginning with the date on which the first order was made;

(c) in a case within subsection (1)(a), the disposal of the application;

(d) in a case within subsection (1)(b), the disposal of an application for a care order or supervision order made by the Department with respect to the child or, if no such application is made, the expiry of the period referred to in section 29(3).

(5) In determining the period for which an interim order is to be in force, the court shall consider whether any party who was, or might have been, opposed to the making of the order was in a position to argue his case against the order in full.

(6) Where the court makes an interim order, it may give such directions (if any) as it considers appropriate with regard to the medical or psychiatric examination or other assessment of the child; but if the child is of sufficient understanding to make an informed decision he may refuse to submit to the examination or other assessment.

(7) A direction under subsection (6) may be to the effect that there is to be no such examination or assessment, or no such examination or assessment unless the court directs otherwise; and such a direction may —

(a) be given when the interim order is made or at any time while it is in force, and

(b) be varied at any time on the application of the Department, the child or any person with parental responsibility for him.

36. Power to include exclusion requirement in interim care order

P1989/41/38A, P1996/27/Sch.6

(1) Where the court makes an interim care order with respect to a child and the conditions specified in subsection (2) are satisfied, the court may include an exclusion requirement in the interim care order.

(2) The conditions referred to in subsection (1) are that —

(a) the court is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 31(2)(a) and (b)(i);

(b) there is reasonable cause to believe that, if a person ("the relevant person") is excluded from a dwelling-house in which the child lives, the child will cease to suffer, or be likely to suffer, significant harm, and

(b) that another person living in the dwelling-house (whether a parent of the child or some other person) —

(i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him, and

(ii) consents to the inclusion of the exclusion requirement.

(3) Schedule 5 has effect with respect to exclusion requirements under this section and undertakings to the like effect.

37. Revocation etc. of care orders

P1989/41/39

(1) A care order may be revoked by the court on the application of —

(a) any person who has parental responsibility for the child;

(b) the child himself; or

(c) the Department.

(2) A supervision order may be substituted by the court for a care order on the application of any person entitled to apply for the care order to be revoked; and section 31(2) need not be satisfied at that time.

(3) In this section "the court" means —

(a) where the care order was made by a court other than a juvenile court, that court or a juvenile court; or

(b) in any other case, a juvenile court;

but where the care order was made by a court on the determination of an appeal from another court, it shall be treated for the purpose of this subsection as made by the latter court.

38. Duration of care orders

P1989/41/91

(1) Unless previously revoked, and subject to subsections (2) and (3), a care order (other than an interim order) continues in force until the child concerned reaches the age of 18.

(2) A care order with respect to a child ceases to have effect —

(a) if he is adopted;

(b) on the making of any of the following orders with respect to him —

(i) a residence order;

(ii) an order under section 6;

(iii) an order under section 43 of the Adoption Act 1984.

(3) Where a child who is in the care of the Department is lawfully taken to live in any part of the United Kingdom or any of the Channel Islands, the care order in question shall cease to have effect if the conditions prescribed in an order made by the Council of Ministers are satisfied.

(4) This section is without prejudice to section 48 (termination of custody orders etc.) of the Child Custody Act 1987⁵.

39. Orders etc. pending appeal

P1989/41/40

(1) Where —

(a) a court dismisses an application for a care order or a supervision order, and

(b) at the time when the court dismisses the application, an interim care order is in force with respect to the child,

the court may make an order pending appeal, that is, a supervision order or (if the application was for a care order) a care order with respect to the child to have effect for such period, not exceeding the appeal period, as may be specified in the order.

(2) Where a court revokes a care order or a supervision order, it may direct that the order shall continue to have effect for such period, not exceeding the appeal period, as may be specified in the order.

(3) An order or direction under subsection (1) or (2) may be made subject to such directions or further directions (if any) as the court may see fit to include in the order or direction.

(4) On an appeal against any decision of a court on which an order or direction under subsection (1) or (2) is made, or on an application in connection with a proposed appeal against such a decision, the appellate court

⁵ 1987 c.11

may extend the period for which the order or direction is to have effect, but not so as to extend it beyond the end of the appeal period.

- (5) In this section "the appeal period" means —
 - (a) where an appeal is made against the decision in question, the period between the making of the decision and the determination of the appeal;
 - (b) otherwise, the period during which an appeal may be made against the decision.

40. Restrictions on applications

P1989/41/91(14)-(17)

- (1) Where an application has been made for —
 - (a) the revocation of a care order;
 - (b) the revocation of a supervision order; or
 - (c) the substitution of a supervision order for a care order;

no further application of any of those kinds (except in relation to an interim order) may be made with respect to the child concerned without the leave of the court, unless the period between the disposal of the previous application and the making of the further application exceeds 6 months.

(2) Where an application for an order under section 33 has been refused, the applicant may not make a further application for such an order without the leave of the court, unless the period between the disposal of the previous application and the making of the further application exceeds 6 months.

(3) On disposing of any application for an order under this Part, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of a specified kind may be made with respect to the child concerned by any person named in the order without the leave of the court.

(4) References in this section to the leave of the court are to the leave of any court having jurisdiction to hear the application in question.

PART 5

PROTECTION OF CHILDREN

41. Assessment orders

P1989/41/43

- (1) On the application of the Department for an order under this section (an "assessment order") with respect to a child, a court of summary jurisdiction may make the order if (and only if) it is satisfied that —
 - (a) the Department has reasonable cause to suspect that the child is suffering, or likely to suffer, significant harm;

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- (b) an assessment of the state of the child's health or development, or of the way in which he has been treated, is required to enable the Department to determine whether or not the child is suffering, or likely to suffer, significant harm; and
 - (c) it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an assessment order.
- (2) The court may treat an application under this section as an application for an emergency protection order.
- (3) The court may not make an assessment order if it is satisfied —
- (a) that there are grounds for making an emergency protection order with respect to the child; and
 - (b) that it ought to make such an order rather than an assessment order.
- (4) An assessment order shall specify the date by which the assessment is to begin, and shall have effect for such period, not exceeding 7 days beginning with that date, as may be specified in the order.
- (5) Where an assessment order is in force with respect to a child, any person who is in a position to produce the child shall —
- (a) produce him to such person as may be named in the order, and
 - (b) comply with such directions relating to the assessment of the child as the court thinks fit to specify in the order.
- (6) An assessment order authorises any person carrying out the assessment, or any part of it, to do so in accordance with the terms of the order; but if the child is of sufficient understanding to make an informed decision, he may refuse to submit to a medical or psychiatric examination or other assessment.
- (7) The child may only be kept away from home —
- (a) in accordance with directions specified in the order;
 - (b) if it is necessary for the purposes of the assessment; and
 - (c) for such period or periods as may be specified in the order;
- and where the child is to be kept away from home, the order shall contain such directions as the court thinks fit with regard to the contact that he must be allowed to have with other persons while away from home.
- (8) The Department shall take such steps as are reasonably practicable to ensure that notice of an application for an assessment order is given, before the hearing of the application, to —
- (a) the parents of the child;
 - (b) any individual who is not a parent of the child but has parental responsibility for him;
 - (c) any other person caring for the child;

- (e) any person in whose favour a contact order is in force with respect to the child;
- (f) any person who is allowed to have contact with the child by virtue of an order under section 33;
- (g) the child.

(9) Any person mentioned in subsection (8), and any other person specified for the purpose in rules of court, may apply to a court of summary jurisdiction for an assessment order to be varied or revoked.

42. Emergency protection orders

P1989/41/44

(1) On the application of the Department for an order under this section (an "emergency protection order") with respect to a child, a court of summary jurisdiction may make the order if (and only if) it is satisfied that —

- (a) there is reasonable cause to believe that the child will suffer, or be likely to suffer, significant harm if —
 - (i) he is not removed to accommodation provided by or on behalf of the Department; or
 - (ii) he does not remain in the place in which he is then being accommodated; or
- (b) enquiries are being made with respect to the child under section 46(1)(b), and —
 - (i) such enquiries are being frustrated by access to the child being unreasonably refused to a person authorised by the Department to seek access in connection with the enquiries, and
 - (ii) the Department has reasonable cause to believe that such access is required as a matter of urgency.

(2) Where an emergency protection order is in force with respect to a child, any person who is in a position to produce the child shall comply with any request to produce him to the Department.

- (3) An emergency protection order authorises —
 - (a) the removal of the child at any time to accommodation provided by or on behalf of the Department and his detention there; and
 - (b) the prevention of the child's removal from any hospital or other place in which he was being accommodated immediately before the making of the order;

but the Department shall only exercise the power given by paragraph (a) or (b) in order to safeguard the welfare of the child.

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(4) An emergency protection order gives the Department parental responsibility for the child; and the Department shall take, and shall only take, such action in meeting its parental responsibility for the child as is reasonably required to safeguard or promote his welfare (having regard in particular to the duration of the order).

(5) Where a court makes an emergency protection order, it may give such directions (if any) as may be appropriate with respect to —

- (a) the contact which is, or is not, to be allowed between the child and any named person;
- (b) imposing conditions on such contact.

(6) Where a court makes an emergency protection order, it may give such directions (if any) as may be appropriate with respect to the medical or psychiatric examination or other assessment of the child; and a direction under this subsection may be to the effect that there is to be —

- (a) no such examination or assessment, or
- (b) no such examination or assessment unless the court directs otherwise;

but if the child is of sufficient understanding to make an informed decision, he may refuse to submit to any such examination or assessment.

(7) A direction under subsection (5) or (6) may be given when the emergency protection order is made or at any other time, and may be varied at any time on the application of —

- (a) any person having parental responsibility for the child; or
- (b) any other person specified for the purpose in rules of court.

(8) Where —

- (a) an emergency protection order is in force with respect to a child, and
- (b) the Department has exercised the power given by subsection (3)(a) or (b), but
- (c) it appears to the Department that it is safe for the child to be returned, or to be allowed to be removed from the place in question, as the case may be,

it shall return him or allow him to be removed.

(9) Where the Department is required by subsection (8) to return the child it shall —

- (a) return him to the care of the person from whose care he was removed, or
- (b) if that is not reasonably practicable, return him to the care of —
 - (i) a parent of his;
 - (ii) any individual who is not a parent of his but has parental responsibility for him; or

- (iii) such other person as the Department (with the agreement of the court) considers appropriate.

(10) Where the Department has been required by subsection (8) to return the child or allow him to be removed, it may again exercise its powers with respect to the child (at any time while the emergency protection order remains in force) if it appears to it that a change in the circumstances of the case makes it necessary to do so.

(11) Where an emergency protection order has been made with respect to a child, the Department shall, subject to any directions under subsection (5), allow the child reasonable contact with —

- (a) his parents;
- (b) any individual who is not a parent of his but has parental responsibility for him;
- (c) any person with whom he was living immediately before the making of the order;
- (d) any person in whose favour a contact order is in force with respect to the child;
- (e) any person who is allowed to have contact with the child by virtue of an order under section 33;
- (f) any person acting on behalf of any of those persons.

(12) Wherever it is reasonably practicable to do so, an emergency protection order shall name the child; and where it does not name him, it shall describe him as clearly as possible.

(13) Any person who intentionally obstructs any person exercising the power under subsection (3) to remove, or prevent the removal of, the child is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

43. Power to include exclusion requirement in emergency protection order

P1989/43/44A, P1996/27/Sch.6

(1) Where the court makes an emergency protection order with respect to a child and the conditions specified in subsection (2) are satisfied, the court may include an exclusion requirement in the emergency protection order.

- (2) The conditions referred to in subsection (1) are —
 - (a) that there is reasonable cause to believe that, if a person ("the relevant person") is excluded from a dwelling-house in which the child lives, then —
 - (i) in the case of an order made on the ground mentioned in paragraph (a) of section 42(1), the child will not suffer, or be likely to suffer, significant harm, even though he

- is not removed or does not remain as mentioned in subparagraph (i) or (ii) of that paragraph, or
- (ii) in the case of an order made on the ground mentioned in paragraph (b) of section 42(1), the enquiries referred to in that paragraph will cease to be frustrated, and
- (b) that another person living in the dwelling-house (whether a parent of the child or some other person) —
- (i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him, and
 - (ii) consents to the inclusion of the exclusion requirement.
- (3) Schedule 5 has effect with respect to exclusion requirements under this section and undertakings to the like effect.

44. Duration of emergency protection orders etc.

P1989/41/45

- (1) An emergency protection order shall have effect for such period not exceeding 8 days as may be specified in the order.
- (2) Where —
- (a) the court making an emergency protection order would, but for this subsection, specify a period of 8 days as the period for which the order is to have effect; but
 - (b) the last of those 8 days is Christmas Day, Good Friday, a bank holiday or a Sunday,

the court may specify a period which ends at noon on the first later day which is not such a day.

(3) Where an emergency protection order is made on an application under section 45(6), the period of 8 days mentioned in subsection (1) shall begin with the first day on which the child was taken into police protection under section 45.

(4) The Department may, while an emergency protection order has effect, apply to the court for the period during which the order is to have effect to be extended; and on such an application the court may extend that period for such period, not exceeding 7 days, as it thinks fit, but —

- (a) the court may do so only if it has reasonable cause to believe that the child concerned will suffer, or be likely to suffer, significant harm if the order is not extended; and
- (b) an emergency protection order may not be extended more than once.

(5) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, a court hearing an application for or with respect to an emergency protection order may take account of —

- (a) any statement contained in any report made to the court in the course of, or in connection with, the hearing, or
- (b) any evidence given during the hearing,

which is, in the opinion of the court, relevant to the application.

(6) Any of the following may apply to a court of summary jurisdiction for an emergency protection order to be revoked —

- (a) the child concerned;
- (b) any parent of his;
- (c) any person who is not a parent of his but who has parental responsibility for him; or
- (d) any person with whom he was living immediately before the making of the order;

but no such application shall be heard by the court before the expiry of the period of 72 hours beginning with the making of the order.

(7) No appeal may be made against the making of, or refusal to make, an emergency protection order or against any direction given by the court in connection with such an order, except —

- (a) where the person who would otherwise be entitled to apply for the order to be revoked was given notice (in accordance with rules of court) of the hearing at which the order was made, and was present at that hearing, or
- (b) in the case of an order the effective period of which has been extended under subsection (4).

(8) A court making an emergency protection order may direct that an officer of the Department, in exercising any powers by virtue of the order, be accompanied by a registered medical practitioner or registered nurse, if he chooses.

45. Removal by police

P1989/41/46

(1) Where a constable has reasonable cause to believe that a child would otherwise suffer, or be likely to suffer, significant harm, he may —

- (a) remove the child to suitable accommodation and keep him there, or
- (b) take such steps as are reasonable to ensure that the child's removal from any hospital, or other place, in which he is then being accommodated is prevented;

and such a child is referred to in this Act as having been taken into police protection.

(2) As soon as is reasonably practicable after taking a child into police protection, the constable concerned shall —

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- (a) inform the Department of the steps that have been, and are proposed to be, taken with respect to the child under this section, the reasons for taking them and the place at which he is being accommodated;
 - (b) inform the child (if he appears capable of understanding) of the steps that have been taken with respect to him under this section and the reasons for taking them, and of the further steps that may be taken with respect to him under this section;
 - (c) take such steps as are reasonably practicable to discover the wishes and feelings of the child;
 - (d) secure that the case is inquired into by an officer designated for the purposes of this section by the Chief Constable (a "designated officer"); and
 - (e) where the child was taken into police protection by being removed to accommodation which is not provided by or on behalf of the Department, secure that he is moved to accommodation which is so provided.
- (3) As soon as is reasonably practicable after taking a child into police protection, the constable concerned shall take such steps as are reasonably practicable to inform —
- (a) the parents of the child;
 - (b) every individual who is not a parent of his but who has parental responsibility for him; and
 - (c) any other person with whom he was living immediately before he was taken into police protection,

of the steps that have been taken with respect to the child under this section and the reasons for taking them, and of the further steps that may be taken with respect to him under this section.

(4) On completing any inquiry under subsection (2)(d), the designated officer shall release the child from police protection unless he considers that there is still reasonable cause for believing that the child would suffer, or be likely to suffer, significant harm if released.

(5) No child may be kept in police protection for more than 72 hours.

(6) While a child is being kept in police protection, the designated officer may, after consultation with the Department, apply on behalf of the Department for an emergency protection order to be made under section 42 with respect to the child.

- (7) While a child is being kept in police protection —
 - (a) neither the constable concerned nor the designated officer shall have parental responsibility for him; but
 - (b) the designated officer shall do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the welfare of the child (having regard in particular

to the length of the period during which the child will be so protected).

(8) Where a child has been taken into police protection, the designated officer or, where the child is in accommodation provided by or on behalf of the Department, the Department shall allow —

- (a) the parents of the child;
- (b) any individual who is not a parent of his but who has parental responsibility for him; or
- (c) any person with whom he was living immediately before he was taken into police protection;
- (d) any person in whose favour a contact order is in force with respect to him;
- (e) any person who is allowed to have contact with the child by virtue of an order under section 33;
- (f) any person acting on behalf of any of those persons;

to have such contact (if any) with the child as, in the opinion of the designated officer or the Department, as the case may be, is both reasonable and in the best interests of the child.

(9) A police station shall not be taken to be suitable accommodation for the purpose of subsection (1)(a).

46. Department's duty to investigate

P1989/41/47

- (1) Where the Department —
 - (a) is informed that a child is in police protection, or
 - (b) has reasonable cause to believe that a child is suffering, or likely to suffer, significant harm,

the Department shall make or cause to be made such enquiries as it considers necessary to enable it to decide whether it should take any action to safeguard or promote the welfare of the child.

(2) Where the Department has obtained an emergency protection order with respect to a child, it shall make or cause to be made such enquiries as it considers necessary to enable it to decide what action it should take to safeguard or promote the welfare of the child.

(3) The enquiries shall in particular be directed towards establishing —

- (a) whether the Department should make any application to the court, or exercise any of its other powers under this Act, with respect to the child;
- (b) whether, in the case of a child with respect to whom an emergency protection order has been made, or who is not in

accommodation provided by or on behalf of the Department, it would be in the best interests of the child (while an emergency protection order remains in force) for him to be in such accommodation; and

(c) whether, in the case of a child who has been taken into police protection, it would be in his best interests to ask for an application to be made under section 45(6).

(4) Where enquiries are being made under subsection (1) with respect to a child, the Department shall (with a view to enable it to determine what action, if any, to take with respect to him) take such steps as are reasonably practicable —

(a) to obtain access to him; or

(b) to ensure that access to him is obtained, on its behalf, by a person authorised by it for the purpose,

unless the Department is satisfied that it already has sufficient information with respect to him.

(5) Where, as a result of any enquiries made under this section, it appears to the Department that there are matters connected with the education of the child which should be investigated, it shall consult the Department of Education.

(6) Where, in the course of enquiries made under this section any officer of the Department, or any person authorised by the Department to act on its behalf in connection with those enquiries, is refused access to the child concerned, or is denied information as to his whereabouts, the Department shall apply for an emergency protection order, an assessment order, a care order or a supervision order unless it is satisfied that his welfare can be satisfactorily safeguarded without its doing so.

(7) If, on the conclusion of any enquiries or review made under this section, the Department decides not to apply for an order mentioned in subsection (6), it shall —

(a) consider whether it would be appropriate to review the case at a later date, and

(b) if it decides that it would be, determine the date on which that review is to begin.

(8) Where, as a result of complying with this section, the Department concludes that it should take action to safeguard or promote the child's welfare, it shall take that action (so far as it is both within its power and reasonably practicable for it to do so).

47. Discovery of children in need of protection

P1989/41/48

(1) Where it appears to a court making an emergency protection order that adequate information as to the child's whereabouts is not available

to the Department but is available to another person, it may include in the order a provision requiring that person to disclose, if asked to do so by the Department, any information that he may have as to the child's whereabouts.

(2) No person shall be excused from complying with such a requirement on the ground that complying might incriminate him or his spouse of an offence; but a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.

(3) An emergency protection order may authorise a person authorised by the Department to enter premises specified in the order and search for the child with respect to whom the order is made.

(4) Where the court is satisfied that there is reasonable cause to believe that there may be another child on those premises with respect to whom an emergency protection order ought to be made, it may make an order authorising the Department to search for that other child on those premises.

(5) Wherever it is reasonably practicable to do so, an order under subsection (4) shall name the child; and where it does not name him it shall describe him as clearly as possible.

(6) Where —

- (a) an order made been made under subsection (4);
- (b) the child concerned has been found on the premises; and
- (c) the Department is satisfied that the grounds for making an emergency protection order exist with respect to him,

the order shall have effect as if it were an emergency protection order.

(7) Where an order has been made under subsection (4), the Department shall notify the Chief Registrar of its effect; and the Chief Registrar shall make a note thereof against the entry relating to the order in the order book of the court.

(8) A person who intentionally obstructs any person exercising any power conferred by subsection (3) or (4) is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

48. Abduction of person in care

P1989/41/49

- (1) This section applies to a child who is —
 - (a) in the care of the Department,
 - (b) the subject of an emergency protection order, or
 - (c) in police protection,

and in this section "the responsible person" means any person who for the time being has care of him by virtue of the care order, the emergency protection order or section 45, as the case may be.

(2) A person who knowingly and without lawful authority or reasonable excuse —

- (a) takes a child to whom this section applies away from the responsible person;
- (b) keeps such a child away from the responsible person; or
- (c) induces, assists or incites such a child to run away or stay away from the responsible person;

is guilty of an offence and liable on summary conviction to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or both.

49. Recovery of abducted person

P1989/41/50

(1) Where it appears to a court that there is reason to believe that a child to whom section 48 applies —

- (a) has been unlawfully taken away or is being unlawfully kept away from the responsible person; or
- (b) has run away or is staying away from the responsible person; or
- (c) is missing,

the court may make an order under this section (a "recovery order").

(2) A recovery order —

- (a) operates as a direction to any person who is in a position to do so to produce the child on request to any authorised person;
- (b) authorises the removal of the child by any authorised person;
- (c) requires any person who has information as to the child's whereabouts to disclose that information, if asked to do so, to any authorised person; and
- (d) authorises a constable to enter any premises specified in the order and search for the child.

(3) A court may make a recovery order on the application of —

- (a) the Department, or
- (b) the designated officer, in the case of a child in police protection,

and may do so in separate proceedings or in any proceedings under this Act.

(4) A recovery order shall name the child and the person who is the responsible person, and shall not specify any premises under subsection (2)(d) unless it appears to the court that there are reasonable grounds for believing the child to be in them.

(5) A person who intentionally obstructs an authorised person exercising a power under subsection (2)(b) to remove a child shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

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(6) No person shall be excused from complying with a request under subsection (2)(c) on the ground that complying might incriminate him or his spouse of an offence; but a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.

(7) In this section —

"authorised person" means —

- (a) any person specified by the court;
- (b) any constable; and
- (c) any person who is authorised by the Department, after the recovery order is made, to exercise any power under the order;

"court" means —

- (a) in relation to a recovery order made in proceedings in the High Court, that court;
- (b) otherwise, any court of summary jurisdiction;

"the designated officer" has the same meaning as in section 45;

"the responsible person" has the same meaning as in section 48.

(8) Where a person is authorised as mentioned in paragraph (c) of the definition of "authorised person" in subsection (7)—

- (a) the authorisation shall identify the recovery order, and
- (b) a person claiming to be so authorised shall, if asked to do so, produce some duly authenticated document showing that he is so authorised.

PART 6

CHILDREN'S HOMES

50. Introductory

(1) For the purposes of this Act "children's home" means (subject to the following provisions of this section) a home which provides, or usually provides or is intended to provide, care and accommodation wholly or mainly for more than 3 children at any one time.

(2) A child is not cared for and accommodated in a children's home when he is cared for and accommodated by —

- (a) a parent of his;
- (b) a person who is not a parent of his but who has parental responsibility for him; or
- (c) a relative of his.

(3) A child shall not be treated as cared for and accommodated in a children's home when —

- (a) any person mentioned in subsection (2)(a) or (b) is living at the home, or
- (b) the person caring for him is doing so in his personal capacity and not in the course of carrying out his duties in relation to the home.

(4) A home is not a children's home if it is a home provided and managed by the Department.

(5) A home is not a children's home by reason only that the person by whom it is carried on is exceeding the usual fostering limit to the extent that he is permitted to do so by section 61(3) or (4).

51. Registration of children's homes

(1) The Department shall maintain a register of children's homes.

(2) Where a child is at any time cared for and accommodated in a children's home which is not a registered children's home, the person carrying on the home is, unless he has a reasonable excuse, guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

(3) Schedule 6 shall have effect with respect to the registration of children's homes.

52. Disqualifications

(1) A person who is disqualified by regulations under section 58(1) from fostering a child privately shall not carry on, or be otherwise concerned in the management of or have any financial interest in, a children's home

unless he has disclosed to the Department the fact that he is so disqualified and has obtained its written consent.

(2) No person shall employ a person who is so disqualified in a children's home unless he has disclosed to the Department the fact that that person is so disqualified and has obtained its written consent.

(3) Subject to subsection (4), a person who contravenes subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

(4) In proceedings for an offence under subsection (2) it is a defence for the person accused to prove that he did not know, and had no reasonable grounds for believing, that the person whom he was employing was disqualified by regulations under section 58(1).

(5) Where the Department refuses to give its consent under this section, it shall inform the applicant in writing of —

- (a) the reason for its refusal;
- (b) his right of appeal under section 56, and
- (c) the time within which the appeal may be made.

53. Regulations as to children's homes

- (1) The Department may make regulations —
 - (a) as to the placing of children in children's homes;
 - (b) as to the conduct of such homes; and
 - (c) for securing the welfare of children in such homes.
- (2) Regulations under this section may in particular —
 - (a) prescribe standards to which the premises used for children's homes are to conform;
 - (b) impose requirements as to the accommodation, staff and equipment to be provided in such homes, and as to the arrangements to be made for protecting the health of children in such homes;
 - (c) provide for the control and discipline of children in such homes;
 - (d) require the furnishing to the Department of information as to the facilities provided for —
 - (i) the parents of children in the homes;
 - (ii) individuals who are not parents of such children but who have parental responsibility for them; and
 - (iii) other persons connected with such children, to visit and communicate with the children;

- (e) prohibit (except in accordance with section 27) the use of accommodation for the purpose of restricting the liberty of children in such homes;
- (f) impose requirements as to the keeping of records and giving of notice with respect to children in such homes;
- (g) impose requirements as to the facilities which are to be provided for giving religious instruction to children in such homes;
- (h) require notice to be given to the Department of any change of the person in charge of a children's home.

(3) Regulations under this section may provide that a contravention of, or failure to comply with, any specified provision of the regulations without reasonable excuse shall be an offence, punishable on summary conviction by a fine not exceeding such amount (which shall not exceed £2,500) as may be prescribed.

54. Welfare of children in homes

(1) Where a child is accommodated in a children's home, it is the duty of the person carrying on the home —

- (a) to safeguard and promote the child's welfare;
- (b) to make such use of the services and facilities available for children cared for by their own parents as appears to that person reasonable in the case of the child; and
- (c) advise, assist and befriend him with a view to promoting his welfare when he ceases to be so accommodated.

(2) Before making any decision with respect to any such child, the person carrying on the home shall, so far as reasonably practicable, ascertain the wishes and feelings regarding the matter to be decided of —

- (a) the child;
- (b) his parents;
- (c) any other individual who is not a parent of his but who has parental responsibility for him; and
- (d) any other person whose wishes and feelings the person carrying on the home considers to be relevant.

(3) In making any such decision the person concerned shall give due consideration —

- (a) having regard to the child's age and understanding, to such wishes and feelings of his as he has been able to ascertain;
- (b) to such other wishes and feelings mentioned in subsection (2) as he has been able to ascertain; and
- (c) to the child's religious persuasion.

55. Duties of Department

(1) The Department shall satisfy itself that any person carrying on a children's home is satisfactorily safeguarding and promoting the welfare of children accommodated in the home.

(2) The Department shall arrange —

- (a) for every children's home to be inspected from time to time, and
- (b) for children who are accommodated in children's homes to be visited from time to time in the interests of their welfare.

56. Appeals

(1) An appeal shall lie to the High Bailiff under any of the following decisions of the Department under this Part —

- (a) the refusal of an application for registration under section 51;
- (b) the conditions subject to which such an application is granted;
- (c) the cancellation of such registration, the variation of the conditions of registration or the imposition of an additional condition;
- (d) the refusal of consent under section 52(1) or (2).

(2) No such appeal may be brought by a person more than 28 days after notice of the decision is given to him.

(3) On an appeal against a decision of the Department the High Bailiff may —

- (a) affirm the decision;
- (b) direct that the decision shall not have effect;
- (c) vary any condition imposed under paragraph 3 of Schedule 5;
- (d) direct that any such condition (except a condition imposed by paragraph 3(1) of Schedule 5) shall cease to have effect; or
- (e) direct that any conditions he thinks fit shall have effect in respect of the home.

(4) The Department shall comply with any directions of the High Bailiff given under this section.

PART 7

FOSTERING, CHILD-MINDING AND DAY CARE

Fostering

57. Private fostering

P1989/41/66

(1) For the purposes of this Part a child is "privately fostered" if (subject to the following provisions of this Part) —

- (a) he is either under the age of 16 or disabled, and
- (b) he is cared for and provided with accommodation by someone other than —
 - (i) a parent of his,
 - (ii) an individual who is not a parent of his but who has parental responsibility for him; or
 - (iii) a relative of his;

and "to foster a child privately" means to look after the child in circumstances in which he is privately fostered.

(2) A child is not privately fostered if the person caring for and accommodating him —

- (a) has done so for a period of less than 28 days, and
- (b) does not intend to do so for any longer period.

(3) A child is not privately fostered while he is being looked after by the Department.

(4) A child is not privately fostered while he is in the care of any person in premises in which —

- (a) a parent of his;
- (b) a person who is not a parent of his but who has parental responsibility for him; or
- (c) a relative of his who has assumed responsibility for his care,

is for the time being living.

(5) A child is not privately fostered while he is in the care of any person in —

- (a) a children's home;
- (b) a residential care home, nursing home or mental nursing home;
- (c) a health service hospital;
- (d) a school in which he is receiving full-time education; or

- (e) an institution within the meaning of the Custody Act 1995⁶.

unless that person is caring for the child in his personal capacity and not in the course of carrying out his duties in relation to the establishment in question.

- (6) A child is not privately fostered while he is —
 - (a) in the care of any person in compliance with a requirement under paragraph 5 of Schedule 9 (supervision order: residence requirement);
 - (b) liable to be detained, or subject to guardianship, under the Mental Health Act 1998;
 - (c) placed in the care of a person who proposes to adopt him under arrangements made by an adoption agency (within the meaning of the Adoption Act 1984); or
 - (d) a protected child for the purposes of Part II of that Act.

58. Disqualifications

P1989/41/68

(1) The Department shall by regulations provide for the disqualification of persons from fostering a child privately.

(2) Regulations under subsection (1) may in particular provide for a person to be so disqualified where —

- (a) an order of a prescribed kind has been made at any time with respect to him;
- (b) an order of a prescribed kind has been made at any time with respect to any child who has been in his care;
- (c) a requirement of a prescribed kind has been imposed at any time with respect to any such child, under or by virtue of any legislative provision;
- (d) he has been convicted of any offence of a prescribed kind, or has been placed on probation or discharged absolutely or conditionally for any such offence;
- (e) a prohibition has been imposed on him at any time under section 59 or under any other prescribed provision;
- (f) his rights and powers with respect to a child have at any time been vested in a prescribed authority under a prescribed provision.

(3) A provision of regulations made by virtue of subsection (2) may be made with respect to an order made, a requirement or prohibition imposed or other thing done in any part of the United Kingdom, any of the Channel Islands or the Republic of Ireland as well as in the Island.

⁶ 1995 c.1

(4) A person shall not foster a child privately if he is disqualified by regulations under subsection (1) from doing so, unless he has disclosed to the Department the fact that he is so disqualified and has obtained its written consent.

(5) A person shall not foster a child privately if —

(a) he lives in the same household as a person who is disqualified from registration by virtue of regulations under this section; or

(b) he lives in a household at which any such person is employed,

unless he has disclosed to the Department the fact that that person is so disqualified and has obtained its written consent.

(6) Subject to subsection (7), a person who contravenes subsection (4) or (5) is guilty of an offence and liable on summary conviction to custody for a term not exceeding 6 months or a fine not exceeding £5,000, or both.

(7) A person who contravenes subsection (5) is not guilty of an offence if he proves that he did not know, and had no reasonable grounds for believing, that any person living or employed in the household was disqualified by regulations under subsection (1).

(8) Where the Department refuses to give its consent under this section, it shall inform the applicant in writing of —

(a) the reason for its refusal;

(b) his right of appeal under section 68, and

(c) the time within which the appeal may be made.

59. Restrictions on private fostering

P1989/41/69, 8/6

(1) This section applies to a person who proposes to foster a child privately, or is fostering a child privately.

(2) Where the Department is of the opinion that —

(a) a person to whom this section applies is not a suitable person to foster a child; or

(b) the premises in which the child will be or is being accommodated are not suitable; or

(c) it would be prejudicial to the welfare of the child for him to be, or continue to be, accommodated by that person in those premises,

the Department may by notice in writing impose a prohibition on him under subsection (3).

(3) A prohibition imposed on any person under this subsection may prohibit him from fostering privately —

(a) any child in any premises;

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- (b) any child in premises specified in the notice; or
 - (c) a child identified in the notice in premises so specified.
- (4) The Department may by notice in writing impose on a person to whom this section applies requirements (including a requirement varying a previous requirement) as to —
- (a) the number, age and sex of the children who may be privately fostered by him;
 - (b) the standard of the accommodation and equipment to be provided for them;
 - (c) the arrangements to be made with respect to their health and safety; and
 - (d) particular arrangements which must be made with respect to the provision of care for them.
- (5) A requirement under subsection (4) —
- (a) may be limited to a particular child or class of children; and
 - (b) except in the case of one under subsection (4)(a), may be limited by the Department so as to apply only when the number of children fostered by the person exceeds a specified number.
- (6) The Department may, on the application of the person concerned or without any application —
- (a) if it is satisfied that a prohibition or requirement under this section is no longer justified, cancel it; or
 - (b) vary or remove a requirement under this section or impose an additional requirement.
- (7) Where the Department imposes a prohibition or requirement on a person under this section, the notice shall state —
- (a) the reason for the prohibition or requirement;
 - (b) his right of appeal under section 68, and
 - (c) the time within which the appeal may be made.
- (8) A person who fosters a child privately in contravention of a prohibition under subsection (3) is guilty of an offence and liable on summary conviction to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or to both.
- (9) A person who fails without reasonable excuse to comply with a requirement under subsection (4) is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

60. Regulations as to fostering

P1989/41/8/7

- (1) The Department may by regulations make provision as to —

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- (a) the circumstances in which notification is required to be given in connection with children who are, have been or are proposed to be fostered privately; and
 - (b) the manner and form in which such notification is to be given.
- (2) Regulations under this section may in particular —
- (a) require any person who is, or proposes to be, involved (whether or not directly) in arranging for a child to be fostered privately to notify the Department;
 - (b) require any parent of a child, and any person who is not a parent of his but has parental responsibility for him, who knows that it is proposed that the child should be fostered privately, to notify the Department;
 - (c) require any parent of a child who is privately fostered, and any person who is not a parent of his but has parental responsibility for him, to notify the Department of any change in his address;
 - (d) require any person who proposes to foster a child privately to notify the Department of his proposal;
 - (e) require any person who is fostering a child privately, or proposes to do so, to notify the Department of any offence of which he has been convicted in the Island or elsewhere;
 - (f) require any person who is fostering a child privately to notify the Department of any change in his address;
 - (g) require any person who is fostering a child privately to notify the Department of any person who begins, or ceases, to be a member of his household;
 - (h) require any person who has been fostering a child privately, but has ceased to do so, to notify the Department (indicating, where the child has died, that that is the reason).
- (3) A person who —
- (a) fails without reasonable excuse to give a notification required by regulations under this section —
 - (i) within the prescribed time, or
 - (ii) within a reasonable time,
 - (b) makes, or causes or procures another person to make, any statement in any such notification which he knows to be false or misleading in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

(4) Proceedings for an offence under subsection (3) may be brought at any time within 6 months from the date when evidence of the offence came to the knowledge of the Department.

61. Fostering limit

P1989/41/Sch.7

- (1) For the purposes of this section, a person fosters a child if —
 - (a) he is an official foster parent in relation to the child; or
 - (b) he fosters the child privately.
- (2) Subject to the following provisions of this section a person may not foster more than 3 children ("the usual fostering limit").
- (3) A person may exceed the usual fostering limit if the children concerned are all brothers or sisters (or brothers and sisters) of one another.
- (4) A person may exceed the usual fostering limit if he is exempted from it by the Department.
- (5) Where the Department exempts a person under subsection (4), it shall inform him by notice in writing —
 - (a) that he is so exempted;
 - (b) of the children (described by name) whom he may foster; and
 - (c) of any condition to which the exemption is subject.
- (6) The Department may at any time by notice in writing —
 - (a) vary or cancel an exemption under subsection (4), or
 - (b) impose, vary or cancel a condition to which the exemption is subject.
- (7) In exercising its functions under subsections (4) to (6) the Department shall have regard in particular to —
 - (a) the number of children whom the person proposes to foster;
 - (b) the arrangements which he proposes for their care and accommodation;
 - (c) the intended and likely relationship between him and them;
 - (d) the period of time for which he proposes to foster them; and
 - (e) whether their welfare (and that of any other children who are or will be living in the accommodation) will be safeguarded and promoted.
- (8) A person shall cease to be treated as fostering, and shall be treated as carrying on a children's home, if —
 - (a) he exceeds the usual fostering limit; or
 - (b) where he is exempted under subsection (4), he fosters a child not named in the exemption and in so doing he exceeds the usual fostering limit;

except where the children concerned are all brothers or sisters (or brothers and sisters) of one another.

62. Welfare of privately fostered children

- (1) The Department shall —
 - (a) satisfy itself that the welfare of children who are privately fostered is being satisfactorily safeguarded and promoted, and
 - (b) secure that such advice is given to those caring for them as appears to the Department to be needed.
- (2) Where the Department is not satisfied as mentioned in subsection (1)(a) as respects a child, it shall —
 - (a) unless it considers that it would not be in his best interests, take such steps as are reasonably practicable to secure that the care and accommodation of the child are undertaken by —
 - (i) a parent of his,
 - (ii) an individual who is not a parent of his but who has parental responsibility for him, or
 - (iii) a relative of his; and
 - (b) consider the extent to which (if at all) it should exercise any of its functions under this Act with respect to him.

Child-minding and day care

63. Child-minding and day care

P1989/41/71

- (1) For the purposes of this section and the following provisions of this Part —
 - (a) a person acts as a child-minder if —
 - (i) he looks after one or more children under the age of 8 for reward; and
 - (ii) the period, or the total of the periods, which he spends so looking after children in any day exceeds 2 hours;
 - (b) a person does not provide day care for children unless the period, or the total of the periods, during which children are looked after exceeds 2 hours in any day.
- (2) A person who —
 - (a) is the parent or a relative of a child;
 - (b) has parental responsibility for a child; or
 - (c) is an official foster parent of a child or is fostering a child privately,does not act as a child-minder when looking after that child.
- (3) A person who is employed to look after a child by —

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- (a) a parent of the child;
- (b) a person who is not a parent of the child but has parental responsibility for him; or
- (c) a relative of the child who has assumed responsibility for his care,

does not act as a child-minder when looking after that child wholly or mainly in the home of the person so employing her.

(4) A person who is so employed by 2 different employers does not act as a child-minder when looking after any of the children concerned wholly or mainly in the home of either of her employers.

(5) A person does not act as a child-minder or provide day care in relation to a child while he is being looked after in a school.

(6) A person does not provide day care in relation to a child while he is being looked after in —

- (a) a children's home;
- (b) a residential care home, nursing home or mental nursing home;
- (c) a health service hospital.

(7) The exception in subsection (5) or (6) only applies where the child concerned is being looked after in accordance with provision for day care made by —

- (a) the person carrying on the establishment in question; or
- (b) a person employed to work at that establishment and authorised to make that provision,

as part of the establishment's activities.

(8) Where day care for children under the age of 8 is provided in particular premises on less than 6 days in any year, that provision shall be disregarded if the person making it has notified the Department in writing before the first occasion on which the premises are so used in that year; and in this subsection "year" means the year beginning with the day on which the day care is first provided in the premises, and any subsequent year.

(9) In this section and the following provisions of this Part —

"domestic premises" means any premises which are wholly or mainly used as a private dwelling;

"premises" includes a vehicle.

64. Registration

P1989/41/71

- (1) The Department shall keep—
 - (a) a register of persons who act as child-minders on domestic premises; and

(b) a register of persons who provide day care for children under the age of 8 on premises other than domestic premises.

(2) Where a person provides day care for children under the age of 8 on different premises, he shall be separately registered with respect to each of those premises.

(3) A person who —

(a) acts as a child-minder on domestic premises, or

(b) provides day care for children under the age of 8 on any premises (other than domestic premises),

without being registered by the Department under subsection (1)(a) or (b), as the case may be, is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

(4) Schedule 7 shall have effect with respect to registration under subsection (1).

65. Disqualifications

P1989/41/9/2

(1) The Department shall by regulations provide for the disqualification of persons from registration under section 64.

(2) Regulations under subsection (1) may in particular provide for a person to be so disqualified where —

(a) an order of a prescribed kind has been made at any time with respect to him;

(b) an order of a prescribed kind has been made at any time with respect to any child who has been in his care;

(c) a requirement of a prescribed kind has been imposed at any time with respect to any such child, under or by virtue of any legislative provision;

(d) he has been convicted of any offence of a prescribed kind, or has been placed on probation or discharged absolutely or conditionally for any such offence;

(e) a prohibition has been imposed on him at any time under section 59 or under any other prescribed provision;

(f) his rights and powers with respect to a child have at any time been vested in a prescribed authority under a prescribed provision.

(3) A provision of regulations made by virtue of subsection (2) may be made with respect to an order made, a requirement or prohibition imposed or other thing done in any part of the United Kingdom, any of the Channel Islands or the Republic of Ireland as well as in the Island.

(4) A person is disqualified from registration under section 64 if —

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- (a) he lives in the same household as a person who is so disqualified by virtue of regulations under this section; or
- (b) he lives in a household at which any such person is employed,

unless he has disclosed to the Department the fact that that person is so disqualified and has obtained its written consent.

(5) A person who is disqualified from registration under section 64 shall not act as a child-minder on domestic premises.

(6) A person who is disqualified from registration under section 64 shall not —

- (a) provide day care for children under the age of 8, or
- (b) be concerned in the management of or have any financial interest in the provision of such day care,

unless he has disclosed to the Department the fact that he is so disqualified and has obtained its written consent.

(7) No person shall employ, in connection with the provision of day care for children under the age of 8, a person who is disqualified from registration under section 64 unless he has disclosed to the Department the fact that that person is so disqualified and has obtained its written consent.

(8) Subject to subsection (9), a person who contravenes subsection (5), (6) or (7) is guilty of an offence and liable on summary conviction to custody for a term not exceeding 6 months or a fine not exceeding £5,000, or both.

(9) A person who contravenes —

- (a) subsection (5) by virtue of subsection (4), or
- (b) subsection (7),

is not guilty of an offence if he proves that he did not know, and had no reasonable grounds for believing, that the person referred to in subsection (4) or the person whom he was employing, as the case may be, was disqualified.

(10) Where the Department refuses to give its consent under this section, it shall inform the applicant in writing of —

- (a) the reason for its refusal;
- (b) his right of appeal under section 68, and
- (c) the time within which the appeal may be made.

66. Emergency cancellation etc.

P1989/41/75

(1) A court of summary jurisdiction may, on the application of the Department, make an order —

- (a) cancelling the registration of a person who is registered under section 64,

- (b) varying any condition imposed under paragraph 3 of Schedule 7, or
- (c) removing such a condition or imposing an additional condition on that person,

if the court is satisfied that a child who is being, or may be, looked after by that person is suffering, or likely to suffer, significant harm, or that in the course of the provision of day care by that person a child is suffering, or likely to suffer, significant harm, as the case may be.

(2) An application under subsection (1) may be made *ex parte* and shall be supported by a written statement of the Department's reasons for making it.

(3) A cancellation, variation, removal or imposition under subsection (1) shall have effect from the date on which the order is made, and the Department shall as soon as practicable serve a copy of the order and a copy of the statement referred to in subsection (2) on the registered person.

(4) Where the court imposes or varies a condition under this section. the condition, or the condition as varied, shall be treated for all purposes (except those of section 68) as if it had been imposed by the Department.

General

67. Inspection of premises

P1989/41/76

The Department shall arrange for the inspection at least once every year of —

- (b) any domestic premises on which child-minding is at any time carried on; or
- (c) any premises on which day care for children under the age of 8 is at any time provided.

68. Appeals

(1) An appeal shall lie to the High Bailiff against any of the following decisions of the Department under this Part —

- (a) the refusal of consent under section 58(4) or (5);
- (b) the imposition of a prohibition or requirement, or the refusal to remove a prohibition or requirement, under section 59;
- (c) the refusal of an application for registration under section 64;
- (d) the conditions subject to which such an application is granted;

- (e) the cancellation of such registration, the variation of the conditions of registration or the imposition of an additional condition;
 - (f) the refusal of consent under section 65(6) or (7).
- (2) No such appeal may be brought by a person more than 28 days after notice of the decision is given to him.
- (3) On an appeal against a decision of the Department the High Bailiff may —
- (a) confirm the decision;
 - (b) direct that the decision shall not have effect;
 - (c) vary any requirement under section 59 or any condition imposed under paragraph 3 of Schedule 7;
 - (d) direct that any such condition (except a condition imposed under paragraph 3(1) of Schedule 7) shall cease to have effect;
or
 - (e) direct that any conditions he thinks fit shall have effect in respect of the registration.
- (4) The Department shall comply with any directions of the High Bailiff given under this section.

PART 8

PROCEEDINGS INVOLVING CHILDREN AND YOUNG PERSONS

Proceedings involving children and young persons

69. General considerations

XX p.89/39

Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person.

70. Age of criminal responsibility

XX p.89 p.45, XXI p.44/12, P1998/37/27

(1) It shall be conclusively presumed that no child under the age of 10 years can be guilty of an offence.

(2) It shall not be presumed that a child aged 10 or over is incapable of committing an offence.

71. Separation of children and young persons from adults in courts etc.

XX p.89/26

- (1) This section applies to a child or young person while he is —
 - (a) detained in a police station, or
 - (b) being conveyed to or from any criminal court, or
 - (c) waiting before or after attendance in any criminal court.
- (2) Arrangements shall be made for —
 - (a) preventing such a child or young person from associating with an adult (not being a relative) who is charged with any offence other than an offence with which the child or young person is jointly charged, and
 - (b) ensuring that, if the child or young person is a girl, she is under the care of a woman.

72. Bail or detention of children and young persons arrested

XX p.89/27, XXI p.44/18(2), 1993/18/1/2

- (1) This section applies to a person apparently under the age of 17 years who —
 - (a) is apprehended, with or without warrant, and
 - (b) cannot be brought forthwith before a court of summary jurisdiction.
- (2) The appropriate officer shall inquire into the case of a person to whom this section applies, and may release him on a recognizance being entered into by him or his parent or guardian (with or without sureties), for such an amount as will, in the opinion of the officer, secure his attendance upon the hearing of the charge.
- (3) The appropriate officer shall so release such a person unless —
 - (a) the charge is one of homicide or other grave crime; or
 - (b) it is necessary in his interest to remove him from association with any reputed criminal or prostitute; or
 - (c) the officer has reason to believe that his release would defeat the ends of justice.
- (4) Where a person to whom this section applies is released under this section on his parent or guardian entering into a recognizance to secure his attendance upon the hearing of a charge, the recognizance may be conditioned for the attendance at the hearing of the parent or guardian as well as the person charged.

(5) Where a person to whom this section applies is not so released as mentioned in subsection (2), the appropriate officer shall cause him to be detained until he can be brought before a court of summary jurisdiction.

(6) In this section —

"the appropriate officer" means the officer in charge of the police station to which the child or young person in question is brought;

"guardian", in relation to a child or young person, includes any individual who appears to have for the time being the actual care of him.

73. Detention of child or young person

P1933/12/34, P1984/60/57, XX p.89/29, 1998/9/60

(1) Where a child or young person is in police detention such steps as are practicable shall be taken to ascertain the identity of a person responsible for his welfare.

(2) If it is practicable to ascertain the identity of a person responsible for the welfare of a child or young person, that person shall be informed, unless it is not practicable to do so —

- (a) that the child or young person has been arrested;
- (b) why he has been arrested;
- (c) where he is being detained; and
- (d) where the intimate search of a juvenile has been authorised under section 58(1) of the Police Powers and Procedures Act 1998 —
 - (i) that an intimate search has been so authorised;
 - (ii) where the intimate search will be carried out;
 - (iii) that the juvenile has the right to consult an advocate;
 - (iv) that the person has a right to be present when the search is carried out; and
 - (v) that if it is not practicable for the person to be present when the search is carried out, or if he refuses to attend, an application may be made to the High Bailiff for authority to carry out the search in the absence of that person.

(3) Where information falls to be given under subsection (2), it shall be given as soon as it is practicable to do so.

(4) For the purposes of this section the persons who may be responsible for the welfare of a child or young person are —

- (a) his parent or guardian;
- (b) any other person who has for the time being assumed responsibility for his welfare;

(c) where the child or young person is being looked after by the Department, the Department.

(5) If it is practicable to give a person responsible for the welfare of the child or young person the information required by subsection (2) that person shall be given it as soon as it is practicable to do so.

(6) If it appears that at the time of his arrest a supervision order under any provision of this Act is in force in respect of him, the person responsible for his supervision shall also be informed as described in subsection (2) as soon as it is reasonably practicable to do so.

(7) The rights conferred on a child or young person by subsections (2) to (6) are in addition to his rights under section 59 of the Police Powers and Procedures Act 1998.

(8) In this section "police detention" has the meaning given by section 81(2) of the Police Powers and Procedures Act 1998, but also includes detention under the terrorism provisions (as defined in section 69 of that Act); and in subsection (2) "arrest" includes such detention.

74. Children in court during trials

XX p.89/31

(1) No child (other than an infant in arms) shall be permitted to be present in court during —

- (a) the trial of any other person charged with an offence, or
- (b) during any proceedings preliminary thereto,

except during such time as his presence is required as a witness or otherwise for the purposes of justice.

(2) Where any child is present in court when he is not to be permitted to be so under subsection (1), he shall be ordered to be removed:

75. Clearing court while child or young person is giving evidence

XX p.89/32

(1) Where a person who appears to the court to be a child or young person is called as a witness, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, the court may direct that any person be excluded from the court during the taking of the evidence of that witness.

- (2) Subsection (1) does not authorise the exclusion of —
 - (a) members or officers of the court;
 - (b) parties to the case or their advocates;
 - (c) persons otherwise directly concerned in the case; or
 - (d) *bona fide* representatives of a newspaper or news agency.

(3) The powers conferred on a court by this section are in addition and without prejudice to any other powers of the court to hear proceedings in camera.

76. Remand or committal of child or young person

P1969/54/23, P1991/53/60

(1) Subject to subsection (3), where a court has power or would, apart from subsection (2) or (3), have power —

- (a) to remand a child or young person on bail or in custody, or
- (b) to commit him to custody for trial or sentence,

it may instead, after consultation with the Department, remand him to accommodation provided by the Department.

(2) A court may not remand a child or young person in custody unless —

- (a) he is charged with homicide, or
- (b) it is of opinion that only his detention in custody would be adequate to protect members of the public from death or serious personal injury occasioned by offences committed by him.

(3) A court, on remanding or committing for trial a child or young person, shall release him on bail unless —

- (a) either of the conditions in subsection (2) is fulfilled, or
- (b) it is of opinion that either —
 - (i) he will suffer, or be likely to suffer, significant harm, or
 - (ii) the public will not be adequately protected from harm from him,

if he is not remanded to accommodation provided by the Department.

(4) Where a person is remanded to accommodation provided by the Department, it shall be lawful for any person acting on behalf of the Department to detain him.

- (5) The Department shall make regulations as to —
 - (a) the exercise of the powers conferred by subsection (4);
 - (b) the periodical review of any detention pursuant to that subsection; and
 - (c) the making of reports to the court concerning any such detention and any such review.

(6) Subject to subsection (7), a court remanding a young person to accommodation provided by the Department may, after consultation with the Department, impose on the Department a requirement that the person in

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question be placed and kept in secure accommodation (a "security requirement").

(7) A court may not impose a security requirement in respect of a young person unless —

- (a) he is charged with or has been found guilty of a violent or sexual offence, or an offence punishable in the case of an adult with custody for a term of 10 years or more; or
- (b) he has a recent history of absconding while being looked after by the Department, and is charged with or has been found guilty of an offence alleged or found to have been committed while he was being looked after by the Department;

and (in either case) the court is of opinion that only such a requirement would be adequate to protect the public from harm from him.

(8) A court remanding a person to accommodation provided by the Department without imposing a security requirement may, with the consent of the Department, require that person to comply with any such conditions as could be imposed if he were then being granted bail.

(9) Where a court states that it is of the opinion specified in subsection (2)(b), (3)(b) or (7) with respect to a person, or imposes on a person any such conditions as are mentioned in subsection (8), it shall explain to him in open court and in ordinary language why it is of that opinion or is imposing those conditions; and a court of summary jurisdiction shall cause a reason stated by it under this subsection to be entered in the order book.

(10) Where a person is remanded to accommodation provided by the Department, a court of summary jurisdiction may, on the application of the Department, impose on that person any such conditions as could be imposed under subsection (8) if the court were then remanding him to such accommodation.

(11) Where a person is remanded to accommodation provided by the Department, a court of summary jurisdiction may, on the application of the Department or that person, vary or revoke any conditions or requirements imposed under this section.

(12) The functions of a court of summary jurisdiction under this section may be exercised by a single justice of the peace.

(13) Any reference in this section to consultation with the Department is to such consultation (if any) as is reasonably practicable in all the circumstances of the case.

(14) In this section "violent or sexual offence" means —

- (a) an offence which leads, or is intended or likely to lead, to a person's death or to physical injury to a person, or an offence which is required to be charged as arson; or
- (b) an offence under the Sexual Offences Act 1992 (except sections 25 to 31).

77. Evidence by minors

P1988/33/33A, P1989/41/96, P1994/33/9/33, XX p.89/33(2)

(1) A child's evidence in criminal proceedings shall be given unsworn.

(2) A deposition of a child's unsworn evidence may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.

(3) Unsworn evidence admitted under this section may corroborate evidence (sworn or unsworn) given by another person.

(4) A child's evidence shall be received unless it appears to the court that the child is incapable of giving intelligible testimony.

(5) The power of a court in any criminal proceedings to determine that a particular person is not competent to give evidence applies to children of tender years as it applies to other persons.

(6) Where a minor is called as a witness in any civil proceedings and does not, in the opinion of the court, understand the nature of an oath, his evidence may be heard by the court if, in its opinion, —

(a) he understands that it is his duty to speak the truth; and

(b) he has sufficient understanding to justify his evidence being heard.

(7) If a minor giving evidence unsworn intentionally gives false evidence in circumstances in which he would, if it had been given on oath, have been guilty of perjury, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,500; and the court by which he is convicted may exercise in relation to him any of the powers referred to in section 19(3)(b) of the Summary Jurisdiction Act 1989.

78. Admissibility of hearsay evidence

SI 1991/1115

In any of the following proceedings —

(a) any civil proceedings before the High Court;

(b) family proceedings before a court of summary jurisdiction,

evidence given in connection with the upbringing, maintenance or welfare of a minor shall be admissible notwithstanding any rule of law relating to hearsay.

79. Powers in relation to certain offences

XX p.89/36-38

(1) Where, in any proceedings relating to any offence mentioned in Schedule 8, the court is satisfied that the attendance before it of any child or young person in respect of whom the offence is alleged to have been

committed is not essential to the just hearing of the case, it may proceed with and determine the case in the absence of the child or young person.

(2) Where a justice of the peace is satisfied by the evidence of a duly qualified medical practitioner that the attendance before a court of any child or young person in respect of whom any offence mentioned in Schedule 8 is alleged to have been committed would involve serious danger to his life or health, the justice —

- (a) may in accordance with rules of court take in writing the deposition of the child or young person (on oath, in the case of a young person);
- (b) shall thereupon sign the deposition and add to it a statement of —
 - (i) his reason for taking it,
 - (ii) the time when and place where it was taken, and
 - (iii) the names of the persons (if any) present when it was taken; and
- (c) shall transmit the deposition with his statement to the Chief Registrar.

(3) Where, in any proceedings in respect of an offence mentioned in Schedule 8 —

- (a) the court is satisfied by the evidence of a duly qualified medical practitioner that the attendance before the court of any child or young person in respect of whom the offence is alleged to have been committed would involve serious danger to his life or health, and
- (b) any deposition of the child or young person tendered in evidence appears to have been taken in accordance with rules of court and purports to be signed by the justice by or before whom it purports to have been taken,

then, subject to subsection (4), the deposition shall be admissible in evidence either for or against the accused person without further proof thereof.

(4) A deposition shall not be admissible in evidence against the accused person by virtue of subsection (3) unless it is proved —

- (a) that reasonable notice of the intention to take the deposition has been served upon him, and
- (b) that he or his advocate had, or might have had if he had chosen to be present, an opportunity of cross-examining the child or young person making the deposition.

80. Identification of child or young person in media

(1) Subject to subsection (3), no written report of any proceedings in any court shall be published in the Island, and no report of any such

proceedings shall be included in a relevant programme for reception in the Island, which —

- (a) reveals the name, address or school, or
- (b) includes any particulars calculated to lead to the identification,

of any child or young person concerned in those proceedings, either as being the person against or in respect of whom the proceedings are taken or as being a witness therein.

(2) Subject to subsection (3), no picture shall be published in any newspaper or periodical or included in a relevant programme as being or including a picture of any child or young person so concerned in any such proceedings.

(3) Subject to subsection (4), a court may in any case by order dispense with the requirements of subsection (1) or (2) to such extent as may be specified in the order.

(4) A juvenile court shall not exercise the power conferred by subsection (3) unless it is satisfied that it is in the interests of justice to do so.

(5) If a report or picture is published or included in a relevant programme in contravention of this section, each of the following persons —

- (a) in the case of a publication of a written report as part of, or of a picture in, a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
- (b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical, the person who published it;
- (c) in the case of the inclusion of a report or picture in a relevant programme, any body corporate which is engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper;

is guilty of an offence and liable on summary conviction to a fine not exceeding £2,000.

(6) Proceedings for an offence under this section shall not be instituted otherwise than by or with the consent of the Attorney General.

(7) In this section "relevant programme" means a programme included in a programme service (within the meaning of Part 1 of the Broadcasting Act 1993⁷).

81. Findings of guilt etc.

XX p.89/46, 51(1), XXI p.89/12(2)

(1) The words 'conviction' and 'sentence' shall not be used in relation to children and young persons dealt with summarily.

⁷ 1993 c.12

(2) Any reference in any enactment (whenever passed) to a person convicted, a conviction or a sentence shall, in the case of a child or young person, be construed as including a reference to a person found guilty of an offence, a finding of guilty or an order made upon such a finding, as the case may be.

(3) No conviction or finding of guilty of a child or young person shall be regarded as a conviction of felony for the purposes of any disqualification attaching to felony.

(4) In any proceedings for an offence committed or alleged to have been committed by a person of or over the age of 21 —

- (a) any offence of which he was found guilty while under the age of 14 shall be disregarded for the purposes of any evidence relating to his previous convictions; and
- (b) he shall not be asked, and if asked shall not be required to answer, any question relating to such an offence, although the question would otherwise be admissible under section 1 of the Criminal Evidence Act 1946⁸.

82. Power to impose penalty etc. on parent of child or young person

XX p.89/49, 1985/15/2/6, 1996/17/2/3

- (1) Subject to subsection (2), where —
 - (a) a child or young person is convicted or found guilty of any offence for the commission of which a fine or costs may be imposed or a compensation order may be made under Part I of Schedule 6 to the Criminal Law Act 1981⁹; and
 - (b) the court is of opinion that the case would best be met by the imposition of a fine or costs or the making of such an order, whether with or without any other punishment,

the court shall order that the fine, compensation or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person himself.

(2) The court shall not make an order under subsection (1) if it is satisfied —

- (a) that the parent or guardian cannot be found; or
- (b) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

(3) Where a child or young person is convicted or found guilty of any offence, the court by which sentence is imposed on him or any order is made against him in respect of that offence may order his parent or guardian to give security for his good behaviour.

⁸ XVI p.335

⁹ 1981 c.20

(4) An order under this section may not be made against a parent or guardian unless —

- (a) he has been required to attend but has failed to do so, or
- (b) he has been given an opportunity of being heard.

(5) Where an order is made against a parent or guardian under this section —

- (a) he may appeal against it, and
- (b) any sums ordered to be paid by him under subsection (1), or payable by him on forfeiture of any security under subsection (3), may be recovered from him,

as if the order had been made on his conviction of the offence with which the child or young person was found guilty.

(6) In this section "guardian", in relation to a child or young person, includes any individual who in the court's opinion has the actual care of him.

Supervision orders in criminal proceedings

83. Power to make supervision order in criminal proceedings

(1) Subject to section 8 of the Custody Act 1995 (detention during Her Majesty's pleasure), where a child or a young person is found guilty of any offence by or before any court, that court or the court to which his case is remitted may make a supervision order in respect of him, that is, an order placing him under the supervision of —

- (a) the Department;
- (b) an officer of the Department designated for the purpose by the Department; or
- (c) if the Department consents in the particular case, a probation officer.

(2) If a court makes a supervision order under this section while another such order, or a care order or a supervision order under section 31, made by any court is in force in respect of the child or young person, it may also revoke the earlier order.

(3) Schedule 9 has effect with respect to supervision orders under subsection (1).

PART 9

FERTILISATION, SURROGACY ETC.

Human fertilisation and embryology

84. Prohibition on activities connected with embryos etc.

P1990/37/3-4, P1994/33/156

- (1) Subject to section 85, a person is guilty of an offence if —
 - (a) he places in a woman a live embryo other than a human embryo;
 - (b) he places in a woman any live gametes other than human gametes;
 - (c) he mixes live human gametes with the live gametes of any animal;
 - (d) for the purpose of providing fertility services for any woman, he uses female germ cells taken or derived from an embryo or a foetus, or uses embryos created by using such cells.
- (2) A person guilty of an offence under subsection (1) is liable on conviction on information to custody for a term not exceeding 10 years or to a fine or to both.
- (3) Subject to section 85, a person is guilty of an offence if he —
 - (a) brings about the creation of an embryo outside the human body;
 - (b) keeps or uses an embryo outside the human body;
 - (c) keeps any live human gametes while preserved (whether by cryopreservation or in any other way);
 - (d) in the course of providing fertility services for any woman, uses the live sperm of any man (unless the services are provided for the woman and the man together);
 - (e) in the course of providing fertility services for any woman, uses the live eggs of any other woman;
 - (f) places sperm and eggs in a woman in any prescribed circumstances.
- (4) A person guilty of an offence under subsection (3) is liable —
 - (a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both;
 - (b) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

85. Provision for licensing of certain activities

(1) The Department may by order provide for the licensing of any of the activities specified in section 84(1)(c) or (d) or (3)(a), (b), (c), (d), (e) or (f).

(2) In any proceedings for an offence under section 84(1) or (3) consisting in any of those activities, it is a defence for the person accused to show that the

activity was carried on in pursuance of a licence granted in accordance with an order under subsection (1).

(3) An order under subsection (1) may provide for the application to the Island, as part of the law of the Island, of any of the following legislation —

- (a) the Human Fertilisation and Embryology Act 1990 (an Act of Parliament), except —
 - (i) sections 1, 2, 3(1) and (2) and 4 to 8, and
 - (ii) sections 27 to 30;
- (b) any provision of an Act of Parliament amending, varying or modifying that Act, directly or indirectly;
- (c) any statutory instrument made or having effect as if made under that Act,

subject to such exceptions, adaptations and modifications as may be specified in the order.

- (4) An order under subsection (1) may either —
 - (a) provide for the establishment of a body of persons with the function of licensing any activity mentioned in subsection (1), and with such advisory functions relating to those activities and any other activities mentioned in section 84 as appear to the Department to be appropriate; or
 - (b) confer such licensing and advisory functions on a body of persons established otherwise than by the order (including a body established in the United Kingdom).
- (5) An order under subsection (1) —
 - (a) may make such transitional, consequential, incidental and supplemental provision as appears to the Department to be necessary or expedient for the purposes of the order; and
 - (b) may repeal or amend any enactment (including an enactment contained in this Part, other than section 84 and this section) appearing to the Department to be inconsistent with, or to have become unnecessary or to require amendment in consequence of, the order.

86. Meaning of "mother"

P1990/37/27

(1) The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child.

(2) Subsection (1) does not apply to any child to the extent that the child is treated by virtue of adoption as not being the child of any person other than the adopter or adopters.

(3) For the purposes of this section it is immaterial where the woman was at the time of the placing in her of the embryo or the sperm and eggs.

87. Meaning of "father"

P1990/37/28

(1) This section applies in the case of a child who is being or has been carried by a woman as the result of the placing in her of an embryo or of sperm and eggs or her artificial insemination.

(2) If —

- (a) at the time of the placing in her of the embryo or the sperm and eggs or of her insemination, the woman was a party to a marriage, and
- (b) the creation of the embryo carried by her was not brought about with the sperm of her husband,

then, subject to subsection (5), her husband shall be treated as the father of the child unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs or to her insemination (as the case may be).

(3) If no man is treated, by virtue of subsection (2), as the father of the child but —

- (a) the embryo or the sperm and eggs were placed in the woman, or she was artificially inseminated, in the course of fertility services provided for her and a man together, and
- (b) the creation of the embryo carried by her was not brought about with the sperm of that man,

then, subject to subsection (5), that man shall be treated as the father of the child.

(4) Where a person is treated as the father of the child by virtue of subsection (2) or (3), no other person is to be treated as the father of the child.

(5) Subsections (2) and (3) do not apply —

- (a) to any child who, by virtue of the rules of common law, is treated as the legitimate child of the parties to a marriage, or
- (b) to any child to the extent that the child is treated by virtue of adoption as not being the child of any person other than the adopter or adopters.

(6) Where the sperm of a man, or any embryo the creation of which was brought about with his sperm, was used after his death, he is not to be treated as the father of the child.

(7) The reference in subsection (2) to the parties to a marriage at the time there referred to —

- (a) is to the parties to a marriage subsisting at that time, unless a judicial separation was then in force, but
- (b) includes the parties to a void marriage if either or both of them reasonably believed at the time that the marriage was valid;

and for the purposes of this subsection it shall be presumed, unless the contrary is shown, that one of them reasonably believed at the time that the marriage was valid.

(8) For the purposes of this section it is immaterial where the woman was at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

(9) In subsection (7)(a) "judicial separation" includes a legal separation obtained in a country outside the British Islands and recognised in the Island.

88. Effect of sections 86 & 87

P1990/37/29

(1) Where by virtue of section 86 or 87 a person is to be treated as the mother or father of a child, that person is to be treated in law as the mother or, as the case may be, the father of the child for all purposes.

(2) Where by virtue of section 86 or 87 a person is not to be treated as the mother or father of a child, that person is to be treated in law as not being the mother or, as the case may be, the father of the child for any purpose.

(3) Where subsection (1) or (2) has effect, references to any relationship between 2 people in any statutory provision, deed or other instrument or document (whenever made) are to be read accordingly.

(4) Nothing in section 86(1) or 87(2) to (4), read with this section, affects

—

(a) the succession to any dignity or title of honour or renders any person capable of succeeding to or transmitting a right to succeed to any such dignity or title, or

(b) the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any dignity or title of honour.

(5) Sections 86 and 87 and this section have effect only in relation to children carried by women as a result of the placing in them of embryos or of sperm or eggs, or of their artificial insemination (as the case may be), after the commencement of this section.

89. Parental orders in favour of donors

P1990/37/30

(1) The High Court may make an order providing for a child to be treated in law as the child of the parties to a marriage ("the husband" and "the wife") if —

(a) the child has been carried by a woman other than the wife as the result of the placing in her of an embryo or sperm and eggs or her artificial insemination;

(b) the gametes of the husband or the wife, or both, were used to bring about the creation of the embryo, and

(c) the conditions in subsections (2) to (7) are satisfied.

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For the purposes of this subsection it is immaterial where the woman was at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

(2) The husband and the wife must apply for the order within 6 months of the birth of the child.

(3) At the time of the application and of the making of the order —

- (a) the child's home must be with the husband and the wife, and
- (b) the husband or the wife, or both of them, must be domiciled in the Island, in a part of the United Kingdom or in one of the Channel Islands.

(4) At the time of the making of the order both the husband and the wife must have attained the age of 18.

(5) The Court must be satisfied that both the father of the child (including a person who is the father by virtue of section 87), where he is not the husband, and the woman who carried the child have freely and with full understanding agreed unconditionally to the making of the order.

(6) Subsection (5) does not require the agreement of a person who cannot be found or is incapable of giving agreement, and the agreement of the woman who carried the child is ineffective for the purposes of that subsection if given by her less than 6 weeks after the child's birth.

(7) The Court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by the husband or the wife for or in consideration of —

- (a) the making of the order,
- (b) any agreement required by subsection (5),
- (c) the handing over of the child to the husband and the wife, or
- (d) the making of any arrangements with a view to the making of the order,

unless authorised by the Court.

(8) Regulations may provide —

- (a) for any provision of the Adoption Act 1984 to have effect, with prescribed modifications, in relation to orders under this section, and applications for such orders, as it has effect in relation to adoption and applications for adoption orders, and
- (b) for references in any enactment to adoption, an adopted child or an adoptive relationship to be read respectively as references to the effect of an order under this section, a child to whom such an order applies and a relationship arising by virtue of the Adoption Act 1984, as applied by the regulations, and for similar expressions in connection with adoption to be read accordingly.

Surrogacy arrangements

90. Surrogacy arrangements unenforceable

P1985/49/1A, P1990/37/36

No surrogacy arrangement is enforceable by or against any of the persons making it.

91. Negotiating surrogacy arrangements

P1985/49/2(1)-(4)

- (1) Any person who on a commercial basis does any of the following acts —
- (a) initiates or takes part in any negotiations with a view to the making of a surrogacy arrangement,
 - (b) offers or agrees to negotiate the making of a surrogacy arrangement, or
 - (c) compiles any information with a view to its use in making, or negotiating the making of, surrogacy arrangements,

is guilty of an offence.

(2) Any person who on a commercial basis knowingly causes another to do any of the acts specified in subsection (1) is guilty of an offence.

(3) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

- (4) It is not a contravention of subsection (1) or (2) —
- (a) for a woman, with a view to becoming a surrogate mother herself, to do any act mentioned in subsection (1) or to cause such an act to be done; or
 - (b) for any person, with a view to a surrogate mother carrying a child for him, to do such an act or to cause such an act to be done.
- (5) In proceedings against a person for an offence under subsection (1) or (2), he is not to be treated as doing an act on a commercial basis by reason of any payment received by another in respect of the act if it is proved that —
- (a) in a case where the payment was received before he did the act, he did not do the act knowing or having reasonable cause to suspect that any payment had been received in respect of the act; and
 - (b) in any other case, he did not do the act with a view to any payment being received in respect of it.

92. Bodies negotiating surrogacy arrangements etc.

P1985/49/2(5)-(9)

- (1) Where —
- (a) a person acting on behalf of a body of persons takes part in negotiating or facilitating the making of a surrogacy arrangement in the Island, and
 - (b) negotiating or facilitating the making of surrogacy arrangements is an activity of the body, and
 - (c) the body at any time receives any payment made by or on behalf of —
 - (i) a woman who carries a child in pursuance of the surrogacy arrangement referred to in paragraph (a),
 - (ii) the person or persons for whom she carries it, or
 - (iii) any person connected with the woman or with that person or those persons,

the body is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

For the purposes of this subsection a payment received by a person connected with a body is to be treated as received by the body.

(2) In proceedings against a body for an offence under subsection (1) it is a defence to prove that the payment concerned was not made in respect of the arrangement referred to in subsection (1)(a).

- (3) Where —
- (a) negotiating or facilitating the making of surrogacy arrangements is an activity of a body of persons, and
 - (b) either —
 - (i) the making of the arrangements is negotiated or facilitated on a commercial basis, or
 - (ii) payments are received (or treated for the purposes of subsection (1) as received) by the body in contravention of subsection (1) in the case of the arrangements,

any person who takes part in the management or control of the body in question, or of that activity, is guilty of an offence and liable on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

(4) In proceedings against a person for an offence under subsection (3) it is a defence to prove that he neither knew nor had reasonable cause to suspect that the activity referred to in subsection (3) was an activity of the body concerned; and for the purposes of such proceedings any arrangement falling within subsection (3)(b) shall be disregarded if it is proved that the payment concerned was not made in respect of the arrangement.

(5) In any proceedings for an offence under this section, proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) —

- (a) by any person taking part in the management or control of a body of persons or of any of the activities of the body, or
- (b) by any person doing any of the acts mentioned in section 91(1)(a), (b) or (c),

shall be admissible as evidence of the activities of the body.

93. Advertisements about surrogacy

P1985/49/3

(1) This section applies to any advertisement containing an indication (however expressed) —

- (a) that any person is or may be willing to enter into a surrogacy arrangement or to negotiate or facilitate the making of a surrogacy arrangement, or
- (b) that any person is looking for a woman willing to become a surrogate mother or for persons wanting a woman to carry a child as a surrogate mother.

(2) Where a newspaper or periodical containing an advertisement to which this section applies is published in the Island, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence.

(3) Where any advertisement to which this section applies is conveyed by means of a telecommunication system so as to be seen or heard in the Island, any person who in the Island causes it to be so conveyed knowing it to contain such an indication is guilty of an offence.

(4) A person who publishes or causes to be published in the Island an advertisement to which this section applies (not being an advertisement contained in a newspaper or periodical or conveyed by means of a telecommunication system) is guilty of an offence.

(5) A person who distributes or causes to be distributed in the Island an advertisement to which this section applies (not being an advertisement contained in a newspaper or periodical published outside the Island or an advertisement conveyed by means of a telecommunication system) knowing it to contain such an indication as is mentioned in subsection (1) is guilty of an offence.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £5,000.

(7) In this section "telecommunication system" has the same meaning as in the Telecommunications Act 1984.

Supplemental

94. Offences under Part 9

P1985/49/4

(1) Proceedings for an offence under this Part shall not be instituted except by or with the consent of the Attorney General.

(2) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) In relation to an offence under this Part, section 75(1) of the Summary Jurisdiction Act 1989 (time-limit for summary proceedings) applies with the substitution for "6 months" of "2 years".

95. Interpretation of Part 9

P1985/49/1, P1989/41/13/56, P1990/37/1-2, 36, P1994/33/156

(1) In this Part —

"body of persons" means a body of persons corporate or unincorporate;

"embryo" means a live human embryo where fertilisation is complete, and includes an egg in the process of fertilisation;

"female germ cells" means cells of the female germ line and includes such cells at any stage of maturity and accordingly includes eggs;

"fertility services" means medical, surgical or obstetric services provided for the purpose of assisting women to carry children;

"payment" means payment in money or money's worth;

"surrogacy arrangement" shall be construed in accordance with subsection (3);

"surrogate mother" means a woman who carries a child in pursuance of an arrangement —

(a) made before she began to carry the child, and

(b) made with a view to any child carried in pursuance of it being handed over to, and parental responsibility being met (so far as practicable) by, another person or other persons;

references to gametes and eggs do not include eggs in process of fertilisation.

(2) For the purposes of this Part —

(a) fertilisation is not complete until the appearance of a two-cell zygote;

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- (b) a woman is not to be treated as carrying a child until the embryo has become implanted.
 - (3) For the purposes of this Part —
 - (a) if a woman were to carry a child in pursuance of an arrangement and thereby became a surrogate mother, the arrangement is a surrogacy arrangement;
 - (b) in determining whether an arrangement is made with such a view as is mentioned in paragraph (b) of the definition of "surrogate mother" above, regard may be had to the circumstances as a whole (and, in particular, where there is a promise or understanding that any payment will or may be made to the woman or for her benefit in respect of the carrying of the child in pursuance of the arrangement, to that promise or undertaking);
 - (c) an arrangement may be regarded as made with such a view although it is subject to conditions regarding the handing over of the child;
 - (d) a woman who carries a child is to be treated for the purposes of the definition of "surrogate mother" above as beginning to carry it at the time of the insemination or of the placing in her of an embryo, of an egg in the process of fertilisation or of sperm and eggs, as the case may be, that results in her carrying the child.
 - (4) Subject to section 91(5), for the purposes of this Part a person does an act on a commercial basis if —
 - (a) any payment is at any time received by himself or another in respect of it, or
 - (b) he does it with a view to any payment being received by himself or another in respect of making, or negotiating or facilitating the making of, any surrogacy arrangement.
- In this subsection "payment" does not include payment to or for the benefit of a surrogate mother or prospective surrogate mother.
- (5) Sections 91 to 93 apply to arrangements whether or not they are lawful.

PART 10

MISCELLANEOUS AND SUPPLEMENTAL

96. Representation of child in family proceedings

(1) If it appears to the Attorney General that a child concerned in any family proceedings is not, but should be, represented in those proceedings, he may instruct an advocate to represent the child in the proceedings.

(2) Where an advocate is instructed under subsection (1) —

(a) the child, if not a party, shall be treated as a party to the proceedings; and

(b) the advocate shall represent the child in the proceedings and, subject to any directions of the Attorney General, shall take such steps in connection with the proceedings as appear to him to be necessary in the interests of the child.

(3) Nothing in this section affects any powers exercisable by the Attorney General apart from this section.

97. Appeals to High Court

(1) Any person who would be entitled to apply for the variation or revocation of an order made under Part 4 or 5 by a court of summary jurisdiction (otherwise than in domestic proceedings) may appeal to the High Court against —

(a) the making of any such order by a court of summary jurisdiction;

(b) the refusal by the court to make such an order; or

(c) the revocation or variation by the court of such an order.

(2) Section 105 (procedure) of the Summary Jurisdiction Act 1989 applies to appeals under subsection (1) with the substitution for "28 days" of "14 days".

(3) On an appeal under subsection (1) the High Court may make such orders as may be necessary to give effect to its determination of the appeal, including such incidental or consequential orders as appear to the Court to be just.

(4) No appeal, except under section 109 (appeal by way of case stated) of that Act, lies against a decision of the High Bailiff under section 56 or 68.

(5) In this section "domestic proceedings" has the same meaning as in the Summary Jurisdiction Act 1989.

98. Inspection of premises

P1989/41/67, 76 & 80

(1) Any person authorised by the Department may at any reasonable time enter —

- (a) any children's home;
- (b) any premises in which he has reasonable cause to believe any of the following is or will be living —
 - (i) a child who is being looked after by the Department;
 - (ii) a privately fostered child;
- (c) any domestic premises on which child-minding is at any time carried on; or
- (d) any premises on which day care for children under the age of 8 is at any time provided.

(2) Where the Department have reasonable cause to believe that a child is being looked after on any premises in contravention of any provision of this Act or of regulations under this Act, any person authorised by the Department may enter those premises at any reasonable time.

(3) A person entering premises under this section may —

- (a) inspect the premises;
- (b) inspect any children there;
- (c) inspect any arrangements made for their welfare; and
- (d) require any person to furnish him with such records of a kind required to be kept in relation to the premises under this Act (in whatever form they are held) or allow him to inspect such records, as he may at any time direct.

(4) Any person exercising a power conferred by subsection (1), (2) or (3) shall, if asked to do so, produce some duly authenticated document showing his authority to do so.

(5) Any person authorised to exercise the power to inspect records conferred by subsection (3)(d) —

- (a) is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in used in connection with the records in question; and
- (b) may require the person by whom or on whose behalf the computer is or has been used, or any person having charge of or otherwise concerned with the operation of the computer, apparatus or material, to afford him such assistance as he may reasonably require.

(6) Any person who intentionally obstructs another in the exercise of any power conferred by this section is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

(7) In relation to day care and child-minding, expressions used in Part 7 have the same meanings in this section as in that Part.

99. Search warrants

P1989/41/102

(1) Where, on an application made by any person for a warrant under this section, it appears to a court of summary jurisdiction that a person attempting to exercise powers under —

- (a) an emergency protection order, or
- (b) section 98,

has been or is likely to be prevented from doing so by being refused entry to premises or refused access to a child, it may issue a warrant authorising any constable to assist that person in the exercise of those powers, using reasonable force if necessary.

(2) Every warrant under this section shall be addressed to, and executed by, a constable, who shall be accompanied by —

- (a) the person applying for the warrant, if that person so desires and the court issuing the warrant does not otherwise direct; and
- (b) if the court so directs and the constable so desires, a registered medical practitioner or a registered nurse.

(3) Where an application for a warrant under this section relates to a particular child, the application and any warrant granted on the application shall name the child, if it is reasonably practicable to do so, and if they do not do so they shall describe him as clearly as possible.

(4) The powers of the court under this section may be exercised by a single justice of the peace.

100. Education supervision orders

(1) For section 70A of the Isle of Man Education Act 1949¹⁰ there is substituted the following section —

"70A. Education supervision orders

P1989/41/36

(1) On the application of the Department a juvenile court, if it is satisfied that a child —

- (a) is of compulsory school age, and

¹⁰ XVII p.516

- (b) is not receiving efficient full-time education suitable to his age, ability and aptitude,

may make an order putting him under the supervision of the Department of Health and Social Security.

- (2) Where —
 - (a) a school attendance order is in force in respect of a child and that order is not being complied with, or
 - (b) a child is a registered pupil at a school and is failing to attend regularly thereat (within the meaning of section 69),

it shall be presumed, until the contrary is proved, that the condition in subsection (1)(b) is fulfilled.

(3) An education supervision order may not be made with respect to a child who is in the care of the Department of Health and Social Security by virtue of any order of a court.

(4) Before making an application for an education supervision order the Department shall consult the Department of Health and Social Security.

(5) Schedule 4A to this Act has effect with respect to education supervision orders."

(2) After Schedule 4 to that Act there are inserted the provisions set out in Schedule 10 to this Act.

101. Welfare of children accommodated in independent schools

After section 106 of the Isle of Man Education Act 1949 there is inserted the following section —

"106A. Welfare of children

P1989/41/87

(1) Where an independent school provides accommodation for a child —

- (a) the proprietor of the school, and
- (b) any person who is not the proprietor of the school but is responsible for conducting it,

shall safeguard and promote the child's welfare.

(2) Subsection (1) does not apply in relation to a school which is —

- (a) a children's home (within the meaning of the Children and Young Persons Act 2001) or

(b) a residential care home (within the meaning of the Nursing and Residential Homes Act 1988¹¹).

(3) Where accommodation is provided for a child by an independent school, the Department of Health and Social Security shall take such steps as are reasonably practicable to enable it to determine whether the child's welfare is adequately safeguarded and promoted while he is accommodated by the school.

(4) Where the Department of Health and Social Security is of the opinion that there has been a failure to comply with subsection (1) in relation to a child provided with accommodation by a school, it shall notify the Department.

(5) Any person authorised by the Department of Health and Social Security may, for the purpose of enabling that Department to discharge its duty under this section, enter at any reasonable time any independent school which provides accommodation for any child.

(6) Any person entering an independent school in exercise of the power conferred by subsection (5) may carry out such inspection of premises, children and records as is prescribed by regulations made by the Department of Health and Social Security after consultation with the Department; and section 160(2) applies to regulations under this subsection as it applies to regulations made by the Department.

(7) Any person exercising that power shall, if asked to do so, produce some duly authenticated document showing his authority to do so.

(8) Section 98(5) of the Children and Young Persons Act 2001 (records kept on computer) applies to a power to inspect records conferred by regulations under subsection (6) as it applies to the power conferred by section 98(3)(d) of that Act.

(9) Any person who intentionally obstructs another in the exercise of any power conferred by this section or regulations under subsection (6) is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000."

102. Interpretation — general

(1) In this Act —

"care order" means an order under section 31(1)(a);

"child", except in Part 8, means a person under 18 years of age;

"child of the family", in relation to the parties to a marriage, means —

(a) a child of both those parties;

¹¹ 1988 c.9

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- (b) any other child, not being a child who is placed with those parties as foster parents by the Department, who has been treated by both of those parties as a child of their family;

"children's home" has the meaning given by section 50;

"contact order" means an order under section 11(1)(b);

"day care" means any form of care or supervised activity provided for children during the day (whether or not it is provided on a regular basis);

"the Department" means the Department of Health and Social Security;

"development", "disabled", "harm", "health" and "ill-treatment" have the meanings given by section 23;

"family proceedings" means —

- (a) any proceedings under any inherent jurisdiction of the High Court in relation to wardship, maintenance or the upbringing of children;
- (b) any proceedings under any of the following enactments —
- (i) Part 1, Part 2 or Part 4;
 - (ii) section 1 of the Matrimonial Homes Act 1971¹²;
 - (iii) the Judicature (Matrimonial Causes) Act 1976¹³;
 - (iv) section 3 of the Domestic Violence and Matrimonial Proceedings Act 1978¹⁴;
 - (v) the Domestic Proceedings Act 1983;
 - (vi) the Adoption Act 1984;
 - (vii) the Matrimonial Proceedings Act 2001¹⁵.

"health service hospital" means a hospital provided by the Department under Part 3 of the National Health Service Act 2001¹⁶;

"home" includes any institution, other than —

- (a) a school,
- (b) a health service hospital,
- (c) a residential care home, nursing home or mental nursing home, or
- (d) an institution within the meaning of the Custody Act 1995;

"lump sum order" means an order under Schedule 1 for the payment of a lump sum;

"marital child" has the meaning given by section 5;

¹² 1971 c.23

¹³ 1976 c.14

¹⁴ 1978 c.8

¹⁵ 2001 c.5

¹⁶ 2001 c.

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"mental nursing home" and "nursing home" have the same meanings as in the Nursing and Residential Homes Act 1988;

"official foster parent" means a person with whom a child has been placed under section 26(1)(a), other than —

- (a) a parent of his,
- (b) an individual who is not a parent of his but who has parental responsibility for him, or
- (c) where the child is in the care of the Department and there was a residence order in force with respect to him immediately before the care order was made, the person with whom he was to live under the residence order;

"parental responsibility" has the meaning given by section 2;

"periodical payments order" means an order under Schedule 1 for the making or securing of periodical payments;

"police protection" shall be construed in accordance with section 45(1);

"prescribed" (without more) means prescribed by regulations;

"registered children's home" means a children's home registered under Part 6;

"regulations" means regulations made by the Department;

"relative", in relation to a child, means a grandparent, brother, sister, uncle or aunt of his (whether of the whole blood or the half blood or by affinity) or a step-parent of his;

"residence order" means an order under section 11(1)(a);

"residential care home" has the same meaning as in the Nursing and Residential Homes Act 1988;

"school" has the same meaning as in the Isle of Man Education Act 1949;

"secure accommodation" means accommodation provided for the purpose of restricting liberty;

"the usual fostering limit" means the limit imposed by section 61(2);

references to a child being in need shall be construed in accordance with section 23;

references to a child in the care of the Department are to a child with respect to whom a care order is in force;

references to a child being looked after by the Department shall be construed in accordance with section 24(1).

(2) Any register to be kept by the Department under this Act may be kept on a computer; and where such a register is so kept, any obligation to make it available for inspection is fulfilled by making the entries on it available in visible and legible form.

103. Reciprocal effect of orders

(1) The Council of Ministers may by order provide that prescribed orders which —

- (a) are made by a court in any part of the United Kingdom or any of the Channel Islands; and
- (b) appear to the Council of Ministers to correspond in their effect to orders which may be made under any provision of this Act,

shall have effect in prescribed circumstances, for prescribed purposes of this Act, as if they were orders of a prescribed kind made under this Act.

(2) An order under this section may modify any provision of this Act in its application by virtue of that order in relation to an order made by a court outside the Island.

(3) In this section "prescribed" means prescribed by an order under this section.

104. Subordinate legislation

(1) The Department may by regulations prescribe anything which by virtue of any provision of this Act may be prescribed.

(2) Orders and regulations made by the Council of Ministers or any Department under this Act (except an order under section 106(3)) shall not have effect unless they are approved by Tynwald.

105. Transitional provisions, amendments and repeals

(1) The transitional provisions in Schedule 11 shall have effect.

(2) The enactments specified in Schedule 12 are amended in accordance with that Schedule.

(3) The enactments specified in Schedule 13 are repealed to the extent specified in column 3 of that Schedule.

106. Short title and commencement

(1) This Act may be cited as the Children and Young Persons Act 2001.

(2) The following provisions shall come into operation on the expiration of a period of 2 months beginning with the passing of this Act —
sections 84 and 90 to 95 (fertilisation, surrogacy etc.); and
sections 102 and 104 and this section.

(3) The remaining provisions of this Act shall come into operation on such day or days as the Department may by order appoint.

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(4) An order under subsection (3) may include such transitional and consequential provisions as appear to the Department necessary or expedient for the purpose of the partial operation of this Act.

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SCHEDULE 1 — FINANCIAL PROVISION FOR CHILDREN

Orders against parents

1. (1) The orders which the court may make under this paragraph are as follows —
 - (a) an order requiring either or both parents of a child to make to the applicant for the benefit of the child, or to the child himself, such periodical payments, for such term, as may be specified in the order;
 - (b) an order requiring either or both parents of a child to secure to the applicant for the benefit of the child, or to the child himself, such periodical payments, for such term, as may be so specified;
 - (c) an order requiring either or both parents of a child to pay to the applicant for the benefit of the child, or to the child himself, such lump sum as may be so specified;
 - (d) an order requiring a settlement to be made for the benefit of the child, and to the satisfaction of the court, of property to which either parent is entitled (either in possession or reversion) and which is specified in the order;
 - (e) an order requiring either or both parents of a child to transfer to the applicant for the benefit of the child, or to the child himself, property to which the parent is, or the parents are, entitled (either in possession or reversion) and which is specified in the order.
- (2) The court may make an order under this paragraph on an application made by —
 - (a) a parent or guardian of a child, or
 - (b) any person in whose favour a residence order is in force with respect to a child.
- (3) The court may make an order under this paragraph on taking, varying or revoking a residence order in any family proceedings; and in such a case "the applicant" in sub-paragraph 1 means the person in whose favour the residence order is made or varied.
- (4) Where one parent of a child lives in the Island and the child lives outside the Island with another parent or a guardian of his, or with a person in whose favour a residence order is in force with respect to him, the court may, on any application by that other parent, guardian or person, make an order under this paragraph (except an order under sub-paragraph (1)(c) to (e)) against the parent living in the Island.
- (5) The powers conferred by this paragraph may be exercised at any time.
- (6) Where a court makes an order under this paragraph, it may at any time make a further such order under sub-paragraph (1)(a), (b) or (c) with respect to the child concerned if he has not reached the age of 18, but it may not make more than one order under sub-paragraph (1)(d) or (e) against the same person in respect of the same child.

Orders for financial relief for persons over 18

2. (1) The orders which the court may make under this paragraph are as follows —
 - (a) an order requiring the applicant's father or mother or both to make to the applicant such periodical payments, for such term, as may be specified in the order;
 - (b) an order requiring the applicant's father or mother or both to pay to the applicant such lump sum as may be so specified.
- (2) The court may make an order under this paragraph if, on an application by a person who has reached the age of 18, it appears to the court —
 - (a) that the applicant is, will be or (if an order were made under this paragraph) would be receiving instruction at any educational establishment or undergoing instruction for a trade, profession or vocation, whether or not while in gainful employment; or

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(b) that there are special circumstances which justify the making of such an order.

(3) An application may not be made under this paragraph by any person if, immediately before he attained the age of 16 a periodical payments order, or an order for making or securing periodical payments under any other enactment, was in force with respect to him.

(4) No order may be made under this paragraph at a time when the applicant's father and mother are living together.

(5) The powers conferred by this paragraph may be exercised at any time.

(6) Where a court makes an order under this paragraph, it may at any time make a further such order.

Matters to which court is to have regard

3. (1) In deciding whether to exercise its powers under paragraph 1 or 2, and if so in what manner, the court shall have regard to all the circumstances including —

(a) the income, earning capacity, property and other financial resources which —

(i) in relation to paragraph 1, any parent of the child,

(ii) in relation to paragraph 2, the child's mother and father,

(iii) the applicant for the order, and

(iv) any other person in whose favour the court proposes to make the order,

has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities which each of those persons has or is likely to have in the foreseeable future;

(c) the financial needs of the child;

(d) the income, earning capacity (if any), property and other financial resources of the child;

(e) any physical or mental disability of the child;

(f) the manner in which the child was being, or was expected to be, educated or trained.

(2) In deciding whether to exercise its powers under paragraph 1 against a person who is not the mother or father of the child, and if so in what manner, the court shall in addition have regard to —

(a) whether that person had assumed responsibility for the maintenance of the child and, if so, the extent to which and basis on which he assumed that responsibility and the length of the period during which he met that responsibility;

(b) whether he did so knowing that the child was not his child;

(c) the liability of any other person to maintain the child.

(3) Where the court makes an order under paragraph 1 against a man who is not the father of the child, it shall record in the order that it is made on the basis that the man is not the child's father.

Duration of orders

4. (1) The term to be specified in a periodical payments order under paragraph 1(1)(a) or (b) may begin with the date of the making of an application for the order in question or any later date.

(2) The said term shall not in the first instance extend beyond the child's 17th birthday unless the court thinks it right in the circumstances of the case to specify a later date.

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(3) The said term shall not in any event extend beyond the child's 18th birthday unless it appears to the court —

(a) that the child is, will be or (if an order were made under this paragraph) would be receiving instruction at any educational establishment or undergoing instruction for a trade, profession or vocation, whether or not while in gainful employment; or

(b) that there are special circumstances which justify the making of an order for a term extending beyond that date.

(4) A periodical payments order under paragraph 1(1)(a) or 2(1)(a) shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

(5) Where a periodical payments order under paragraph 1(1)(a) or (b) requires payments to be made or secured to a parent of a child, the order shall cease to have effect if the parents of the child live together for a continuous period of more than 6 months.

Lump sums

5. (1) Without prejudice to the generality of paragraph 1, a lump sum order under paragraph 1(1)(c) may be made for the purpose of enabling any liabilities or expenses to be met which were reasonably incurred before the making of the order in connection with the birth of the child or in maintaining him.

(2) The power of the court under paragraph 1 or 2 to vary or revoke a periodical payments order for the making or securing of payments by a parent includes power under that paragraph to make an order for the payment of a lump sum by that parent.

(3) A lump sum order may provide for the payment of the lump sum by instalments, and the court may, on an application made by the person by or to whom the sum is required to be paid, vary that order by varying —

(a) the number of instalments payable;

(b) the amount of any instalment payable;

(c) the date on which any instalment becomes payable.

Variation etc. of periodical payments orders

6. (1) A periodical payments order may be varied or revoked by a subsequent order made on the application of —

(a) any person by or to whom the payments were required to be made under the previous order;

(b) if he has attained the age of 16, the child himself;

(c) if either parent has died, a guardian of the child; or

(d) in the case of a secured periodical payments order, if the parent liable to make payments under the order has died, the personal representatives of the deceased parent.

(2) In exercising its power to vary or revoke a periodical payments order, the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order.

(3) The power of the court to vary a periodical payments order includes power to suspend any provision of the order temporarily and to revive any provision so suspended.

(4) Where, on an application under paragraph 1 or 2 for the variation or revocation of a periodical payments order, the court varies the payments required to be made under that order, the court may provide that the payments as so varied shall be made from such date as the court may specify, not being earlier than the making of the application.

(5) Where a periodical payments order under paragraph 1 ceases to have effect on the date on which the child attains the age of 16 or at any time after that date but before or on the date on which he attains the age of 18, the child may apply to the court for an order for its revival.

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- (6) If on such an application it appears to the court —
- (a) that the child is, will be or (if an order were made under this paragraph) would be receiving instruction at any educational establishment or undergoing instruction for a trade, profession or vocation, whether or not while in gainful employment; or
 - (b) that there are special circumstances which justify the making of an order under this sub-paragraph,

the court may by order revive the order from such date as the court may specify, not being earlier than the date of the application.

(7) An order which is revived by an order under sub-paragraph (6) may be varied or revoked under that sub-paragraph, on the application of any person by or to whom payments are required to be made under the revived order.

(8) Where an application to vary a secured periodical payments order is made after the death of the parent liable to make payments under the order, the circumstances which the court is required to have regard under sub-paragraph (2) include the changed circumstances resulting from the death of the parent.

(9) The power of a court of summary jurisdiction under section 55 of the Summary Jurisdiction Act 1989 to revoke or amend an order for the periodical payment of money does not apply in relation to an order under this Schedule.

Variation etc. of previous orders

7. Where a residence order is made with respect to a child at a time when there is in force an order made under an enactment other than this Act and requiring a person to contribute to the child's maintenance, the court may on the application of —

- (a) any person required by the previous order to contribute to the child's maintenance; or
- (b) any person in whose favour a residence order with respect to the child is in force,

make an order revoking the previous order, or varying it by altering the amount of any sum payable under that order or by substituting the applicant for the person to whom any such sum is otherwise payable under that order.

Interim orders

8. (1) Where the court has power under paragraph 1 or 2 to make any order, it may, at any time before it disposes of the matter, make an interim order —

- (a) requiring either or both parents to make such periodical payments, at such times for such term as the court thinks fit; and
- (b) giving any direction which the court thinks fit.

(2) An interim order under this paragraph may provide for payments to be made from such date as the court may specify, not being earlier than the date of the making of the application under paragraph 1 or 2 or, where no such application is made, the commencement of the family proceedings in question.

(3) An interim order under this paragraph shall cease to have effect when the matter is disposed of or, if earlier, on the expiry of the term specified under sub-paragraph (1)(a).

(4) An interim order may be varied by extending the term specified under sub-paragraph (1)(a).

Alteration of maintenance agreements

9. (1) Where a maintenance agreement is for the time being subsisting and each of the parties to it is for the time being domiciled or resident in the Island, then, subject to sub-paragraph (3), either party may apply to the court for an order under this paragraph.

- (2) If the court is satisfied either —

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- (a) that, by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different financial arrangements; or
- (b) that the agreement does not contain proper financial arrangements with respect to the child,

then subject to sub-paragraphs (3) and (4), the court may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it as may appear to the court to be just having regard to all the circumstances.

(3) If the agreement is altered under this paragraph, it shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(4) Where the court decides to alter an agreement by an order under this paragraph —

- (a) by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the child, or
- (b) by increasing the rate of periodical payments required to be made or secured by one of the parties for the maintenance of the child,

then, in deciding the term for which under the agreement as altered by the order the payments, or the additional payments attributable to the increase, are to be made or secured for the benefit of the child, the court shall apply the provisions of paragraph 4(1), (2) and (3) as if the order were an order under paragraph 1.

(4) Nothing in this paragraph affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment to make an order containing financial arrangements, or any right of either party to apply for such an order in such proceedings.

10. (1) Where a maintenance agreement provides for the continuation, after the death of one of the parties, of payments for the maintenance of the child and that party dies domiciled in the Island, the surviving party or the personal representatives of the deceased party may, subject to paragraph 11, apply to the court for an order under paragraph 9.

(2) If a maintenance agreement is altered by the court on an application under this paragraph, the like consequences shall ensue as if the alteration had been made, immediately before the death, by agreement between the parties and for valuable consideration.

Variation etc. affecting deceased's estate

11. (1) An application for —
- (a) the variation or revocation of a secured periodical payments order after the death of the parent liable to make payments under that order, or
 - (b) for the alteration of a maintenance agreement by virtue of paragraph 10,

shall not, except with the permission of the court, be made after the end of a period of 6 months from the date on which representation in regard to the estate of the deceased parent is first taken out.

(2) The personal representatives of the deceased parent shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of 6 months referred to in sub-paragraph (1) on the ground that they ought to have taken into account the possibility that the court might permit such an application to be made after that period.

(3) Sub-paragraph (2) does not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order on an application referred to in sub-paragraph (1).

(4) In considering for the purposes of sub-paragraph (1) the question when representation was first taken out, a grant limited to trust property shall be left out of account,

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and a grant limited to real estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

Enforcement

12. (1) Where the High Court makes a periodical payments order, it shall order that the payments shall be made to the Chief Registrar unless, upon representations expressly made in that behalf by the person to whom payments under the order fall to be made, it is satisfied that it is undesirable to do so.

(2) Part VIII of the Summary Jurisdiction Act 1989, so far as it relates to the enforcement of an order for, or the recovery of, periodical payments, applies to payments to be made to the Chief Registrar by virtue of an order of the High Court under sub-paragraph (1) as it applies to payments to be so made by virtue of an order under section 54(1) of that Act.

(3) Any person for the time being under an obligation to make payments in pursuance of a periodical payments order shall give notice of any change of address to such person (if any) as may be specified in the order; and any person who without reasonable excuse fails to give such a notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200.

Interpretation

13. In this Schedule —

"financial arrangements", in relation to a child, means provision in respect of the making or securing of payments, or the disposition or use of any property, for the maintenance or education of the child;

"maintenance agreement", in relation to a child, means any agreement in writing made at any time between the parents of a child and containing financial arrangements relating to him;

"child" includes, in any case where an application is made under paragraph 2 or 6 in relation to a person who has reached the age of 18, that person;

"parent" includes any party to a marriage (whether or not subsisting) in relation to whom the child concerned is a child of the family.

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SCHEDULE 2 — CHILDREN LOOKED AFTER BY DEPARTMENT

Promotion and maintenance of contact between child and family

1. (1) Where a child is being looked after by the Department, the Department shall, unless it is not reasonably practicable or consistent with his welfare, endeavour to promote contact between the child and —
 - (a) his parents;
 - (b) any individual who is not a parent of his but who has parental responsibility for him; and
 - (c) any relative, friend or other person connected with him.
- (2) Where a child is being looked after by the Department —
 - (a) the Department shall take such steps as are reasonably practicable to secure that —
 - (i) his parents; and
 - (ii) any individual who is not a parent of his but who has parental responsibility for him,are kept informed of where he is being accommodated; and
 - (b) every such person shall secure that the Department is kept informed of his or her address.
- (3) Nothing in this paragraph requires the Department to inform any person of the whereabouts of a child if —
 - (a) the child is in the care of the Department; and
 - (b) the Department has reasonable cause to believe that informing the person would prejudice the child's welfare.
- (4) Any person who fails without reasonable excuse to comply with sub-paragraph (2)(b) is guilty of an offence and liable on summary conviction to a fine not exceeding £500.
- (5) It is a defence in any proceedings under sub-paragraph (4) to prove that the defendant —
 - (a) was residing at the same address as another person who was the child's parent or had parental responsibility for the child, and
 - (b) had reasonable cause to believe that the other person had informed the Department that both of them were residing at that address.

Visits to or by children: expenses

2. (1) Subject to sub-paragraph (2), the Department may —
 - (a) make payments to —
 - (i) a parent of the child;
 - (ii) any person who is not a parent of his but who has parental responsibility for him; or
 - (iii) any relative, friend or other person connected with him,in respect of travelling, subsistence or other expenses incurred by that person in visiting the child; or
 - (b) make payments to the child, or to any person on his behalf, in respect of travelling, subsistence or other expenses incurred by or on behalf of the child in his visiting —
 - (i) a parent of his;

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- (ii) any person who is not a parent of his but who has parental responsibility for him; or
- (iii) any relative, friend or other person connected with him.

- (2) Payments may not be made under this paragraph unless —
 - (a) the child is being looked after by the Department;
 - (b) it appears to the Department that the visit in question could not otherwise be made without undue financial hardship; and
 - (c) the circumstances warrant the making of the payments.

Appointment of visitor for child who is not being visited

- 3. (1) Where it appears to the Department in relation to any child whom it is looking after that —
 - (a) communication between the child and —
 - (i) a parent of his, or
 - (ii) any individual who is not a parent of his but who has parental responsibility for him,
has been infrequent; or
 - (b) he has not visited or been visited by (or lived with) any such person during the preceding 12 months,

and that it would be in the child's best interests for an independent person to be appointed to be his visitor for the purposes of this paragraph, it shall appoint such a visitor.

- (2) A person so appointed —
 - (a) shall visit, advise and befriend the child; and
 - (b) may recover from the Department any reasonable expenses incurred by him for the purposes of his functions under this paragraph.
- (3) A person's appointment as a visitor in pursuance of this paragraph may be determined by —
 - (a) notice in writing by him to the Department resigning the appointment; or
 - (b) notice in writing by the Department to him terminating it.
- (4) The determination of such an appointment does not prejudice any duty under this paragraph to make a further appointment.
- (5) Where the Department proposes to appoint a visitor for a child under this paragraph, the appointment shall not be made if —
 - (a) the child objects to it; and
 - (b) the Department is satisfied that he has sufficient understanding to make an informed decision.
- (6) Where a visitor has been appointed for a child under this paragraph, the Department shall terminate the appointment if —
 - (a) the child objects to its continuing; and
 - (b) the Department is satisfied that he has sufficient understanding to make an informed decision.

Power to guarantee apprenticeship deeds etc.

- 4. (1) While a child is being looked after by the Department, it may undertake any obligation by way of guarantee under any deed of apprenticeship or articles of clerkship which he enters into.
- (2) Where the Department has undertaken any such obligation under any deed or articles it may at any time (whether or not it is still looking after the person concerned) undertake the like obligation under any supplemental deed or articles.

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Review of cases etc.

5. (1) The Department shall make arrangements for periodically reviewing the case of every child while he is being looked after by the Department.

(2) Without prejudice to the generality of sub-paragraph (1), in performing its duty under that sub-paragraph the Department shall —

- (a) seek and take into account, so far as it is reasonably practicable to do so, the views of —
 - (i) the child himself,
 - (ii) his parents,
 - (iii) any other individual who has parental responsibility for him, and
 - (iv) any other person whose views the Department consider to be relevant;
- (b) where the child is in the care of the Department, consider whether to apply for the revocation of the relevant care order; and
- (c) record any decisions taken in the course or as a result of any review under this paragraph and, so far as practicable, notify the persons referred to in (a) above of those decisions.

(3) The Department shall establish a procedure for considering any representations (including any complaint) with respect to the treatment of a child who is or has been looked after by it made to it by —

- (a) any person mentioned in sub-paragraph (2)(a);
 - (b) any official foster parent; or
 - (c) any other person appearing to the Department to have a sufficient interest in the welfare of the child to warrant his representations being considered by it.
- (4) The Department shall set out in writing, and make available to the public, —
- (a) its arrangements under sub-paragraph (1), and
 - (b) its procedure established under sub-paragraph (3).

Arrangements to assist children to live abroad

6. (1) The Department may with the approval of every person who has parental responsibility for him arrange for, or assist in arranging for, any child looked after by it (except a child in its care) to live outside the Island.

(2) The Department may with the approval of the court arrange for, or assist in arranging for, any child in its care to live outside the Island.

(3) The court shall not give its approval under sub-paragraph (2) unless it is satisfied that —

- (a) living outside the Island would be in the child's best interests;
- (b) suitable arrangements have been, or will be, made for his reception and welfare in the country in which he will live;
- (c) the child has consented to living in that country; and
- (d) every person who has parental responsibility for the child has consented to his living in that country.

(4) Where the court is satisfied that the child does not have sufficient understanding to give or withhold his consent, it may disregard sub-paragraph (3)(c) and give its approval if the child is to live in the country concerned with a parent, guardian, or other suitable person.

(5) Where a person whose consent is required by sub-paragraph (3)(d) fails to give his consent, the court may disregard that provision and give its approval if it is satisfied that that person —

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- (a) cannot be found;
- (b) is incapable of consenting; or
- (c) is withholding his consent unreasonably.

(6) Section 44 of the Adoption Act 1984 (authority for taking or sending certain children abroad for adoption) does not apply in the case of any child who is to live outside the Island with the approval of the court given under this paragraph.

(7) Where the court decides to give its approval under this paragraph it may order that its decision is not to have effect during the appeal period.

(8) In this paragraph —
"the appeal period" means —

- (a) where an appeal is made against the decision, the period between the making of the decision and the determination of the appeal; and
- (b) otherwise, the period during which an appeal may be made against the decision;

"the court" means —

- (a) where the relevant care order was made by a court other than a juvenile court, that court or a juvenile court;
- (b) in any other case, a juvenile court.

Death of children being looked after by Department

7. (1) If a child who is being looked after by the Department dies, the Department

- (a) shall, so far as is reasonably practicable, notify the child's parents and every person who is not a parent of his but who has parental responsibility for him;
- (b) may, with the consent (so far as it is reasonably practicable to obtain it) of every person who has parental responsibility for the child, arrange for the child's body to be buried or cremated; and
- (c) may, if the conditions mentioned in sub-paragraph (2) are satisfied, make payments to any person who has parental responsibility for the child, or any relative, friend or other person connected with the child, in respect of travelling, subsistence or other expenses incurred by that person in attending the child's funeral.

(2) The conditions are that —

- (a) it appears to the Department that the person concerned could not otherwise attend the child's funeral without undue financial hardship; and
- (b) that the circumstances warrant the making of the payments.

(3) Sub-paragraph (1) does not authorise cremation where it does not accord with the practice of the child's religious persuasion.

(4) Where the Department has exercised its power under sub-paragraph (1)(b) with respect to a child who was under 16 when he died, it may recover from any parent of the child any expenses incurred by it.

(5) Nothing in this paragraph affects any enactment regulating or authorising the burial, cremation or anatomical examination of the body of a deceased person.

Persons formerly looked after by the Department

8. (1) This paragraph applies to a person within the Island who is under the age of 21 and who was, at any time after reaching the age of 16 but while still a child —

- (a) looked after by the Department;
- (b) accommodated in a children's home,

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- (c) accommodated in a residential care home, nursing home or mental nursing home for a consecutive period of at least 3 months (whether or not that period began after he reached the age of 16) ; or
- (d) privately fostered,

but who is no longer so looked after, accommodated or fostered.

- (2) If —
 - (a) the Department knows that there is in the Island a person to whom this paragraph applies,
 - (b) it appears to the Department that he is in need of advice and being befriended,
 - (c) where he was not being looked after by the Department, the Department is satisfied that the person by whom he was being looked after is not able to advise and befriend him, and
 - (d) he has asked the Department for help of a kind which it is able to give under this paragraph,

the Department may advise and befriend him, and may also give him assistance in kind or, in exceptional circumstances, in cash.

- (3) Paragraph 4 applies in relation to a person to whom this paragraph applies as it applies in relation to a child who is being looked after by the Department.

SCHEDULE 3 — CONTRIBUTIONS TOWARDS MAINTENANCE

Liability to contribute

1. (1) Where the Department is looking after a child (except where he is looked after by the Department under —

- (a) section 25(1)(c); or
- (b) a care order, being an interim order),

and it considers that it is reasonable to do so, it shall take such steps as are practicable to recover contributions towards the child's maintenance from any person liable to contribute (a "contributor").

(2) The persons liable to contribute are —

- (a) where the child is under 16, each of his parents;
- (b) where he has reached the age of 16, the child himself.

(3) A parent is not liable to contribute during any period when he is in receipt of income support, family income supplement or disability working allowance under any statutory provision relating to social security.

(4) A person is not liable to contribute towards the maintenance of a child in the care of the Department in respect of any period during which the child is allowed by the Department under section 26(2) to live with a parent of his.

(5) A contributor is not obliged to make any contribution towards a child's maintenance except as agreed with the Department or determined in accordance with this Schedule.

Agreed contributions

2. (1) Before recovering contributions towards a child's maintenance the Department must first serve a notice in writing (a "contribution notice") on the contributor specifying —

- (a) the weekly sum which it considers that he should contribute; and
- (b) arrangements for payment.

(2) Arrangements for payment shall, in particular, include —

- (a) the date on which liability to contribute begins (which must not be earlier than the date on which the notice is served on the contributor);
- (b) the date on which liability under the notice will end, if the child has not before that date ceased to be looked after by the Department; and
- (c) the date on which the first payment is to be made.

(3) The Department may specify in a contribution notice a weekly sum which is a standard contribution determined by it for all children looked after by the Department.

(4) The Department may not specify in a contribution notice a weekly sum greater than that which it considers —

- (a) it would normally be prepared to pay if it had placed a similar child with official foster parents; and
- (b) it is reasonably practicable for the contributor to pay (having regard to his means).

(5) The Department may at any time withdraw a contribution notice (without prejudice to its power to serve another).

(6) Where the Department and the contributor agree —

- (a) the sum which the contributor is to contribute; and
- (b) arrangements for payment,

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(whether as specified in the contribution notice or otherwise) and the contributor notifies the Department in writing that he so agrees, the Department may recover from him any contribution which is overdue and unpaid.

(7) A contributor may, by serving a notice in writing on the Department, withdraw his agreement in relation to any period of liability falling after the date of service of the notice.

Contribution orders

3. (1) Where a contributor has been served with a contribution notice and has —
- (a) failed to reach any agreement with the Department as mentioned in paragraph 2(6) within the period of one month beginning with the day on which the contribution notice was served; or
 - (b) served a notice under paragraph 2(7) withdrawing his agreement,

the Department, unless it has withdrawn the notice, may apply to a court of summary jurisdiction for an order under this paragraph.

(2) On such an application the court may make an order (a "contribution order") requiring the contributor to contribute a weekly sum towards the child's maintenance in accordance with arrangements for payment specified by the court.

- (3) In making a contribution order the court —
 - (a) shall not specify a weekly sum greater than that specified in the contribution notice; and
 - (b) shall have regard to the contributor's means.
- (4) A contribution order shall not —
 - (a) take effect before the date specified in the contribution notice; or
 - (b) have effect while the contributor is not liable to contribute (by virtue of paragraph 1); or
 - (c) remain in force after the child has ceased to be looked after by the Department.
- (5) Where —
 - (a) a contribution order is in force;
 - (b) the Department serves another contribution notice; and
 - (c) the contributor and the Department reach an agreement under paragraph 2(6) in respect of that other contribution notice,

the order shall cease to have effect on the date on which it is agreed that the agreement shall take effect.

(6) Where an agreement is reached under sub-paragraph (5) the Department shall notify the Chief Registrar of the agreement and of the date on which it took effect.

(7) A contribution order may be varied or revoked by a court of summary jurisdiction on the application of the contributor or the Department.

- (8) In proceedings for the variation of a contribution order, the Department shall specify —
- (a) the weekly sum which, having regard to paragraph 2, it proposes that the contributor should contribute under the order as varied; and
 - (b) the proposed arrangements for payment.
- (9) In varying a contribution order the court —
- (a) shall not specify a weekly sum greater than that specified under sub-paragraph (8)(a); and
 - (b) shall have regard to the contributor's means.

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(10) An appeal shall lie in accordance with rules of court from any order made under this paragraph.

Arrears

4. (1) In any proceedings for the recovery of any sum due under a contribution order, a certificate which —

- (a) purports to be signed by an officer of the Department, and
- (b) states that any sum due to the Department under the order is overdue and unpaid,

shall be evidence that the sum is overdue and unpaid.

(2) In any proceedings for the variation or revocation of a contribution order, or for the recovery of any sum due under a contribution order, the court may remit the whole or any part of the sum due under the order.

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SCHEDULE 4 — SUPERVISION ORDERS

Interpretation

1. (1) In this Schedule —
"the responsible person", in relation to a supervised person, means —
 - (a) any person who has parental responsibility for him; and
 - (b) any other person with whom he is living;"the supervised person" means the child with respect to whom a supervision order is made;
"supervision order" means a supervision order under section 31(1)(b);
"the supervisor" means —
 - (a) where the supervision order places the supervised person under the supervision of a probation officer, such probation officer as is for the time being assigned to him in accordance with probation rules;
 - (b) where the supervision order places the supervised person under the supervision of the Department, such officer of the Department as is for the time being assigned to him by the Department.(2) The above definition of "supervisor" applies for the purpose of section 34(1).

Requirement to comply with supervisor's directions

2. (1) A supervision order may require the supervised person to comply with any directions given from time to time by the supervisor and requiring him to do all or any of the following —
 - (a) to live at a place or places specified in the directions for a period or periods so specified;
 - (b) to present himself to a person or persons specified in the directions at a place or places and on a day or days;
 - (c) to participate in activities specified in the directions on a day or days to be specified.(2) It shall be for the supervisor to decide whether and to what extent he exercises any power to give directions under sub-paragraph (1).
(3) This paragraph does not confer on a supervisor power to give directions in respect of any medical or psychiatric examination or treatment.

Requirements imposed on responsible persons

3. (1) With the consent of any responsible person, a supervision order may include a requirement —
 - (a) that he take all reasonable steps to ensure that the supervised person complies with any direction given by the supervisor under paragraph 2;
 - (b) that he take all reasonable steps to ensure that the supervised person complies with any requirement included in the order under paragraph 4 or 5;
 - (c) that he comply with any directions given by the supervisor requiring him to attend at a place specified in the directions for the purpose of taking part in activities so specified.(2) A direction given under sub-paragraph (1)(c) may specify the time at which the responsible person is to attend and whether or not the supervised person is required to attend with him.
(3) A supervision order may require any person who is a responsible person in relation to the supervised person to keep the supervisor informed of his address, if it differs from the supervised person's.

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Medical and psychiatric examinations

4. (1) A supervision order may require the supervised person —
- (a) to submit to a medical or psychiatric examination; or
 - (b) to submit to any such examination from time to time as directed by the supervisor.
- (2) Any such examination shall be required to be conducted —
- (a) by, or under the direction of, such registered medical practitioner as may be specified in the order;
 - (b) at a place specified in the order and at which the supervised person is to attend as a non-resident patient; or
 - (c) at a health service hospital or (in the case of a psychiatric examination) a hospital or mental nursing home at which the supervised person is, or is to attend as, a resident patient.
- (3) A requirement of a kind mentioned in sub-paragraph (2)(c) shall not be included unless the court is satisfied, on the evidence of a registered medical practitioner, that —
- (a) the supervised person may be suffering from a physical or mental condition that requires, or may be susceptible to, treatment; and
 - (b) a period as a resident patient is necessary if the examination is to be carried out properly.
- (4) No court shall include a requirement under this paragraph in a supervision order unless it is satisfied that —
- (a) where the child has sufficient understanding to make an informed decision, he consents to its inclusion; and
 - (b) satisfactory arrangements have been, or can be, made for the examination.
- (5) This paragraph does not apply in the case of an interim order or an order pending appeal.

Medical and psychiatric treatment

5. (1) Where a court proposes to make or vary a supervision order and is satisfied, on the evidence of a registered medical practitioner, that the physical condition of the supervised person is such as required and may be susceptible to treatment, the court may include in the supervision order a requirement that the supervised person shall, for a period specified in the order, submit to treatment of one of the following descriptions so specified —
- (a) treatment by or under the direction of a registered medical practitioner specified in the order;
 - (b) treatment as a non-resident patient at a place specified in the order;
 - (c) treatment as a resident patient in a health service hospital.
- (2) Where a court proposes to make or vary a supervision order and is satisfied, on the evidence of a medical practitioner approved for the purposes of section 12 of the Mental Health Act 1998, that the mental condition of the supervised person is such as requires and may be susceptible to treatment, the court may include in the supervision order a requirement that the supervised person shall, for a period specified in the order, submit to treatment of one of the following descriptions so specified —
- (a) treatment by or under the direction of a registered medical practitioner specified in the order;
 - (b) treatment as a non-resident patient at a place specified in the order;
 - (c) treatment as a resident patient in a hospital or mental nursing home.
- (3) No court shall include a requirement under this paragraph in a supervision order unless it is satisfied that —

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- (a) where the child has sufficient understanding to make an informed decision, he consents to its inclusion; and
 - (b) satisfactory arrangements have been, or can be, made for the treatment.
- (4) If a medical practitioner by whom or under whose direction a supervised person is being treated in pursuance of a requirement included in a supervision order by virtue of this paragraph —
- (a) is unwilling to treat or direct the treatment of the supervised person, or
 - (b) is of opinion —
 - (i) that the treatment should be continued beyond the period specified in that behalf in the order, or
 - (ii) that the supervised person needs different treatment, or
 - (iii) that he is not susceptible to treatment, or
 - (iv) that he does not require further treatment,

the practitioner shall make a report in writing to that effect to the supervisor.

(5) On receiving a report under sub-paragraph (4) the supervisor shall refer it to a juvenile court, and on such a reference the court may make an order cancelling or varying the requirement.

(6) This paragraph does not apply in the case of an interim order or an order pending appeal.

Restriction on directions

6. (1) The total number of days in respect of which a supervised person or responsible person may be required to comply with directions given under paragraph 2 or 3 shall not exceed 90 or such lesser number, if any, as may be specified in the order.

(2) For the purpose of calculating the total number of days in respect of which such directions may be given the supervisor may disregard any day in respect of which directions were previously given in pursuance of the order and on which the directions were not complied with.

Information to be given to supervisor etc.

7. (1) A supervision order may require the supervised person —
- (a) to keep the supervisor informed of any change in his address; and
 - (b) to allow the supervisor to visit him at the place where he is living.
- (2) The responsible person in relation to a supervised person shall —
- (a) if asked by the supervisor, inform him of the supervised person's address (if it is known to him); and
 - (b) if he is living with the supervised person, allow the supervisor reasonable contact with the supervised person.

Duration of supervision order

8. (1) Subject to any other enactment providing for its termination, a supervision order (other than an interim order or an order pending appeal) shall, unless previously revoked, cease to have effect —

- (a) at the end of the period of one year beginning with the date on which it is made, unless it is extended under sub-paragraph (2);
- (b) when the supervised person attains the age of 18;
- (c) on the making of a care order with respect to the supervised person;
- (d) on the happening of any event mentioned in section 48(1)(a) or (b) of the Child Custody Act 1987 with respect to the supervised person.

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(2) On an application made by the supervisor a juvenile court may make an order extending, or further extending, the duration of a supervision order for such period as the court may specify.

(3) A supervision order may not be extended beyond —

(a) the end of the period of 3 years beginning with the date on which it was made, or

(b) the date on which the supervised person attains the age of 18.

(4) This paragraph is without prejudice to section 5(6) of the Child Custody Act 1987.

Variation and revocation of supervision order

9. (1) A supervision order may be revoked or varied by the court on the application of —

(a) any person who has parental responsibility for the child;

(b) the child himself; or

(c) the supervisor.

(2) On the application of a person —

(a) who is not entitled to apply for the order to be revoked, but

(b) with whom the child is living,

a supervision order may be varied by the court in so far as it imposes a requirement which affects that person.

(3) In this paragraph "the court" means —

(a) where the supervision order was made by a court other than a juvenile court, that court or a juvenile court; or

(b) in any other case, a juvenile court;

but where the supervision order was made by a court on the determination of an appeal from another court, it shall be treated for the purpose of this sub-paragraph as made by the latter court.

Effect on earlier orders

10. The making of a supervision order with respect to a child revokes any earlier supervision order (including a supervision order under Schedule 9) made with respect to him which would otherwise continue in force.

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SCHEDULE 5 — EXCLUSION REQUIREMENTS &c

Exclusion requirement

1. (1) For the purposes of sections 36 and 43 and this Schedule an exclusion requirement is any one or more of the following —
 - (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child,
 - (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and
 - (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.
- (2) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the relevant order.

Power of arrest

2. (1) Where the court makes a relevant order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.
- (2) Where the court attaches a power of arrest to an exclusion requirement of a relevant order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.

Extension of period of requirement or power of arrest

3. Any period specified for the purposes of paragraph 1(2) or 2(2) may be extended by the court (on one or more occasions) on an application to vary or revoke the interim care order.

Execution of power of arrest

4. (1) Where a power of arrest is attached to an exclusion requirement of a relevant order by virtue of paragraph 2, a constable may arrest without warrant any person whom he has reasonable cause to believe to be in breach of the requirement.
- (2) Where a power of arrest is attached to an exclusion requirement of a relevant order by virtue of paragraph 2 and a person is arrested under sub-paragraph (1) —
 - (a) he shall be brought before a justice of the peace within a period of 24 hours beginning at the time of his arrest, and
 - (b) the justice before whom he is brought may remand him.

Lapse of exclusion requirement

5. If, while a relevant order containing an exclusion requirement is in force, the Department has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the relevant order shall cease to have effect in so far as it imposes the exclusion requirement.

Undertaking in lieu of exclusion requirement

6. (1) In any case where the court has power to include an exclusion requirement in a relevant order, the court may accept an undertaking from the relevant person.
- (2) No power of arrest may be attached to any undertaking given under this paragraph.
- (3) An undertaking given to a court under this paragraph —
 - (a) shall be enforceable as if it were an order of the court, and
 - (b) shall cease to have effect if, while it is in force, the Department has removed the child from the dwelling-house from which the relevant person is excluded by virtue of the undertaking to other accommodation for a continuous period of more than 24 hours.

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(4) This section has effect without prejudice to the powers of the court apart from this paragraph.

Interpretation

7. In this Schedule —

"relevant order" means an interim care order or an emergency protection order;

"relevant person" has the same meaning as in section 36 or 43, as the case may be.

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SCHEDULE 6 — REGISTRATION OF CHILDREN'S HOMES

Application for registration

1. An application for registration of a children's home shall be made in writing to the Department by the person carrying on or proposing to carry on the home, and shall be accompanied by such information as the Department may reasonably require.

Determination of application

2. (1) Subject to sub-paragraph (2), the Department shall, on receiving an application for registration, grant the application and issue to the applicant a certificate of registration specifying —

- (a) the name and address of the applicant,
- (b) the address of the children's home, and
- (c) the conditions imposed under paragraph 3.

(2) The Department may refuse an application for registration if it is satisfied —

- (a) that the applicant, or any person concerned in the management of, or having a financial interest in, the home is disqualified under section 52 from carrying on, or being concerned in the management of or having a financial interest in, a children's home;
- (b) that the applicant, or a person employed or proposed to be employed by the applicant at the home, is not a fit person to carry on or be employed at a children's home;
- (c) that, for reasons concerned with situation, construction, state of repair, accommodation, staffing or equipment, the home is not, or any premises used in connection with the home are not, fit to be used for a children's home;
- (d) that the home is, or any premises used in connection with the home are, used or proposed to be used for purposes which are in any way improper or undesirable in the case of a children's home;
- (e) that the way in which it is intended to carry on the home is such as not to provide services or facilities reasonably required.

Conditions of registration

3. (1) It is a condition of the registration of any person in respect of a children's home that the number of children cared for and accommodated in the home (excluding any child in respect of whom a person carrying on or employed at the home is a relative) does not exceed such number as may be specified in the certificate of registration.

(2) The Department may, when granting an application for registration, impose such further conditions as it considers appropriate.

(3) The Department may from time to time —

- (a) vary any condition for the time being in force in respect of a children's home under this paragraph;
- (b) remove any such condition (except the condition imposed by sub-paragraph (1)); or
- (c) impose an additional condition,

either on the application of the person registered in respect of the home or without such an application.

(4) Any person who without reasonable excuse carries on a children's home in contravention of a condition for the time being in force in respect of the home under this paragraph shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

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Cancellation of registration

4. The Department may at any time cancel the registration of a person in respect of a children's home —

- (a) on any ground which would entitle it to refuse an application for the registration of that person in respect of that home;
- (b) on the ground that that person has been convicted of an offence under Part 6, or that any other person has been convicted of such an offence in respect of that home;
- (c) on the ground that any condition for the time being in force in respect of the home under paragraph 3 has not been complied with;
- (d) on the ground that that person has been convicted of an offence against regulations under section 53;
- (e) at the request of that person.

Procedure for registration etc.

5. (1) Where the Department proposes —

- (a) to grant an application subject to conditions (other than conditions agreed between the applicant and the Department), or
- (b) to refuse an application,

it shall give to the applicant notice of its proposal and, in the case of a proposal to grant the application, of the conditions subject to which it proposes to grant it.

(2) The Department shall give any person registered in respect of a children's home notice of a proposal —

- (a) to cancel the registration;
 - (b) to vary any condition for the time being in force in respect of the home under paragraph 3; or
 - (c) to impose any additional condition.
- (3) A notice under this paragraph shall —
- (a) be in writing;
 - (b) give the Department's reasons for its proposal; and
 - (c) state that within such period as may be specified in the notice (not being less than 21 days beginning with the date of service of the notice) any person on whom it is served may make objections or representations in writing to the Department concerning the proposal.

(4) In relation to any proposal mentioned in sub-paragraph (1) or (2) the Department —

- (a) shall not make a decision on the proposal before the expiration of the period specified under sub-paragraph (3)(c): and
- (b) shall before making such a decision consider any objections or representations made in accordance with the notice.

(5) If the Department decides to adopt a proposal mentioned in sub-paragraph (1) or (2), it shall give notice of its decision to any person to whom it was required to give notice of the proposal.

(6) A notice under sub-paragraph (5) shall be in writing and include an explanation of the right of appeal conferred by section 56.

(7) A decision of the Department, other than a decision to grant an application for registration subject only to conditions agreed between the applicant and the Department or to refuse an application for registration, shall not take effect —

- (a) if no appeal is brought, until the expiration of the period of 28 days referred to in section 56(2);

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- (b) if an appeal is brought, until it is determined or abandoned.

Inspection of register

6. The register of children's homes kept by the Department shall be available for inspection at all reasonable times, and any person inspecting the register shall be entitled to make copies of entries in the register on payment of such reasonable fee as the Department may determine.

Display of certificate

7. (1) The certificate of registration issued under paragraph 2(1) in respect of a children's home shall be kept affixed in a conspicuous place in the home.

(2) If sub-paragraph (1) is not complied with, the person carrying on the home is guilty of an offence and liable on summary conviction to a fine not exceeding £500.

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SCHEDULE 7 — REGISTRATION OF CHILD-MINDERS ETC

Application for registration

1. An application for registration shall be made in writing to the Department and shall be accompanied by such information as the Department may reasonably require.

Determination of application

2. (1) Subject to sub-paragraphs (2) to (5), the Department shall, on receiving an application for registration, grant the application and issue to the applicant a certificate of registration specifying —

- (a) the name and address of the applicant,
- (b) the premises in respect of which he is registered (in the case of registration under section 64(1)(b)), and
- (c) the conditions imposed under paragraph 3.

(2) The Department shall refuse to register a person if he is disqualified by regulations under section 65.

(3) The Department may refuse to register an applicant under section 64(1)(a) if it is satisfied that —

- (a) the applicant, or any person looking after, or likely to be looking after, any children on any premises on which the applicant is, or is likely to be, child-minding, is not fit to look after children under the age of 8; or
- (b) any person living, or likely to be living, at any such premises, or any person employed, or likely to be employed, on those premises, is not fit to be in the proximity of children under the age of 8.

(4) The Department may refuse to register an applicant under section 64(1)(b) if it is satisfied that any person living, or likely to be living, at any of the premises to which the application relates, or any person employed, or likely to be employed, on those premises, is not fit to be in the proximity of children under the age of 8.

(5) The Department may refuse to register an applicant for registration under section 64(1)(a) if it is satisfied that any premises on which the applicant is, or is likely to be, child-minding are not fit to be used for looking after children under the age of 8, whether because of their condition or the condition of any equipment used in the premises or for any reason connected with their situation, construction or size.

(6) The Department may refuse to register an applicant for registration under section 64(1)(b) if, in relation to the premises to which the application relates, any requirement of regulations under paragraph 6(1) is contravened.

(7) The Department may refuse to register an applicant under section 64(1)(b) if it is satisfied that any person concerned in the management of, or having a financial interest in, the provision of day care by the applicant is disqualified under section 65(6) from carrying on, or being concerned in the management of or having a financial interest in such provision.

Conditions of registration

3. (1) It is a condition of the registration of any person that he shall not when acting as a child-minder, or in providing day care on the premises in question, look after a number of children, or a number of children within specified age groups, exceeding such number as may be specified in the certificate of registration.

(2) The Department may, when granting an application for registration of any person, impose such further conditions as it considers appropriate —

- (a) requiring him to secure that any premises on which he looks after children as a child-minder, or the premises on which he provides day care, and the equipment used on those premises, are adequately maintained and kept safe;
- (b) requiring him to keep a record of the name and address of —

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- (i) any child looked after by him as a child-minder on any premises, or looked after on the premises in question, as the case may be;
 - (ii) any person who assists in looking after any such child; and
 - (iii) any person who lives, or is likely at any time to be living, at those premises;
- (c) requiring him to notify the Department in writing of any change in the persons mentioned in paragraph (b)(ii) and (iii);
- (d) in the case of registration under section 64(1)(b) —
- (i) specifying the number of persons required to assist in looking after children on the premises; and
 - (ii) requiring him to notify the Department of any change in the facilities which he provides or the period during which he provides them; and
- (e) imposing such other reasonable requirements (other than with respect to any matter specified in paragraph 6(1)) as the Department thinks appropriate.
- (3) The Department may from time to time —
- (a) vary any condition for the time being in force under this paragraph;
 - (b) remove any such condition (except a condition imposed under sub-paragraph (1)); or
 - (c) impose an additional condition,

either on the application of the person registered or without such an application.

(4) Any person registered who without reasonable excuse contravenes or fails to comply with a condition for the time being in force under this paragraph is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

(5) In determining the maximum number of children, or the maximum number of children of specified age groups, under sub-paragraph (1) in relation to a registered child-minder, the Department shall take account of the number of other children who may at any time be on the premises on which he acts or is likely to act as child-minder or provides day care, as the case may be.

(6) Where a person is registered under section 64(1)(b) with respect to different premises, this paragraph applies separately in relation to each registration.

Cancellation of registration

4. (1) The Department may by notice in writing at any time cancel the registration of a person —
- (a) if it appears to it that it would be justified in refusing an application for the registration of that person as a child-minder or in respect of the provision of day care on the premises in question, as the case may be;
 - (b) if the care provided by that person when looking after a child as a child-minder, or the day care provided by that person on those premises, is in the Department's opinion seriously inadequate having regard to the needs of the children concerned;
 - (c) if that person has contravened or failed to comply with a condition imposed under paragraph 3;
 - (d) if that person has failed, within 28 days after service of a demand for payment or after the beginning of the inspection, whichever is the later, to pay any fee due under the Fees and Duties Act 1989 in respect of an annual inspection under section 67 of premises on which day care is provided;
 - (e) if, in relation to any premises with respect to which that person is registered under section 64(1)(b), any requirement of regulations under paragraph 6(1) is contravened; or

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(f) at the request of that person.

(2) The Department may by notice in writing at any time cancel all registrations of a person under section 64(1)(b) if it appears to it that the circumstances are such that it would be justified in refusing to register him in respect of any premises.

(3) Where a condition imposed under paragraph 3(3)(a) required a registered person to carry out repairs or make alterations or additions to any premises, his registration shall not be cancelled on the ground that the premises are not fit to be used for looking after children if —

- (a) the time set for complying with the condition has not expired, and
- (b) it is shown that the condition of the premises is due to the repairs not having been carried out or the alterations or additions not having been made.

Procedure for registration etc.

5. (1) Where the Department proposes to grant or refuse an application, it shall give to the applicant notice of its proposal and, in the case of a proposal to grant the application, of the conditions subject to which it proposes to grant it.

(2) The Department shall give any person who is registered notice of a proposal —

- (a) to cancel the registration;
 - (b) to vary any condition for the time being in force under paragraph 3; or
 - (c) to impose any additional condition.
- (3) A notice under this paragraph shall —
- (a) be in writing;
 - (b) give the Department's reasons for its proposal; and
 - (c) state that within such period as may be specified in the notice (not being less than 21 days beginning with the date of service of the notice) any person on whom it is served may make objections or representations in writing to the Department concerning the proposal.

(4) In relation to any proposal mentioned in sub-paragraph (1) or (2) the Department —

- (a) shall not make a decision on the proposal before the expiration of the period specified under sub-paragraph (3)(c): and
- (b) shall before making such a decision consider any objections or representations made in accordance with the notice.

(5) If the Department decides to adopt a proposal mentioned in sub-paragraph (1) or (2), it shall give notice of its decision to the applicant or person registered.

(6) A notice under sub-paragraph (5) shall be in writing and include an explanation of the right of appeal conferred by section 68.

(7) A decision of the Department, other than a decision to grant an application for registration subject only to conditions agreed between the applicant and the Department or to refuse an application for registration, shall not take effect —

- (a) if no appeal is brought, until the expiration of the period of 28 days referred to in section 68(2);
- (b) if an appeal is brought, until it is determined or abandoned.

Regulations for premises on which day-care is provided

6. (1) The Department may make regulations prescribing standards to be complied with as respects —

- (a) the size, construction, accommodation and equipment of premises on which day care is provided;

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(b) facilities to be provided in connection with the provision of day care on such premises.

(2) Where regulations under this paragraph have come into force since the date of registration of any person under section 64(1)(b) in respect of any premises on which day care is provided, the registration may be cancelled on the ground specified in paragraph 4(1)(e) by reason that the premises do not comply with any standard specified in those regulations, notwithstanding that the size, construction, accommodation or equipment of the premises, or the facilities provided on the premises, as the case may be, have not changed since the date of registration.

Inspection of register

7. The register shall be available for inspection at all reasonable times, and any person inspecting the register shall be entitled to make copies of entries in the register on payment of such reasonable fee as the Department may determine.

Display of certificate

8. (1) The certificate of registration issued under paragraph 2(1) shall be kept affixed in a conspicuous place in the premises where the person registered acts as a child-minder, or in respect of which he is registered, as the case may be.

(2) If sub-paragraph (1) is not complied with, the person registered is guilty of an offence and liable on summary conviction to a fine not exceeding £500.

Interpretation

9. In this Schedule "the register" means the register kept by the Department under section 64(1)(a) or (b), as the case may be, and "registered" and "registration" have corresponding meanings.

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SCHEDULE 8 — OFFENCES REFERRED TO IN SECTION 79

1. The murder or manslaughter of a child or young person.
2. Infanticide.
3. An offence under section 42 of the Criminal Code 1872 (abandonment or exposure of child under 5).
4. An offence under any of the following provisions of the Children and Young Persons Act 1966 —
 - (a) section 1 (cruelty, neglect etc. of children);
 - (b) section 3 (allowing person under 16 to be in brothel);
 - (c) section 4 (using person under 16 for begging);
 - (d) section 9 (exposing child under 12 to risk of burning);
 - (e) section 19 (allowing person under 16 to take part in dangerous performance).
5. Any other offence involving bodily injury to a child or young person.
6. An offence under section 2(1) of the Criminal Law Act 1981 (aiding, abetting, counselling or procuring another's suicide or attempted suicide).
7. An offence against a child or young person under any of the following provisions of the Sexual Offences Act 1992 —
 - (a) section 2 (procurement by threats or lies);
 - (b) section 3 (administering drugs for sexual purposes);
 - (c) section 4 (unlawful sexual intercourse);
 - (d) section 5 (sexual act with subnormal person);
 - (e) section 7 (incest);
 - (f) section 9 (unnatural offences);
 - (g) section 11 (assault with intent to commit buggery);
 - (h) section 13 (indecent assault);
 - (i) section 15 (abduction by force);
 - (j) section 17 (causing prostitution);
 - (k) section 18 (procurement of person under 18);
 - (l) section 20 (detention in brothel);
 - (m) section 21 (permitting person under 16 to use premises for sex);
 - (n) section 23 (causing or encouraging prostitution of person under 16).
8. An attempt to commit an offence against a child or young person under any of the following provisions of the Sexual Offences Act 1992 —
 - (a) section 2(a) (procurement by threats);
 - (b) section 4 (unlawful sexual intercourse);
 - (c) section 5 (sexual act with subnormal person);
 - (d) section 7 (incest);
 - (e) section 9(1) (buggery);
 - (f) section 17 (causing prostitution);
 - (g) section 18 (procurement of person under 18).

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SCHEDULE 9 — SUPERVISION ORDERS IN CRIMINAL PROCEEDINGS

Interpretation

1. In this Schedule —

"supervision order" means an order under section 83(1);

"supervised person" and "supervisor", in relation to a supervision order, mean respectively the person placed or to be placed under supervision by the order and the person under whose supervision he is placed or to be placed by the order.

Power to include certain requirements in order

2. (1) A supervision order may require the supervised person to reside with an individual named in the order who agrees to the requirement, but such a requirement shall be subject to any such requirement of the order as is authorised by the following provisions of this paragraph or by paragraph 3 or 5 or paragraph 4 or 5 of Schedule 4 (as applied by paragraph 6).

(2) Subject to paragraph 4(5), a supervision order may require the supervised person to comply with any directions given from time to time by the supervisor and requiring him to do all or any of the following things —

- (a) to live at a place or places specified in the directions for a period or periods so specified;
- (b) to present himself to a person or persons specified in the directions at a place or places and on a day or days so specified;
- (c) to participate in activities specified in the directions on a day or days so specified;

but it shall be for the supervisor to decide whether and to what extent he exercises any power to give directions conferred on him by virtue of this sub-paragraph and to decide the form of any directions; and a requirement imposed by a supervision order in pursuance of this sub-paragraph shall be subject to any such requirement of the order as is authorised by paragraph 5(1) of Schedule 4 (as applied by paragraph 6).

(3) The total number of days in respect of which a supervised person may be required to comply with directions given by virtue of sub-paragraph (2)(a), (b) or (c) in pursuance of a supervision order shall not exceed 90 or such lesser number, if any, as the order may specify for the purposes of this sub-paragraph.

(4) For the purpose of calculating the total number of days in respect of which such directions may be given the supervisor shall be entitled to disregard any day in respect of which directions were previously given in pursuance of the order and on which the directions were not complied with.

(5) This paragraph does not confer on a supervisor power to give directions in respect of any medical or psychiatric examination or treatment.

Power to include additional requirements in order

3. (1) This paragraph applies to any supervision order unless it requires the supervised person to comply with directions given by the supervisor under paragraph 2(2).

(2) Subject to the following provisions of this paragraph and to paragraph 4(6), a supervision order to which this paragraph applies may require the supervised person —

- (a) to do anything which by virtue of paragraph 2(2) a supervisor has power, or would but for paragraph 4(5) have power, to direct a supervised person to do;
- (b) to remain for specified periods between 6 pm and 6 am —
 - (i) at a place specified in the order; or
 - (ii) at one of several places so specified;
- (c) to refrain from participating in activities specified in the order —

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- (i) on a specified day or days during the period for which the supervision order is in force; or
 - (ii) during the whole of that period or a specified portion of it.
- (3) Any power to include a requirement in a supervision order which is exercisable in relation to a person by virtue of this paragraph or the following provisions of this Schedule may be exercised in relation to him whether or not any other such power is exercised.
- (4) The total number of days in respect of which a supervised person may be subject to requirements imposed by virtue of sub-paragraph (2)(a) or (c) shall not exceed 90.
- (5) The court may not include requirements under sub-paragraph (2) in a supervision order unless —
 - (a) it has first consulted the supervisor as to —
 - (i) the offender's circumstances; and
 - (ii) the feasibility of securing compliance with the requirements, and is satisfied, having regard to the supervisor's report, that it is feasible to secure compliance with them;
 - (b) having regard to the circumstances of the case, it considers the requirements necessary for securing the good conduct of the supervised person or for preventing a repetition by him of the same offence or the commission of other offences; and
 - (c) the supervised person or, if he is a child, his parent or guardian, consents to their inclusion.
- (6) The court shall not include in a supervision order by virtue of sub-paragraph (2) —
 - (a) any requirement that would involve the co-operation of a person other than the supervisor and the supervised person unless that other person consents to its inclusion; or
 - (b) any requirement requiring the supervised person to reside with a specified individual; or
 - (c) any requirement in respect of any medical or psychiatric examination or treatment.
- (7) The place, or one of the places, specified in a requirement under sub-paragraph (2)(b) ("a curfew") shall be the place where the supervised person lives.
- (8) A curfew shall not —
 - (a) require the supervised person to remain at a place for longer than 10 hours on any one night;
 - (b) be imposed in respect of any day after the expiration of 3 months beginning with the date when the supervision order is made; or
 - (c) be imposed in respect of more than 30 days in all.
- (9) A supervised person who is required by a curfew to remain at a place may leave it if he is accompanied —
 - (a) by his parent or guardian;
 - (b) by his supervisor; or
 - (c) by some other person specified in the supervision order.
- (10) A curfew imposed in respect of a period of time beginning in the evening and ending in the morning shall be treated as imposed only in respect of the day upon which the period begins.

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Facilities for the carrying out of supervisor's directions etc.

4. (1) The Department may provide facilities, or make arrangements with other persons for the provision by those persons of facilities, for enabling —

- (a) directions given by virtue of paragraph 2(2); and
- (b) requirements that may be included in a supervision order by virtue of paragraph 3(2)(a),

to be carried out effectively.

(2) The Department shall consult the Department of Home Affairs as to the facilities to be provided under this paragraph.

(3) The Department shall from time to time make a scheme specifying the facilities which are for the time being provided under this paragraph.

(4) The Department shall —

- (a) lay a copy of every such scheme before Tynwald;
- (b) send copies of the scheme to the Chief Registrar;
- (c) keep a copy of the scheme available at the principal office of the Department for inspection by members of the public at all reasonable hours; and
- (d) on demand by any person furnish him with a copy of the scheme free of charge.

(5) A supervision order shall not require compliance with directions given by virtue of paragraph 2(2) unless the court making it is satisfied that a scheme under this paragraph is in force; and no such directions may involve the use of facilities which are not for the time being specified in a scheme under this paragraph.

(6) Subject to sub-paragraph (7), a supervision order may not include by virtue of paragraph 3(2) —

- (a) any requirement that would involve the supervised person in absence from home —
 - (i) for more than 2 consecutive nights; or
 - (ii) for more than 2 nights in any one week; or
- (b) if the supervised person is of compulsory school age, any requirement to participate in activities during normal school hours,

unless the court making the order is satisfied that the facilities whose use would be involved are for the time being specified in a scheme under this paragraph.

(7) Sub-paragraph (6)(b) does not apply to activities carried out in accordance with arrangements made or approved by the Department of Education.

Requirement for young offender to live in certain accommodation

5. (1) Where the conditions mentioned in sub-paragraph (5) are fulfilled, a supervision order may impose a requirement ("a residence requirement") that a child or young person shall live for a specified period in accommodation provided by the Department.

(2) The court shall not impose a residence requirement without the consent of the Department.

(3) A residence requirement may stipulate that the child or young person shall not live with a named person.

(4) The maximum period which may be specified in a residence requirement is 6 months.

(5) The conditions referred to in sub-paragraph (1) are that —

- (a) a supervision order has previously been made in respect of the child or young person;

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- (b) that order imposed —
 - (i) a requirement under paragraph 3(2), or
 - (ii) a residence requirement;
- (c) he is found guilty of an offence which —
 - (i) was committed while that order was in force;
 - (ii) was punishable with custody; and
 - (iii) in the opinion of the court is serious; and
- (d) unless condition (b)(ii) is fulfilled, the court is satisfied that the behaviour which constituted the offence was due, to a significant extent, to the circumstances in which he was living.
- (6) A supervision order imposing a residence requirement —
 - (a) may also impose any of the requirements mentioned in paragraphs 2, 3 and 7 and paragraphs 4 and 5 of Schedule 4 (as applied by paragraph 6); and
 - (b) shall also contain a direction committing the supervised person to the care of the Department;

but it is hereby declared that a direction under (b) above shall have effect for the purpose of section 26(1)(b) (transfers to England and Wales) of the Children and Young Persons Act 1969 (an Act of Parliament) only, and not for the purpose of any other statutory provision (including a provision contained in this Act).

Medical or psychiatric examination or treatment

6. Paragraphs 4 and 5 of Schedule 4 apply to supervision orders as they apply to supervision orders under section 31(1)(b) with the substitution for paragraphs 4(4)(a) and 5(3)(a) of the following —

- "(a) where the child has attained the age of 14, he consents to its inclusion; and".

Requirements as to education

7. (1) Subject to sub-paragraph (3), a supervision order to which paragraph 3 applies may require a supervised person, if he is of compulsory school age, to comply, for as long as he is of that age and the order remains in force, with such arrangements for his education as may from time to time be made by his parent, being arrangements for the time being approved by the Department of Education.

(2) The court may not include such a requirement in a supervision order unless —

- (a) it has consulted the Department of Education with regard to its proposal to include the requirement, and
 - (b) it is satisfied that in the view of that Department arrangements exist for the supervised person to receive efficient full-time education suitable to his age, ability and aptitude.
- (3) The court may not include such a requirement unless —
- (a) it has first consulted the supervisor as to the offender's circumstances, and
 - (b) having regard to the circumstances of the case, it considers the requirement necessary for securing the good conduct of the supervised person or for preventing a repetition by him of the same offence or the commission of other offences.

Duty of supervisor

8. (1) While a supervision order is in force it shall be the duty of the supervisor to advise, assist and befriend the supervised person.

(2) A supervision order may contain such prescribed provisions as the court making the order, or the court varying any provision included in the order in pursuance of this

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paragraph, considers appropriate for facilitating the performance by the supervisor of his functions under sub-paragraph (1), including any prescribed provisions for requiring visits to be made by the supervised person to the supervisor.

Variation and revocation of supervision orders

9. (1) If while a supervision order is in force in respect of a supervised person it appears to a juvenile court, on the application of the supervisor or the supervised person, that it is appropriate to make an order under this subsection, the court may make an order revoking the supervision order or varying it —

- (a) by cancelling any requirement included in it in pursuance of paragraph 2, 3, 5, 7 or 8(2) or paragraph 4 or 5 of Schedule 4 (as applied by paragraph 6); or
- (b) by inserting in it (either in addition to or in substitution for any of its provisions) any provision which could have been included in the order if the court had then had power to make it and were exercising the power.

(2) The powers of variation conferred by sub-paragraph (1) do not include power —

- (a) to insert in the supervision order, after the expiration of 3 months beginning with the date when the order was originally made, a requirement in pursuance of paragraph 4 or 5 of Schedule 4 (as applied by paragraph 6), unless it is in substitution for such a requirement already included in the order; or
- (b) to insert in the supervision order a requirement in pursuance of paragraph 3(2)(b) in respect of any day after the expiration of 3 months beginning with the date when the order was originally made.

(3) If while a supervision order is in force in respect of a person it is proved to the satisfaction of a juvenile court, on the application of the supervisor, that the supervised person has failed to comply with any requirement included in the supervision order in pursuance of paragraph 2, 3, 5, 7 or 8(2), the court —

- (a) whether or not it also makes an order under sub-paragraph (1), may order him to pay a fine of an amount not exceeding £1,000; or
- (b) in the case of a person who has attained the age of 18, may (if it also revokes the supervision order) make an order imposing on him any punishment, other than a sentence of custody, which it could have imposed on him if it —
 - (i) had then had power to try him for the offence in consequence of which the supervision order was made; and
 - (ii) had convicted him in the exercise of that power.

(4) If while a supervision order is in force in respect of a person it is proved to the court under sub-paragraph (3) that the supervised person has failed to comply with any requirement included in the supervision order in pursuance of paragraph 3(2)(a) directing the supervised person to participate in specified activities, the court may, if it also revokes the supervision order, make an order imposing on him any sentence which it could have imposed on him if it —

- (a) had then had power to try him for the offence in consequence of which the supervision order was made; and
- (b) had convicted him in the exercise of that power.

(5) In a case falling within sub-paragraph (3)(b) or (4) where the offence in question is of a kind which the court has no power to try, or has no power to try without appropriate consents, the sentence imposed by virtue of that provision —

- (a) shall not exceed that which any court having power to try such an offence could have imposed in respect of it; and
- (b) where the case falls within sub-paragraph (3)(b) and the sentence is a fine, shall not in any event exceed £5,000; and

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(c) where the case falls within sub-paragraph (4), shall not in any event exceed a custodial sentence for a term of 6 months and a fine of £5,000.

(6) A fine imposed under sub-paragraph (3) or (4) shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.

(7) In dealing with a supervised person under sub-paragraph (3) or (4), the court shall take into account the extent to which that person has complied with the requirements of the supervision order.

(8) If a medical practitioner by whom or under whose direction a supervised person is being treated for his mental condition in pursuance of a requirement included in a supervision order by virtue of paragraph 5 of Schedule 4 (as applied by paragraph 6) —

(a) is unwilling to continue to treat or direct the treatment of the supervised person, or

(b) is of opinion —

(i) that the treatment should be continued beyond the period specified in that behalf in the order; or

(ii) that the supervised person needs different treatment; or

(iii) that he is not susceptible to treatment; or

(iv) that he does not require further treatment,

the practitioner shall make a report in writing to that effect to the supervisor.

(9) On receiving a report under sub-paragraph (8), the supervisor shall refer it —

(a) if the supervised person has not attained the age of 19, to a juvenile court;

(b) otherwise, to a court of summary jurisdiction other than a juvenile court;

and on such a reference, the court may make an order cancelling or varying the requirement.

(10) This paragraph has effect subject to paragraph 10.

Provisions supplementary to paragraph 9

10. (1) Where the supervisor makes an application or reference under paragraph 9 to a court he may bring the supervised person before the court, and subject to sub-paragraph (6) a court shall not make an order under that paragraph unless the supervised person is present before the court.

(2) Without prejudice to any power to issue a warrant apart from this sub-paragraph, a justice may issue a warrant for the purpose of securing the attendance of a supervised person before the court to which any application or reference in respect of him is made under paragraph 9; and section 44(3) and (4) of the Summary Jurisdiction Act 1989 (circumstances in which warrant may not be issued) shall apply with the necessary modifications to a warrant under this sub-paragraph as they apply to a warrant under that section and as if in section 44(3)(a) after the word "adjourned hearing" there were inserted the words "cannot be served or".

(3) Where the supervised person is arrested in pursuance of a warrant issued by virtue of sub-paragraph (2) and cannot be brought immediately before the court referred to in that sub-paragraph, the person in whose custody he is —

(a) may make arrangements for his detention in a place of safety for a period of not more than 72 hours from the time of the arrest (and it shall be lawful for him to be detained in pursuance of the arrangements); and

(b) shall within that period, unless within it the supervised person is brought before that court, bring him before a justice of the peace.

(4) Where a supervised person is brought before a justice under sub-paragraph (3), the justice may —

(a) direct that he be released forthwith;

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(b) remand him on bail or in custody as if he had been convicted of an offence but had not yet been sentenced.

(5) Where an application is made to a juvenile court under paragraph 9(1), the court may remand (or further remand) on bail or in custody if —

(a) a warrant has been issued under sub-paragraph (2) for the purpose of securing the attendance of the supervised person before the court; or

(b) the court considers that remanding (or further remanding) him will enable information to be obtained which is likely to assist the court in deciding whether and, if so, how to exercise its powers under paragraph 9(1).

(6) A court may make an order under paragraph 9 in the absence of the supervised person if the effect of the order is one or more of the following —

(a) revoking the supervision order;

(b) cancelling a provision included in the supervision order in pursuance of paragraph 2, 3, 5, 7 or 8(2) or paragraph 4 or 5 of Schedule 4 (as applied by paragraph 6) ;

(c) reducing the duration of the supervision order or any provision included in it in pursuance of paragraph 2, 3, 5 or 7 or the said paragraph 4 or 5;

(d) changing the supervisor;

and an order cancelling a residence requirement under paragraph 5 shall also cancel any direction under paragraph 5(6)(b).

(7) A juvenile court shall not under paragraph 9 make an order —

(a) revoking a supervision order,

(b) inserting in it a requirement authorised by paragraph 2, 3, 5 or 7 or the said paragraph 4 or 5, or

(c) varying or cancelling such a requirement,

except where it is satisfied that the supervised person either —

(i) is unlikely to receive the care or control he needs unless the court makes the order, or

(ii) is likely to receive it despite the order.

(8) A juvenile court shall not under paragraph 9 make an order inserting a requirement authorised by paragraph 4 or 5 of Schedule 4 (as applied by paragraph 6) in a supervision order which does not already contain such a requirement, unless the court is satisfied as mentioned in the said paragraph 4(3) and (4) or 5(2) and (3), as the case may be, on such evidence as is there mentioned.

(9) Where the supervised person has attained the age of 14, a court shall not without his consent make an order under paragraph 9 containing provisions which insert in the supervision order a requirement in pursuance of paragraph 4 or 5 of Schedule 4 (as applied by paragraph 6) or which alter such a requirement already included in the supervision order otherwise than by removing it or reducing its duration.

(10) The supervised person may appeal to the High Court against —

(a) any order made under paragraph 9, except —

(i) an order which was or could have been made in his absence, and

(ii) an order containing only provisions to which he consented in pursuance of that paragraph, and

(b) the dismissal of an application under that paragraph to revoke a supervision order.

(11) Where an application under paragraph 9 for the revocation of a supervision order is dismissed, no further application for its revocation shall be made under that paragraph by any person during the period of 3 months beginning with the date of the dismissal except with the leave of a juvenile court.

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Duration of supervision order

11. A supervision order shall, unless it has previously been revoked, cease to have effect on the expiration of the period of 3 years, or such shorter period as may be specified in the order, beginning with the date on which the order was originally made.

Supplementary provisions relating to supervision orders

12. (1) A court shall not make a supervision order unless it is satisfied that the supervised person resides or will reside in the Island; and a court shall be entitled to be satisfied that the supervised person will so reside if he is to be required so to reside by a provision to be included in the order in pursuance of paragraph 2(1).

(2) A court which makes a supervision order or an order varying or revoking a supervision order shall forthwith send a copy of its order —

- (a) to the supervised person and to any person known or believed to have parental responsibility for him;
- (b) to the supervisor and any person who has ceased to be the supervisor by virtue of the order;
- (c) to the Department; and
- (d) where the supervised person is required by the order, or was required by the supervision order before it was varied or discharged, to reside with an individual or to undergo examination or treatment by or under the direction of an individual or at any place, to that individual or the person in charge of that place.

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SCHEDULE 10 — NEW SCHEDULE INSERTED IN 1949 ACT

SCHEDULE 4A

EDUCATION SUPERVISION ORDERS

Effect of orders

1. (1) Where an education supervision order is in force with respect to a child, it shall be the duty of an officer of the Department of Health and Social Security authorised by that Department for the purpose ("the supervisor") —

(a) to advise, assist and befriend, and give directions to the supervised child and his parents in such a way as will, in the opinion of the supervisor, secure that he is properly educated;

(b) where any such directions given to the supervised child or to a parent of his have not been complied with, to consider what further steps to take in the exercise of the supervisor's powers under this Act.

(2) Before giving any directions under sub-paragraph (1) the supervisor shall, so far as is reasonably practicable, ascertain the wishes and feelings of the child and his parents, including, in particular, their wishes as to the place at which the child should be educated.

(3) When settling the terms of any such directions, the supervisor shall give due consideration —

(a) having regard to the child's age and understanding, to such wishes and feelings of his as the supervisor has been able to ascertain; and

(b) to such wishes and feelings of the child's parents as he has been able to ascertain.

(4) Directions may be given under this paragraph at any time while the education supervision order is in force.

2. (1) Where an education supervision order is in force with respect to a child, the duties of the child's parents under sections 66 and 69 of this Act shall be superseded by their duty to comply with any directions in force under the education supervision order.

(2) Where an education supervision order is made with respect to a child —

(a) any school attendance order with respect to the child and in force immediately before the making of the education supervision order, shall cease to have effect; and

(b) while the education supervision order remains in force, sections 66 and 107 shall not apply with respect to the child;

(c) a supervision order made under section 83 of the Children and Young Persons Act 2001 with respect to the child may not, while the education supervision order is in force, include an education requirement of the kind which could otherwise be included under paragraph 7 of Schedule 9 to that Act;

(d) any education requirement of a kind mentioned in paragraph (c) which was in force with respect to the child immediately before the making of the education supervision order shall cease to have effect.

Cancellation of school attendance order

3. Where —

(a) the Department of Health and Social Security applies for an education supervision order with respect to a child who is the subject of a school attendance order, and

(b) the court is satisfied that the child is receiving sufficient full-time education suitable to his age, ability and aptitude,

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

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Effect where child also subject to supervision order

4. (1) This paragraph applies where an education supervision order and a supervision order under section 31 or 83 of the Children and Young Persons Act 2001 are in force at the same time with respect to the same child.

(2) Any failure to comply with a direction given by the supervisor under the education supervision order shall be disregarded if it would not have been reasonably practicable to comply with it without failing to comply with a direction given under the other order.

Duration of orders

5. (1) An education supervision order shall have effect for a period of one year, beginning with the date on which it is made.

(2) An education supervision order shall not expire if, before it would otherwise have expired, a juvenile court has, on the application of the Department of Health and Social Security, extended the period during which it is in force.

(3) Such an application may not be made earlier than 3 months before the date on which the order would otherwise expire.

(4) The period during which an education supervision order is in force may be extended under sub-paragraph (2) on more than one occasion.

(5) No one extension may be for a period of more than 3 years.

(6) An education supervision order shall cease to have effect on —

(a) the child's ceasing to be of compulsory school age; or

(b) the making of a care order with respect to the child;

and sub-paragraphs (1) to (4) are subject to this sub-paragraph.

Information to be given to supervisor etc.

6. (1) An education supervision order may require the child —

(a) to keep the supervisor informed of any change in his address; and

(b) to allow the supervisor to visit him at the place where he is living.

(2) A person who is the parent of a child with respect to whom an education supervision order has been made shall —

(a) if asked by the supervisor, inform him of the child's address (if it is known to him); and

(b) if he is living with the child, allow the supervisor reasonable contact with the child.

Revocation of orders

7. A juvenile court may revoke any education supervision order on the application of —

(a) the child concerned;

(b) a parent of his; or

(c) the Department of Health and Social Security.

Offences

8. (1) If a parent of a child with respect to whom an education supervision order is in force persistently fails to comply with a direction given under the order or with paragraph 6(2), he is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

(2) It shall be a defence for any person charged with an offence of failing to comply with such a direction to prove that —

(a) he took all reasonable steps to ensure that the direction was complied with;

(b) the direction was unreasonable; or

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- (c) he had complied with a requirement included in a supervision order made with respect to the child or with directions given under such a requirement, and that it was not reasonably practicable to comply both with the direction and with the requirement or directions mentioned in this paragraph.

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SCHEDULE 11 — TRANSITIONAL PROVISIONS

Family Law Act 1991

1. Paragraphs 1 to 4 of Schedule 4 (transitional provisions) of the Family Law Act 1991 continues to have effect subject to the modification that a reference to a repealed provision of that Act or to an order made under such a provision shall be construed as a reference to the corresponding provision of this Act or to an order under that provision, as the case may be.

Guardianship

2. Section 8(4) has effect as respects an appointment made by a person dying on or after the 1st July 1996 regardless of the date of the appointment and the date of the dissolution or annulment of the marriage.

Care and supervision orders etc.

3. (1) A care order or fit person order made under any enactment repealed by this Act or by the Children and Young Persons Act 1990 (including an order to which paragraph 3 of Schedule 3 to that Act applies) and in force immediately before the coming into operation of Part 4 shall have effect as a care order made under section 31.

(2) A supervision order made under any enactment repealed by this Act and in force immediately before the coming into operation of Part 4 shall have effect as a supervision order made under section 31 on the date of such commencement.

(3) Any of the following orders —

- (a) a contribution order under section 76 of the Children and Young Persons Act 1966;
- (b) an arrears order under section 23 of the Children and Young Persons Act 1969;
- (c) an order made (or having effect as if made) under paragraph 4 of Schedule 2 to the Family Law Act 1991,

and in force immediately before the coming into operation of Part 4 shall have effect as a contribution order made under paragraph 3 of Schedule 3.

Children looked after by Department

4. A child who immediately before the coming into operation of Part 3 is kept in the care of the Department under section 82 of the Children and Young Persons Act 1966 shall be treated for the purposes of this Act as being looked after by the Department.

Resolutions assuming parental responsibility

5. (1) Subject to sub-paragraph (2), where immediately before the coming into operation of Part 4 a resolution under section 83 of the Children and Young Persons Act 1966 is in force with respect to a child, the resolution shall have effect as a care order made under section 31 on the date of such commencement.

(2) Where immediately before the commencement of Part 4 proceedings under section 83(3) of that Act are pending in relation to such a resolution —

- (a) the resolution shall have effect as an interim care order; and
- (b) the proceedings shall continue as if they had been begun by an application for a care order.

Transfer of children in care to United Kingdom

6. (1) Where, on a date falling within the period specified in sub-paragraph (2) —
- (a) a child in the care of the Department by virtue of a relevant order was lawfully taken to live in England and Wales or Northern Ireland, and
 - (b) the conditions prescribed for the purpose of this paragraph in an order under section 38(3) were satisfied,

the relevant order shall be deemed to have ceased to have effect on that date.

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- (2) The period mentioned in sub-paragraph (1) is the period commencing on —
- (a) 14th October 1991, in the case of a child taken to live in England and Wales; or
- (b) 4th November 1996, in the case of a child taken to live in Northern Ireland, and ending with the coming into operation of the order under section 38(3).
- (3) In this paragraph "relevant order" has the meaning given by section 56(6) of the Children and Young Persons Act 1966.

Fostering

7. Regulations under section 60 shall include provision that a notice given to the Department under section 1 or 2 of the Child Life Protection Act 1959 shall be treated, for such period and for such purposes as may be prescribed, as a notification to the Department under the regulations.

Children's homes

8. Subsection (3) of section 51 shall not apply until the expiration of 6 months after the commencement of that section in the case of a children's home in which a child is being cared for and accommodated immediately before such commencement.

Nurseries and child-minding

9. (1) Where, immediately before the commencement of sections 63 to 66, any premises are or person is registered under section 1 of the Nurseries and Child-Minders Regulation Act 1974, those sections shall not apply to those premises or that person (except for the purpose of registration under section 64(1)), and the provisions of the said Act shall continue to apply to those premises or that person, until the earlier of —
- (a) the expiration of one year after such commencement, and
- (b) the date on which the Department registers that person, or registers a person in respect of those premises, as the case may be, under section 64(1).

Presumption of doli incapax

10. Section 70(2) does not apply in relation to anything done before the commencement of that section.

Supervision orders in criminal proceedings

11. For a period of 3 years after the commencement of section 83, paragraph 5 of Schedule 9 shall have effect with the following modifications —
- (a) sub-paragraph (5)(a) shall have effect as if the reference to a supervision order included a reference to a care order under any provision of the Children and Young Persons Acts 1966 to 1990, or a supervision order under any such provision imposing a requirement which could be imposed under paragraph 3(2);
- (b) where the condition in sub-paragraph (5)(a) is fulfilled by reference to such a care order or supervision order, sub-paragraph (5)(b) and, in sub-paragraph (5)(d), the words "unless condition (b)(ii) if fulfilled," shall be omitted.

Parental orders

12. Section 89(2) applies in relation to a child born before the commencement of section 89 with the substitution for the words "6 months of the birth of the child" of the words "6 months of the commencement of this section".

Family proceedings

13. Until the coming into operation of the Matrimonial Proceedings Act 2001, the reference to that Act in section 102(1) shall be construed as a reference to Part III of the Matrimonial Proceedings Act 1986.

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Hospitals

14. Until the coming into operation of the National Health Service Act 2001, the reference to Part 3 of that Act in section 102(1) shall be construed as a reference to Part III of the National Health Service (Isle of Man) Act 1948.

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SCHEDULE 12 — AMENDMENT OF ENACTMENTS

The Infanticide and Infant Life (Preservation) Act 1938 (XV p.23)

1. In section 2(4), for "section 15 of the Children Act 1910" substitute "section 1 of the Children and Young Persons Act 1966".

The Isle of Man Education Act 1949 (XVII p.516)

2. In section 67 —
 - (a) after subsection (6) insert —

"(6A) On the making of a care order under Part 4 of the Children and Young Persons Act 2001 with respect to a child, any school attendance order in force with respect to him shall cease to be in force.";
 - (b) in subsection (7), for "the last foregoing subsection" substitute "subsections (6) and (6A)".

The National Assistance (Isle of Man) Act 1951 (XVII p.1008)

3. (1) In section 22(1)(a), after "persons" insert "aged 18 or over".
(2) In section 33(2), for "Family Law Act 1991" substitute "Children and Young Persons Act 2001".

The Criminal Justice Act 1963 (XIX p.975)

4. In section 8(1) —
 - (a) for "subsection (2) of section ninety-one of the Children Act 1910" substitute "section 82(3) of the Children and Young Persons Act 2001";
 - (b) for "charged with" substitute "found guilty of".

The Children and Young Persons Act 1966 (XX p.89)

5. (1) In section 8, after subsection (1) insert —

"(1A) Proceedings for an offence under this section shall not be instituted except by the Department of Education."

 - (2) In section 14(1)(a), for "Family Law Act 1991" substitute "Children and Young Persons Act 2001".
 - (3) In section 118 —
 - (a) in subsection (1), in the definition of "parental responsibility", for "Family Law Act 1991" substitute "Children and Young Persons Act 2001";
 - (b) in subsection (2A), for "Family Law Act 1991" substitute "Children and Young Persons Act 2001".

The Civil Evidence Act 1973 (c.18)

6. In section 12(5), in the definition of "affiliation proceedings", in paragraph (a), for "section 9 of or Schedule 1 to the Family Law Act 1991" substitute "section 11 of or Schedule 1 to the Children and Young Persons Act 2001".

The Domicile and Matrimonial Proceedings Act 1974 (c.15)

7. In paragraph 11 of Schedule 1 —
 - (a) in sub-paragraph (1), in the definition of "relevant order", in paragraph (c), for "section 9 of the Family Law Act 1991" substitute "section 11 of the Children and Young Persons Act 2001";
 - (b) in sub-paragraph (3), for "section 9 of the Family Law Act 1991" substitute "section 11 of the Children and Young Persons Act 2001".

The Judicature (Matrimonial Causes) Act 1976 (c.14)

8. (1) In section 41(1)(b), for "Part II of the Family Law Act 1991" substitute "the Children and Young Persons Act 2001".

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The Administration of Justice Act 1981 (c.8)

9. For Schedule 4 substitute —

"SCHEDULE 4

MAINTENANCE ORDERS TO WHICH PARTS II AND III OF THIS ACT
APPLY

1. Any order for periodical or other payments made under any of the following enactments —

- (a) the Married Persons Protection Acts 1897 to 1952;
- (b) section 34 or 35 of the National Assistance (Isle of Man) Act 1951;
- (c) the Guardianship of Infants Act 1953;
- (d) the Matrimonial Proceedings (Magistrates Courts) Act 1962;
- (e) the Judicature (Matrimonial Causes) Act 1965;
- (f) the Affiliation Proceedings Act 1966;
- (g) section 76 or 78 of the Children and Young Persons Act 1966;
- (h) section 4(2) or 6 of the Family Law Reform (Isle of Man) Act 1971;
- (i) Part II of the Judicature (Matrimonial Causes) Act 1976;
- (j) section 18 of the Supplementary Benefits Act 1976 (an Act of Parliament), as it has effect in the Island;
- (k) Part I or II of the Domestic Proceedings Act 1983;
- (l) paragraph 3 of Schedule 1 to the Adoption Act 1984;
- (m) Part III of the Matrimonial Proceedings Act 1986;
- (n) Schedule 1 to the Family Law Act 1991;
- (o) section 106 of the Social Security Administration Act 1992 (an Act of Parliament), as it has effect in the Island.

2. Any order registered in or confirmed by a court in the Island under —

- (a) the Maintenance Orders (Facilities for Enforcement) Act 1921;
- (b) the Maintenance Orders (Reciprocal Enforcement) Act 1978;
- (c) the Maintenance Orders (Reciprocal Enforcement) Act 1995.

3. Any order referred to in paragraph 1 or 2 which has been revoked or discharged if any arrears are recoverable thereunder."

The Domestic Proceedings Act 1983 (c.13)

10. In section 8, for "Part II of the Family Law Act 1991" substitute "the Children and Young Persons Act 2001".

The Adoption Act 1984 (c.14)

11. (1) In section 1(3)(b), for "Acts 1966 to 1990" substitute "Act 2001".

(2) In section 21(3) —

- (a) for "remains in the custody of" substitute "has his home with";
- (b) for "section 75 of the Children and Young Persons Act 1966" substitute "Schedule 3 to the Children and Young Persons Act 2001".

(3) In section 22(3) —

- (a) in paragraph (a), for "Family Law Act 1991" substitute "Children and Young Persons Act 2001";
- (b) in paragraph (c) (ii), for "Family Law Act 1991" substitute "Children and Young Persons Act 2001".

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(4) For section 23(2) substitute —

"(2) Sections 98(1) and (3) to (6) and 99 of the Children and Young Persons Act 2001 apply to any premises in which an authorised officer has cause to believe —

- (a) a protected child is or will be living; or
- (b) a child is or will be living with a person with whom he has been placed by an adoption agency;

as they apply to premises referred to in section 98(1) of that Act."

(4) In section 43(1), for "the parental rights and duties relating to the child" substitute "parental responsibility for the child".

(5) In section 58(1), for the definition of "the parental rights and duties" substitute —

"parental responsibility" has the meaning given by section 2 of the Children and Young Persons Act 2001;".

The Legal Aid Act 1986 (c.23)

12. In Schedule 1, for paragraph 3 substitute —

"3. Proceedings in a court of summary jurisdiction under Part 4 or 5 of the Children and Young Persons Act 2001."

The Child Custody Act 1987 (c.11)

13. (1) For sections 1, 2 and 3 substitute —

"1. Jurisdiction in matrimonial proceedings

(1) In proceedings for divorce, nullity of marriage or judicial separation, a court in the Island shall not have jurisdiction to make an order under section 11 of the Children and Young Persons Act 2001 with respect to a child unless the proceedings are in respect of the marriage of the parents of the child concerned and —

- (a) they are for divorce or nullity of marriage and are continuing; or
- (b) they are for judicial separation and are continuing, and the jurisdiction is not excluded by subsection (2); or
- (c) they have been dismissed after the beginning of the trial but —
 - (i) the order under the said section 9 is being made forthwith, or
 - (ii) the application for the order was made on or before the dismissal.

(2) For the purposes of subsection (1)(b), the jurisdiction of the court is excluded if, after the decree of judicial separation, on the relevant date proceedings for divorce or nullity of marriage are continuing in any part of the United Kingdom, except where the court in which those other proceedings are continuing has made —

- (a) an order under a provision corresponding to subsection (3), or
 - (b) an order under a provision corresponding to section 4(2) which is recorded as made for the purpose of enabling proceedings to be taken in the Island with respect to the child concerned.
- (3) Where a court —
- (a) has jurisdiction to make an order under the said section 9 in or in connection with proceedings for divorce, nullity of marriage or judicial separation, but
 - (b) considers that it would more appropriate for matters relating to the custody of the child to be determined outside the Island,

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the court may by order direct that, while the order under this subsection is in force, no order under the said section 11 shall be made by any court in or in connection with those proceedings.

2. Jurisdiction otherwise than in matrimonial proceedings

(1) A court in the Island shall not have jurisdiction to make an order under section 11 of the Children and Young Persons Act 2001 in a non-matrimonial case (that is, where the conditions in section 1(1) are not satisfied) unless on the relevant date the child concerned —

- (a) is habitually resident in the Island, or
- (b) is present in the Island and is not habitually resident in the Island or any part of the United Kingdom,

and, in either case, the jurisdiction of the court is not excluded by subsection (2).

(2) For the purposes of subsection (1), the jurisdiction of the court is excluded if, on the relevant date, proceedings for divorce, nullity of marriage or judicial separation are continuing in a court in any part of the United Kingdom in respect of the marriage of the parents of the child concerned.

(3) Subsection (2) does not apply if the court in which the other proceedings are continuing has made —

- (a) an order under a provision corresponding to section 1(3), or
- (b) an order under a provision corresponding to section 4(2) which is recorded as made for the purpose of enabling proceedings with respect to the child concerned to be taken in the Island,

and that order is in force.

3. Orders under High Court's inherent jurisdiction

The High Court shall not have jurisdiction to make a custody order within section 20(1)(b) unless —

- (a) the condition in section 2(1) is satisfied, or
- (b) the child concerned is present in the Island at the relevant date and the Court considers that the immediate exercise of its powers is necessary for his protection."

(2) For section 5(3) substitute —

"(3) A court in the Island shall not have jurisdiction to vary a custody order if, on the relevant date, proceedings for divorce, nullity or judicial separation are continuing in any part of the United Kingdom in respect of the marriage of the parents of the child concerned.

(3A) Subsection (3) shall not apply if —

- (a) the custody order was made in or in connection with proceedings for divorce or nullity of marriage in the Island in respect of the marriage of the parents of the child concerned; and
- (b) those proceedings are continuing.

(3B) Subsection (3) does not apply if —

- (a) the custody order was made in or in connection with proceedings for judicial separation in the Island in respect of the marriage of the parents of the child concerned;
- (b) those proceedings are continuing; and
- (c) the decree of judicial separation has not yet been granted."

(3) In section 5(4)(a), for "section 3(3)" substitute "section 1(3)".

(4) In section 5(6), for "paragraph 1 of Schedule 2 to the Family Law Act 1991" substitute "Part 4 of the Children and Young Persons Act 2001".

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- (5) In section 20(1)(a), for "section 9 of or Schedule 1 to the Family Law Act 1991" substitute "section 11 of or Schedule 1 to the Children and Young Persons Act 2001".
- (6) In section 31, for paragraph (a) substitute —
- "(a) making, varying or revoking a custody order, or a supervision order under section 31 of the Children and Young Persons Act 2001;"
- (7) In section 42(2), for paragraph (a) substitute —
- "(a) in the case of custody proceedings, make, vary or revoke any custody order or a supervision order under section 31 of the Children and Young Persons Act 2001;"
- (8) In section 49(1), for the definition of "custody order" substitute —
- "custody order" means —
- (a) a residence order under section 11 of the Children and Young Persons Act 2001;
- (b) a care order (other than an interim order) under Part 4 of that Act;"
- (9) For section 49(2) substitute —
- "(2) The Council of Ministers may by order modify or amend any provision of Part II or III or this Part so that any reference to the U.K. Act or any provision of that Act includes a reference to —
- (a) that Act or that provision as it has effect in any of the Channel Islands or any colony by virtue of an order under section 28(1) thereof; or
- (b) any corresponding enactment or provision having effect in any of the Channel Islands or any colony.
- (3) An order under subsection (2) may contain such consequential, incidental and supplementary provisions as appear to the Council of Ministers to be necessary or expedient, and in particular may amend or repeal any enactment other than Part II or III or this Part which appears to the Council of Ministers to be inconsistent with, or to have become unnecessary or to require modification in consequence of, the order.
- (4) An order under subsection (2) shall not have effect unless it is approved by Tynwald."
- (10) In section 51(2)(b), for "legitimate" substitute "illegitimate".
- (11) In the table in paragraph 5 of Schedule 1, in column 1, for "3(3)" substitute "1(3)".

The Nursing and Residential Homes Act 1988 (c.9)

14. (1) In section 1(2), after paragraph (a) insert —
- "(aa) any children's home (within the meaning of the Children and Young Persons Act 2001);"
- (2) After section 12 insert —
- "12A. Minors accommodated in homes**
- (1) The person carrying on a home to which this Act applies shall notify the Department where a minor is provided with accommodation in the home —
- (a) for a consecutive period of at least 3 months, or
- (b) with the intention, on the part of the person taking the decision to accommodate him, of accommodating him for such a period.
- (2) That person shall also notify the Department when he ceases to accommodate the minor in the home.

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(3) Where the Department has been notified under subsection (1), it shall —

(a) take such steps as are reasonably practicable to enable it to determine whether the minor's welfare is adequately safeguarded and promoted while he is accommodated in the home; and

(b) consider the extent to which (if at all) it should exercise any of its functions under the Children and Young Persons Act 2001 with respect to him.

(4) If the person carrying on any home fails without reasonable cause to comply with subsection (1) he is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000."

The Summary Jurisdiction Act 1989 (c.15)

15. (1) In section 48(1), for paragraph (i) substitute —

"(i) Part 1 or 2 of, or paragraph 3 of Schedule 3 to, the Children and Young Persons Act 2001;"

(2) In section 49(4), for "Family Law Act 1991" substitute "Children and Young Persons Act 2001".

(3) In section 54(2), for "Schedule 1 to the Family Law Act 1991" substitute "Schedule 1 to the Children and Young Persons Act 2001".

(4) In section 57, at the end insert —

"(5) For the purposes of this section and section 56(3) the person with whom a minor has his home —

(a) in the case of a minor who is being looked after by the Department of Health and Social Security (within the meaning of the Children and Young Persons Act 2001), is that Department;

(b) otherwise, is the person who, disregarding any absence of the minor at a hospital or boarding school and any other temporary absence, has the care of him."

The Criminal Justice Act 1990 (c.1)

16. In section 5(6), for "Section 49 of the Children and Young Persons Act 1966" substitute "Section 82 of the Children and Young Persons Act 2001".

The Prevention of Terrorism Act 1990 (c.19)

17. In section 13(6), for paragraph (b) substitute —

"(b) section 72 of the Children and Young Persons Act 2001."

The Family Law Act 1991 (c.3)

18. In section 33, at the end insert —

"(5) This section does not have effect in relation to a child carried by a woman as the result of her artificial insemination after the commencement of sections 86 to 88 of the Children and Young Persons Act 2001."

The Sexual Offences Act 1992 (c.6)

19. In section 35(5), for the words from "section 35" onwards substitute "Part 5 of the Children and Young Persons Act 2001".

The Mental Health Act 1998 (c.3)

20. (1) For section 38 substitute —

"38. Children and young persons in care

Where a patient is a minor in the care of the Department by virtue of a care order within the meaning of the Children and Young Persons Act 2001, the Department shall be deemed to be the nearest relative of the patient in preference to any person except the patient's husband or wife (if any)."

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- (2) In section 114(2), for paragraph (a) substitute —
- "(a) a minor who is in the care of the Department by virtue of a care order within the meaning of the Children and Young Persons Act 2001;"

The Police Powers and Procedures Act 1998 (c.9)

21. (1) In section 40(12), for ",as defined by section 4 of the Children and Young Persons Act 1969," substitute "under any provision of the Children and Young Persons Act 2001".

(2) In section 41(6), for "taken into the care of the Department of Health and Social Security" substitute "moved to accommodation provided by the Department of Health and Social Security under Part 3 of the Children and Young Persons Act 2001".

(3) In section 42 —

(a) in subsection (4), for "transferred to the care of" substitute "moved to accommodation provided by";

(b) in subsection (5), for "in that Department's care" substitute "in accommodation provided by that Department".

(4) In section 58(8)(b), for "section 29(4) of the Children and Young Persons Act 1966" substitute "section 73(2) of the Children and Young Persons Act 2001".

The Rehabilitation of Offenders Act 2001 (c6)

22. (1) In section 5(2), for paragraphs (b) and (c) substitute —

"(b) in any proceedings relating to adoption, the marriage of any minor, the exercise of the inherent jurisdiction of the High Court with respect to minors or the provision by any person of accommodation, care or schooling for minors;

(c) in any proceedings brought under the Children and Young Persons Act 2001 (including proceedings relating to the variation or discharge of a supervision order under Schedule 9 to that Act, or on appeal from any such proceedings);".

(2) In paragraphs 10(c) and 14 of Schedule 1, after "1995" insert "or under Schedule 9 to the Children and Young Persons Act 2001".

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SCHEDULE 13 — ENACTMENTS REPEALED

<i>Reference</i>	<i>Short title</i>	<i>Extent of repeal</i>
XVII p.516	The Isle of Man Education Act 1949.	Section 70(3) to (5). Section 70A. Section 140. Section 169(2).
XVIII p.1096	The Child Life Protection Act 1959.	The whole Act.
XX p.89	The Children and Young Persons Act 1966.	Section 22(6). Parts III to VII. In section 110, in subsection (1), paragraphs (a) to (d) and (f); and subsection (2). Sections 111 to 115. In section 118, in subsection (1), the definitions of "Affiliation Act", "care order", "fit person", "hospital", "legal guardian", "place of safety", "voluntary home" and "voluntary organisation"; and subsections (6) and (7). In Schedule 3, paragraphs 3 to 5.
XXI p.44	The Children and Young Persons Act 1969.	Sections 1 to 5. Section 10. Section 12. Sections 16 to 19. Sections 21 to 23. Section 26. Sections 38 to 42. Sections 48 to 50. Schedule 1. In Schedule 2, paragraphs 9 to 21. In Schedule 3, paragraph 4 to 6.
1971 c.16	The Children and Young Persons Act 1971.	The whole Act.
1974 c.4	The Children and Young Persons (Amendment) Act 1974.	The whole Act.
1974 c.12	The Nurseries and Child-Minders Regulation Act 1974.	The whole Act.
1979 c.22	The Statute Law Revision (Miscellaneous Provisions) Act 1979.	In Schedule 1, paragraph 25.
1983 c.13	The Domestic Proceedings Act 1983.	In section 90(1), the definition of "parental rights and duties". In Schedule 2, paragraph 15.

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1984 c.14	The Adoption Act 1984.	Section 24. Section 27(1), (3) and (4). In section 44(1), paragraph (c). In section 45(2), the words from "and the court" onwards. In section 58(1), the definition of "place of safety". In Schedule 4, paragraphs 1 and 2.
1985 c.15	The Criminal Law (Amendment) Act 1985.	In Schedule 2, paragraph 6.
1985 c.25	The Treasury Act 1985.	In Schedule 2, paragraphs 164 to 170.
1986 c.14	The Health and Social Security Act 1986.	In Schedule 2, paragraphs 31 and 69 to 74.
1986 c.22	The Matrimonial Proceedings Act 1986.	In Schedule 2, paragraph 8.
1987 c.6	The Coroners of Inquests Act 1987.	In section 6(1), paragraph (b).
1987 c.11	The Child Custody Act 1987.	In section 31, the words from "or (d)" onwards.
1989 c.15	The Summary Jurisdiction Act 1989.	Section 41. In section 48(1), paragraphs (c) and (d). In Schedule 5, paragraph 11.
1990 c.1	The Criminal Justice Act 1990.	Section 29(1) and (3).
1990 c.13	The Children and Young Persons Act 1990.	The whole Act.
1991 c.3	The Family Law Act 1991.	Part I. Part II. Section 20. Sections 22 to 26. Section 30. Section 34. Schedules 1 and 2. In Schedule 4, paragraph 6. In Schedule 5, paragraphs 13 and 19(1) to (4); and in paragraph 19(9), the words from "for the definition" to the end of the definition of "custody order".
1992 c.10	The Transfer of Governor's Functions Act 1992.	In Schedule 1, paragraph 34(2) and (3).
1992 c.11	The Statute Law Revision Act 1992.	Section 6(2) and (4).
1993 c.12	The Broadcasting Act 1993.	In Schedule 4, paragraphs 3(2) and 9(2).
1993 c.18	The Criminal Justice (Penalties, Etc.) Act 1993.	Sections 8 and 9. Schedule 1.
1995 c.1	The Custody Act 1995.	In Schedule 4, paragraph 1.

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1995 c.15	The Maintenance Orders (Reciprocal Enforcement) Act 1995.	Section 36(3)(a).
1996 c.5	The Law Reform (Miscellaneous Provisions) Act 1996.	Section 4.
1996 c.17	The Criminal Justice Act 1996.	In Schedule 2, paragraph 3.
1997 c.1	The Law Reform Act 1997.	In Schedule 5, paragraph 18.
1997 c.4	The Statute Law Revision Act 1997.	In Schedule 1, paragraphs 55(2) and 63(1).
1998 c.3	The Mental Health Act 1998.	In Schedule 5, paragraphs 2 and 5.
1998 c.9	The Police Powers and Procedures Act 1998.	Section 60. In Schedule 2, the entry relating to the Children and Young Persons Act 1966. In Schedule 4, paragraph 2.