

## SCHEDULES

### SCHEDULE 2

Section 9.

#### MISCELLANEOUS AMENDMENTS RELATING TO CHILDREN AND YOUNG PERSONS

##### *Adoption Act 1958 (c. 5.)*

- 1 The repeals—
- (a) of section 33 of the Adoption Act 1958 (inspection of books of registered adoption societies) by the Adoption Act 1976 and by the Adoption (Scotland) Act 1978 ; and
  - (b) of sections 34(4) and (5) and 34A(6A) and (6B) of that Act by the Adoption (Scotland) Act 1978,
- are hereby brought into force.

##### *Children Act 1958 (c. 65)*

- 2 In section 7 of the Children Act 1958 (removal of foster children kept in unsuitable surroundings) for subsection (4) there shall be substituted the following subsection.
- “(4) A local authority may receive into their care under section fifteen of the Social Work (Scotland) Act 1968 (duty of local authority to provide for orphans, deserted children, etc), any child removed under this section, whether or not the circumstances of the child are such that they fall within paragraphs (a) to (c) of subsection (1) of the said section 15 and notwithstanding that he may appear to the local authority to be over the age of seventeen.”.

##### *Mental Health Act 1959 (c. 72.)*

- 3 In subsection (1) of section 9 of the Mental Health Act 1959 (functions of children authorities) for the words " section 34 " there shall be substituted the words " section 31 ".

##### *Social Work (Scotland) Act 1968 (c. 49.)*

- 4 In subsection (3A) of section 15 of the Social Work (Scotland) Act 1968 (duty of local authority to provide for orphans, deserted children, etc.)—
- (a) for the words " notwithstanding that no " there shall be substituted the words " whether or not a "; and
  - (b) for paragraph (b) there shall be substituted the following paragraph—
    - “(b) by a parent or guardian of the child in relation to whom no resolution under section 16 of this Act is in effect with respect to the child and who has given the local authority not less than 28 days' notice in writing of his intention to do it.”.

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- 5 In section 20 of that Act (duty of local authority to further the best interests of a child in their care)—
- (a) in subsection (1), for the words " , the local authority " there shall be substituted the words " or of a voluntary organisation, they ";
  - (b) in subsection (2), for the words " a local authority" there shall be substituted the word " they ",  
and after the words " the local authority ", there shall be inserted the words " or voluntary organisation "; and
  - (c) in subsection (3), after the word " authority ", there shall be inserted the words " or voluntary organisation ", and for the words " section 17(3)" there be substituted the words " sections 17(3), 17(3A) ".
- 6 In subsection (2) of section 23 of that Act (power of Secretary of State to consent to emigration of child in care of local authority in certain circumstances) for the words " or relative " there shall be substituted the words " relative or friend ".
- 7 In subsection (1) of section 31 of that Act (restriction on prosecution of children for offences) after the word " child " on each occurrence there shall be inserted the words " under the age of sixteen years ".
- 8 In section 42 of that Act (application from reporter to sheriff for findings)—
- (a) in subsection (6) at the beginning there shall be inserted the words " Subject to subsection (6A) of this section, ";
  - (b) after subsection (6) there shall be inserted the following subsection—  
    - “(6A) Notwithstanding the provisions of subsection (2)(c) of this section, where, in the course of the proceedings before the sheriff, the child and his parent accept any of the grounds in respect of which the application has been made, the sheriff may dispense with the hearing of evidence relating to that ground unless he is satisfied that in all the circumstances such evidence should be heard, and deem that ground to have been established for the purposes of this section.”; and
  - (c) in subsection (7) at the end there shall be added the words—  
    - “except that where any of the grounds for the referral are accepted by the child's parent, whether or not accepted by the child, then, notwithstanding subsection (6A) of this section, the sheriff may dispense with the hearing of evidence relating to that ground if he is satisfied that in all the circumstances it would be reasonable to do so.”.

*Family Law Reform Act 1969 (c. 46.)*

- 9 In section 7(2) of the Family Law Reform Act 1969 (wards of court committed to care of local authority) for the words from " and thereupon" to the end of the subsection there shall be substituted the words “and thereupon—
- (a) Part III of the Child Care Act 1980 (which relates to the treatment of children in the care of a local authority); and
  - (b) for the purposes only of contributions by the child himself at a time when he has attained the age of 16, Part V of that Act (which relates to contributions towards the maintenance of children in the care of a local authority), shall apply, subject to the next following subsection,

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as if the child had been received by the local authority into their care under section 2 of that Act”.

*Children and Young Persons Act 1969 (c. 54.)*

10 The following paragraph shall be substituted for paragraph (bb) of section 1(2) of the Children and Young Persons Act 1969 (conditions for making care orders)—

“(bb) it is probable that the condition set out in paragraph (a) of this subsection will be satisfied in his case, having regard to the fact that a person who has been convicted of an offence mentioned in Schedule 1 to the Act of 1933, including a person convicted of such an offence on whose conviction for the offence an order was made under Part I of the Powers of Criminal Courts Act 1973 placing him on probation or discharging him absolutely or conditionally is, or may become, a member of the same household as the child or young person ;”.

11 The following section shall be inserted after section 14 of that Act—

**“14A Refusal to allow supervisor to visit child or young person.**

Where a supervision order has been made in a case where a condition set out in paragraph (a), (b), (bb) or (c) of section 1(2) above is satisfied, a refusal to comply with a requirement imposed under section 18(2)(b) below—

- (a) that the supervisor of a child or young person shall visit him ; or
- (b) that a child or young person shall be medically examined,

shall be treated for the purposes of section 40 of the Children and Young Persons Act 1933 (under which a warrant authorising the search for and removal of a child or young person may be issued on suspicion of unnecessary suffering caused to, or certain offences committed against, the child or young person) as giving reasonable cause for such suspicion.”.

12 The following subsection shall be inserted after subsection (2) of section 20 of that Act (orders for committal to care of local authorities)—

“(2A) In determining the place of residence of any person for the purposes of this section, any period shall be disregarded during which, while in the care of a local authority (whether by virtue of a care order or not), he resided outside the local authority's area.”.

13 The following section shall be substituted for section 21A of that Act—

**“21A Termination of care order on adoption etc.**

(1) A care order relating to a person under the age of 18 shall cease to have effect—

- (a) on his adoption ;
- (b) if any order under an enactment to which this paragraph applies is made in relation to him ;
- (c) if an order similar to an order under section 25 of the Children Act 1975 is made in relation to him in Northern Ireland, the Isle of Man or any of the Channel Islands.

(2) Subsection (1)(b) above applies to the following enactments—

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- (a) sections 14 and 25 of the Children Act 1975 ;
  - (b) sections 18 and 55 of the Adoption Act 1976 ; and
  - (c) sections 18 and 49 of the Adoption (Scotland) Act 1978.
- (3) After the commencement of section 55 of the Adoption Act 1976 subsection (1)(c) above shall have effect with the substitution of " 55 of the Adoption Act 1976 " for " 25 of the Children Act 1975. ".”
- 14 In section 22(2) of that Act (which specifies certain cases where an interim order may provide for the bringing of the person to whom it relates before a specified court only if that court so requires) after the word " five" there shall be inserted the words " or is legally represented ".
- 15 In section 25 of that Act (transfers of children in care between England or Wales and Northern Ireland)—
- (a) in subsection (1), after the words "training school order" there shall be inserted the words " or by an order under subsection (2) below "; and
  - (b) in subsection (2), after the words " interim order " there shall be inserted the words " or by an order under subsection (1) above ".
- 16 In subsection (3) of section 32 of that Act (which creates an offence of compelling, persuading, inciting or assisting another person to become or continue to be absent as mentioned in subsection (1) of that section) the words "or (1A)" shall be inserted after the word " (1) ".
- 17 Section 46 of that Act (discontinuance of approved schools etc. on establishment of community homes) and Schedule 3 to that Act (which relates to such schools and to other institutions) shall have effect as if—
- (a) any reference to a regional plan approved by the Secretary of State included a reference to a home being designated as a community home under section 31 of the Child Care Act 1980 ; and
  - (b) any reference to a planning area included a reference to the area of a local authority.
- 18 In section 65(3) of that Act (grants to voluntary organisations etc.) for the words from "such" to "institution" there shall be substituted the words " part of the premises occupied by the institution forms part of a controlled or assisted community home. ".
- 19 In section 73 of that Act (citation, commencement and extent) in subsection (6) (by virtue of which section 32(1) and (4), among other provisions, extend to the Channel Islands) after the words " 32 (1)" there shall be inserted the word " , (1A) ".

*Matrimonial Causes Act 1973 (c. 18.)*

- 20 In section 43(1) of the Matrimonial Causes Act 1973 (children committed to care of local authority) for the words from "and thereupon " to the end of the subsection there shall be substituted the words " and thereupon—
- (a) Part III of the Child Care Act 1980 (which relates to the treatment of children in the care of a local authority); and
  - (b) for the purposes only of contributions by the child himself at a time when he has attained the age of 16, Part V of that Act (which relates to contributions towards the maintenance of children in the care of a local authority),

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shall apply, subject to the provisions of this section, as if the child had been received by the local authority into their care under section 2 of that Act".

*Powers of Criminal Courts Act 1973 (c. 62.)*

- 21 At the end of section 13(1) of the Powers of Criminal Courts Act 1973 (by virtue of which a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely or conditionally is to be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender) there shall be added the words " and the purposes of section 1(2)(bb) of the Children and Young Persons Act 1969 ".

*Children Act 1975 (c. 72.)*

- 22 In section 4(1) of the Children Act 1975 (approval of adoption societies) for the word " desiring " there shall be substituted—
- (a) in the first place where it occurs, the words " which is a voluntary organisation and desires " ; and
  - (b) in the second place where it occurs, the word " desires ".
- 23 In subsection (2)(b) of section 37 of that Act (custodianship order on application for adoption or guardianship) for the words " neither of whom falls within paragraph (a)" there shall be substituted the words " neither of whom is a relative of the child or the husband or wife of the mother or father of the child ".
- 24 The following subsections shall be substituted for subsection (1) of section 43A of that Act (restriction on removal of child from England and Wales)—
- “(1) An authorised court, on making an order to which this subsection applies or at any time while such an order is in force, may by order direct, if an application is made under this section, that no person shall take the child to whom the order relates out of England and Wales except with the leave of the court.
- (1A) Subsection (1) applies to the following orders under this Part of this Act—
- (a) a custodianship order ; and
  - (b) an interim order under section 34(5) containing provision regarding legal custody.”.

25 In section 51 of that Act (restriction on removal of child where applicant has provided home for three years), for the word " custody "—

    - (a) where it secondly occurs in subsection (1); and
    - (b) in subsection (2),

there shall be substituted the words " care and possession ".

26 In section 52 of that Act (return of child taken away in breach of section 51) for the word " custody ", except where it first occurs, there shall be substituted the words " care and possession ".

27 In section 101 of that Act (appeals etc.)—

    - (a) the words " or the relevant adoption provisions "—
      - (i) shall be substituted, in subsection (1), for the words " or under section 34 or 34A of the Adoption Act 1958 " ; and

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- (ii) shall be inserted, in subsections (2) and (3), after the words " under this Act "; and
- (b) the following subsection shall be added after subsection (4)—
- “(5) In this section " the relevant adoption provisions " means sections 34, 34A and 35(2) of the Adoption Act 1958.”.
- 28 In section 103 of that Act (guardians ad litem etc.)—
- (a) in subsection (1), for the words " a panel" there shall be substituted the words " one or more panels "; and
- (b) the following subsection shall be substituted for subsection (2) —
- “(2) Regulations under subsection (1) may provide—
- (a) for the defrayment by local authorities of expenses incurred by members of a panel established by virtue of that subsection ; and
- (b) for the payment by local authorities of fees and allowances for members of such a panel.”.
- Adoption Act 1976 (c. 36.)*
- 29 In section 3(1) of the Adoption Act 1976 (approval of adoption societies) for the word " desiring " there shall be substituted—
- (a) in the first place where it occurs, the words " which is a voluntary organisation and desires " ; and
- (b) in the second place where it occurs, the word " desires ".
- 30 Section 10 of that Act (inspection of books of approved adoption societies) is repealed.
- 31 In section 18(6) of that Act (which relates to the freeing of a child for adoption) for the words "who agrees to the adoption of the child " there shall be substituted the words " of the child who can be found ".
- 32 In section 24(2) of that Act (which prevents a court making an adoption order in relation to a child unless it is satisfied that the applicants have not, as respects the child, made any payment or given any reward to a person in contravention of section 57) for the words from " made " to " of " there shall be substituted the word " contravened ".
- 33 Subsections (4) and (5) of section 27 and (8) and (9) of section 28 of that Act (restrictions on removal of child) shall cease to have effect.
- 34 In section 29 of that Act (return of child taken away) after " 28 ", in each place where it occurs in subsections (1) and (2), there shall be inserted " , or section 27 or 28 of the Adoption (Scotland) Act 1978 ".
- 35 The following section shall be inserted after section 58 of that Act—

**“58A Information concerning adoption.**

- (1) Every local authority and every approved adoption society shall transmit to the Secretary of State, at such times and in such form as he may direct, such particulars as he may require with respect—

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- (a) to their performance of all or any of their functions under the enactments mentioned in subsection (2) below; and
  - (b) to the children and other persons in relation to whom they have exercised those functions.
- (2) The enactments referred to in subsection (1) above are—
- (a) the Adoption Act 1958 ;
  - (b) Part I of the Children Act 1975 ; and
  - (c) this Act.
- (3) The clerk of each magistrates' court shall transmit to the Secretary of State, at such times and in such form as he may direct, such particulars as he may require with respect to the proceedings of the court under the enactments mentioned in subsection (2) above.
- (4) The Secretary of State shall publish from time to time abstracts of the particulars transmitted to him under subsections (1) and (3) above.”.
- 36 In subsection (4) of section 63 of that Act (appeals, etc.) for the words from the beginning to " appeal" there shall be substituted the words " No appeal shall lie to the High Court " .
- 37 In section 72(1) of that Act—
- (a) in the definition of " adoption order " , after " 21 " there shall be inserted " , 27 and 28 " ; and
  - (b) at the end of the definition of " order freeing a child for adoption " there shall be added " and in section 27(2) includes an order under section 18 of the Adoption (Scotland) Act 1978 (order freeing a child for adoption made in Scotland) " .
- Adoption (Scotland) Act 1978 (c. 28.)*
- 38 In section 3(1) of the Adoption (Scotland) Act 1978 (approval of adoption societies) for the word " desiring" there shall be substituted—
- (a) in the first place where it occurs, the words "which is a voluntary organisation and desires " ; and
  - (b) in the second place where it occurs, the word " desires " .
- 39 Section 10 of that Act (inspection of books of approved adoption societies) is repealed.
- 40 In section 18(6) of that Act (freeing of child for adoption) for the words " who agrees to the adoption of the child " there shall be substituted the words " of the child who can be found " .
- 41 In section 24(2) of that Act (no adoption order unless the court is satisfied that the applicants have not, as respects the child, made any payment or given any reward to a person in contravention of section 51) for the words from " made " to " of " there shall be substituted the word " contravened " .
- 42 Subsections (4) and (5) of section 27 and (8) and (9) of section 28. of that Act (restrictions on removal of child) shall cease to have effect.
- 43 In subsections (1) and (2) of sections 27 and 28 and in section 29. of that Act (restrictions on removal of child) for the word " custody " wherever it occurs there shall be substituted the words " care and possession " .

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44 In section 29 of that Act (return of child taken away) after " 28 ", in each place where it occurs in subsections (1) and (2), there shall be inserted " , or section 27 or 28 of the Adoption Act 1976 ".

45 In section 65(1) of that Act—

- (a) in the definition of " adoption order ", after " 20 " there shall be inserted " , 27 and 28 "; and
- (b) at the end of the definition of "order freeing a child for adoption" there shall be added "and, in section 27(2), includes an order under section 18 of the Adoption Act 1976 (order freeing a child for adoption made in England and Wales)".

*Child Care Act 1980 (c. 5.)*

46 The following subsection shall be substituted for subsection (2) of section 3 of the Child Care Act 1980 (under which a local authority who pass a resolution under subsection (1)(b), (c) or (d) are required, if the whereabouts of the person whose parental rights and duties have vested in them are known, to serve notice in writing of the passing of the resolution on him, unless he has consented in writing to its passing)—

“(2) If the local authority know the whereabouts of the person whose parental rights and duties have vested in them by virtue of a resolution passed under subsection (1)(b), (c) or (d) above, they shall forthwith after it is passed serve notice in writing of its passing on him.”.

47 The following subsection shall be added at the end of section 10 of that Act (powers and duties of local authorities with respect to children committed to their care)—

“(5) This section does not give a local authority—

- (a) the right to consent or refuse to consent to the making of an application under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978 ; or
- (b) the right to agree or refuse to agree to the making of an adoption order or an order under section 55 of the Adoption Act 1976 or section 49 of the Adoption (Scotland) Act 1978.”.

48 In subsection (2) of section 13 of that Act (penalty for assisting children in care to run away etc.)—

(a) for paragraph (b) there shall be substituted the following paragraph—

“(b) by a parent or guardian of the child in relation to whom no resolution under section 3 of this Act is in force with respect to the child and who has given the local authority not less than 28 days' notice in writing of his intention to do it.”; and

(b) for the words " notwithstanding that no " there shall be substituted the words " whether or not a ".

49 At the end of section 21(1) of that Act (provision of accommodation and maintenance for children in care) there shall be added the words " and shall secure, subject to section 18 of this Act, that any accommodation which they provide is, so far as practicable, near the child's home ".

50 The following section shall be substituted for section 21A of that Act—



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**“21A Use of accommodation for restricting liberty.**

- (1) Subject to the following provisions of this section, a child in the care of a local authority may not be placed, and, if placed, may not be kept, in accommodation provided for the purpose of restricting liberty 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, it is likely that his physical, mental or moral welfare will be at risk; or
  - (b) that if he is kept in any other description of accommodation he is likely to injure himself or other persons.
- (2) The Secretary of State may by regulations—
  - (a) specify—
    - (i) a maximum period beyond which a child may not be kept in such accommodation without the authority of a juvenile court; and
    - (ii) a maximum period for which a juvenile court may authorise a child to be kept in such accommodation;
  - (b) empower a juvenile court from time to time to authorise a child to be kept in such accommodation for such further period as the regulations may specify; and
  - (c) provide that applications to a juvenile court under this section shall be made by local authorities.
- (3) It shall be the duty of a juvenile court before which a child is brought by virtue of this section to determine whether any relevant criteria for keeping a child in accommodation provided for the purpose of restricting liberty are satisfied in his case ; and if a court determines that any such criteria are satisfied, it shall make an order authorising the child to be kept in such accommodation and specifying the maximum period for which he may be so kept.
- (4) On any adjournment of a hearing under subsection (3) above a juvenile court may make an interim order permitting the child to be kept during the period of the adjournment in accommodation provided for the purpose of restricting liberty.
- (5) An appeal shall lie to the Crown Court from a decision of a juvenile court under this section.
- (6) A juvenile court shall not exercise the powers conferred by this section in respect of a child who is not legally represented in that court unless either—
  - (a) he applied for legal aid and the application was refused on the ground that it did not appear his means were such that he required assistance ; or
  - (b) having been informed of his right to apply for legal aid and had the opportunity to do so, he refused or failed to apply.
- (7) The Secretary of State may by regulations provide—

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- (a) that this section shall or shall not apply to any description of children specified in the regulations ;
  - (b) that this section shall have effect in relation to children of a description specified in the regulations subject to such modifications as may be so specified ;
  - (c) that such other provisions as may be so specified shall have effect for the purpose of determining whether a child of a description specified in the regulations may be placed or kept in accommodation provided for the purpose of restricting liberty.
- (8) The giving of an authorisation under this section shall not prejudice any power of any court in England and Wales or Scotland to give directions relating to the child to whom the authorisation relates.”.
- 51 In subsection (3) of section 24 of that Act (by virtue of which the Secretary of State may consent to the emigration of a child in the care of a local authority who is too young to form or express a proper opinion on the matter in any case where the child is to emigrate in company with a parent, guardian or relative of his, or is to emigrate for the purpose of joining a parent, guardian relative or friend) for the words " or relative " there shall be substituted the words " relative or friend ".
- 52 In section 35 of that Act (instruments of management for assisted and controlled community homes)—
- (a) the words " this Part of this Act " shall be substituted—
    - (i) in subsection (1), for the words " a regional plan approved by him "; and
    - (ii) in subsection (2), for the words " a regional plan approved by the Secretary of State "; and
  - (b) the words " in accordance with this Part of this Act " shall be substituted—
    - (i) in subsection (3)(a), for the words " in a regional plan "; and
    - (ii) in subsection (5), for the words " in the regional plan .
- 53 In subsection (1) of section 44 of that Act (financial provisions applicable to cessation of controlled or assisted community home) after the words " section 43 of this Act " there shall be inserted the words " or of subsection (5) of section 43A of this Act ".
- 54 In subsection (1) of section 45 of that Act (by virtue of paragraph (i) of which where a child under 16 is in the care of a local authority under section 2 or by virtue of a care order other than an interim order the father or mother of the child is liable to make contributions in respect of the child)—
- (a) at the beginning of the said paragraph (i) there shall be inserted the words " Subject to subsection (1A) below, "; and
  - (b) for the word " or " in the said paragraph (i) there shall be substituted the word " and ".
- 55 The following section shall be inserted after section 64 of that Act: —

**“64A General duty of voluntary organisation in relation to children in their care.**

- (1) In reaching any decision relating to a child in their care, a voluntary organisation shall give first consideration to the need to safeguard and promote the welfare of the child throughout his childhood ; and shall so far

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as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.

(2) In providing for a child in their care a voluntary organisation shall make such use of facilities and services available for children in their care of the own parents as appears to the organisation reasonable in his case.”.

56 In section 79 of that Act (returns of information and presentation of reports etc. to Parliament)—

(a) the following subsection shall be inserted after subsection (2)—

“(2A) The clerk of each magistrates' court shall, at such times and in such form as the Secretary of State may direct, transmit to him such particulars as he may require with respect to the proceedings of the court under Part II of the Children Act 1975.”;

(b) in subsection (3), for the words "and (2)" there shall be substituted the words " , (2) and (2A) "; and

(c) the following paragraph shall be inserted after subsection (5)(g)

“(ga) Part II of the Children Act 1975,”.

57 In section 82 of that Act (grants in respect of voluntary homes which are assisted community homes) for the words " in a regional plan which was then in operation" there shall be substituted the words " either in a regional plan which was then in operation or in accordance with Part IV of this Act ".

58 In section 85 of that Act (regulations and orders)—

(a) in subsection (2), after the words " section 43 " there shall be inserted the words " or 43A(3) "; and

(b) in subsection (4), after " 11 " there shall be inserted " , 21A ".

59 In paragraph 3 of Schedule 4 to that Act (transitional provisions relating to children in care) after the words " by virtue of ", in the first place where they occur, there shall be inserted the words " a care order or of ".

#### *Interpretation*

60 The word "actual" shall be inserted before the word " custody " , wherever it occurs in—

(a) sections 34(1) and (2) and 34A(1) and (2) of the Adoption Act 1958 ;

(b) sections 30(1) and (2), 41(1) and (2) and 42(1) and (2) of the Children Act 1975 ; and

(c) sections 27(1) and (2), 28(1) and (2), 29(1) and (2) and 30(1)(a) and (b) of the Adoption Act 1976.

61 In section 57(2) of the Adoption Act 1958, for the words " care or possession " , in both places where they occur, there shall be substituted the words " actual custody ".

62 The following section shall be inserted after section 57 of the Adoption Act 1958—

#### **“57A Actual custody.**

(1) While a person not having legal custody of a child has actual custody of the child, he has the like duties under this Act in relation to the child as if he had legal custody.

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- (2) The following, namely—
- (a) any reference in this Act to the person with whom a child has his home ; and
  - (b) the reference to legal custody in subsection (1) above,
- are to be construed in accordance with Part IV of the Children Act 1975.
- (3) This section does not extend to Scotland.”.