

## SCHEDULES

### SCHEDULE 2

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *The Guardianship of Minors Act 1971 (c.3)*

- 28 Without prejudice to any other amendment of the 1971 Act made by this Act, for the words "minor", "minor's" and "minors", wherever occurring in that Act otherwise than in the expression "the Guardianship of Minors Act 1971", there shall be substituted the words "child", "child's" and "children" respectively.
- 29 In section 5(2) of that Act for the words from "notwithstanding" to the end there shall be substituted the words "notwithstanding that parental rights and duties with respect to the child are vested in a local authority or a voluntary organisation by virtue of a resolution under section 3 or 64 of the Child Care Act 1980".
- 30 In section 11A of that Act for the words "section 9(1), 10(1)(a) or 11(a)", wherever they occur, there shall be substituted the words "section 9 or 10".
- 31 (1) Section 12 of that Act shall be amended as follows.
- (2) In subsection (1) for the words "an order made under section 9, 10 or 11 of this Act for the making of periodical payments" there shall be substituted the words "an order for periodical payments made by virtue of section 11 B(2)(a) or (b) or 11 C(3)(a) or (b) of this Act".
- (3) In subsection (2) for paragraph (a) there shall be substituted the following paragraph—
- “(a) the child is, will be or (if an order were made without complying with that paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or”
- (4) In subsection (3) for the words "Any order made under section 9, 10 or 11 of this Act requiring the making of periodical payments" there shall be substituted the words "An order for periodical payments made by virtue of section 11B(2)(a) or 11C(3) (a) of this Act".
- 32 In section 12A of that Act for the words "section 9(2), 10(1)(b) or 11(b)" there shall be substituted the words "section 11B, 11C or 11D".
- 33 (1) Section 12B of that Act shall be amended as follows.
- (2) In subsection (1) for the words "section 9(2), 10(1)(b) and 11(b)" there shall be substituted the words "sections 11B and 11C", the words "in maintaining the minor" shall cease to have effect and there shall be added at the end the words "being liabilities or expenses incurred in connection with the birth of the child or in maintaining the child".

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- (3) In subsection (2) for the words "section 9(2), 10(1)(b) or 11(b)" there shall be substituted the words "section 11B, 11C or 11D".
- (4) In subsections (3) and (5) for the words "section 9, 10 or 11", in each place where they occur, there shall be substituted the words "section 11B, 11C or 11D".
- (5) In subsection (3) after the words "for the making" there shall be inserted the words "or securing" and the words "of a minor" shall cease to have effect.
- 34 (1) Section 12C of that Act shall be amended as follows.
- (2) In subsections (1) to (3) for the words "section 9, 10 or 11" there shall be substituted the words "section 11B, 11C or 11D" and after the words "for the making" there shall be inserted the words "or securing".
- (3) In subsection (4) for the words "section 9, 10 or 11" there shall be substituted the words "section 11B or 11C" and after the words 'for the making' there shall be inserted the words "or securing".
- (4) For subsection (5) there shall be substituted the following subsections—
- “(5) Where an order for the making of periodical payments made under section 11B or 11C of this Act ceases to have effect on the date on which the child attains the age of sixteen or at any time after that date but before or on the date on which he attains the age of eighteen, the child may apply—
- (a) in the case of an order made by the High Court or a county court, to the court which made the order, or
- (b) in the case of an order made by a magistrates' court, to the High Court or a county court,
- for an order for the revival of the first mentioned order.
- (6) If on such an application it appears to the High Court or county court that—
- (a) the child is, will be or (if an order were made under this subsection) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or
- (b) there are special circumstances which justify the making of an order under this subsection,
- the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application.
- (7) Any order made under section 11B or 11C of this Act by the High Court or a county court which is revived by an order under subsection (5) above may be varied or discharged under section 11B or 11C of this Act, as the case may be, on the application of any person by whom or to whom payments are required to be made under the order.
- (8) Any order made under section 11B or 11C of this Act by a magistrates' court which is revived by an order of the High Court or a county court under subsection (5) above—
- (a) for the purposes of the variation and discharge of the order, shall be treated as an order of the court by which it was revived and may be varied or discharged by that court on the application of any person

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by whom or to whom payments are required to be made under the order; and

- (b) for the purposes of the enforcement of the order, shall be treated as an order of the magistrates' court by which the order was originally made.”

35 After that section there shall be inserted the following section—

**“12D Variation of orders for secured periodical payments after death of parent.**

- (1) Where the parent liable to make payments under a secured periodical payments order has died, the persons who may apply for the variation or discharge of the order shall include the personal representatives of the deceased parent, and no application for the variation of the order shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that parent is first taken out.
- (2) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (1) of this section on the ground that they ought to have taken into account the possibility that the court might permit an application for variation to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the variation of an order in accordance with this section.
- (3) 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 to which the court is required to have regard under section 12C(1) of this Act shall include the changed circumstances resulting from the death of that parent.
- (4) In considering for the purposes of subsection (1) of this section the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal 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.
- (5) In this section 'secured periodical payments order' means an order for secured periodical payments made by virtue of section 11B(2)(b) or 11C(3)(b) of this Act.”

36 In section 13 of that Act for subsection (3) there shall be substituted the following subsection—

“(3) Any order for the payment of money made by a magistrates' court under this Act shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980”.

37 In section 13 A(1) of that Act, for the words "section 9(1), 10(1)(a) or 11(a)" there shall be substituted the words "section 9 or 10".

38 After that section there shall be inserted the following section—

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**“13B Direction for settlement of instrument by conveyancing counsel**

Where the High Court or a county court decides to make an order under this Act for the securing of periodical payments or for the transfer or settlement of property, it may direct that the matter be referred to one of the conveyancing counsel of the court for him to settle a proper instrument to be executed by all necessary parties.”

39 Section 14 of that Act and the heading preceding that section shall cease to have effect.

40 (1) Section 14A of that Act shall be amended as follows.

(2) In subsection (1) for the words "section 9(1)" there shall be substituted the words "section 9".

(3) In subsection (3) for the words "section 9(1), 10(1)(a) or 11(a)" there shall be substituted the words "section 9 or 10".

(4) In subsection (5) for the words "the court has made an order under section 9(1)(a)" there shall be substituted the words "before 1st December 1985 the court has made an order under section 9".

41 (1) Section 15A of that Act shall be amended as follows.

(2) In subsection (1)—

(a) for the words "section 9(2)(a) and (b)", in both places where they occur, there shall be substituted the words "section 11 B(2)(a) and (b)"; and

(b) the words from "notwithstanding" to "custody of the child" shall cease to have effect.

(3) In subsection (2) for the words "section 9(2)", in both places where they occur, there shall be substituted the words "section 11 B(2)".

42 In section 16(8) of that Act for the words "section 9(4), 10(2), 11(c), 12B(5) or 12C(5) of this Act or section 3(3) or 4(3 A) or (3D)" there shall be substituted the words "section 9(1), 10(1) or 11B(1), 11C(1) or (2)(b), 11D(6), 12B(5) or 12C(2) of this Act or section 3(3) or 4(3A)".

43 In section 20 of that Act for subsection (2) there shall be substituted the following subsections—

“(2) In this Act, unless the context otherwise requires—

'actual custody', as respects a child, means the actual possession of the person of the child;

'child', except where used to express a relationship, means a person who has not attained the age of eighteen;

'legal custody' shall be construed in accordance with Part IV of the Children Act 1975;

'maintenance' includes education.

(2A) In this Act—

(a) references (however expressed) to any relationship between two persons; and

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(b) references to the father and mother of a child not being married to each other at the time of his birth, shall be construed in accordance with section 1 of the Family Law Reform Act 1987.”