

SCHEDULES

SCHEDULE 1

Article 15(1).

FINANCIAL PROVISION FOR CHILDREN

Interpretation

1.—(1) In this Schedule “child” includes, in any case where an application is made under paragraph 3 or 7 in relation to a person who has reached the age of 18, that person.

[^{F1}(2) In this Schedule, except paragraphs 3 and 17, “parent” includes—

- (a) any party to a marriage (whether or not subsisting) in relation to whom the child concerned is a child of the family, and
- (b) any civil partner in a civil partnership (whether or not subsisting) in relation to whom the child concerned is a child of the family;

and for this purpose any reference to either parent or both parents shall be read as a reference to any parent of his and to all of his parents.]

(3) In this Schedule “^{F2}maintenance assessment” means^{F2} an assessment of maintenance made under the Child Support (Northern Ireland) Order 1991^{F3} and includes, except in circumstances prescribed for the purposes of the definition of that expression in Article 2(2) of that Order,^{F2} an interim maintenance assessment within the meaning of that Order.

F1 2004 c.33

F2 prosp. in pt. subst. by 2000 c. 4 (NI)

F3 1991 NI 23

Orders for financial relief against parents

2.—(1) On an application made by a parent or guardian of a child, or by any person in whose favour a residence order is in force with respect to a child, the court may—

- (a) if it is the High Court or a county court, make one or more of the orders mentioned in sub#paragraph (2);
- (b) if it is a court of summary jurisdiction, make one or both of the orders mentioned in heads (a) and (c) of that sub-paragraph.

(2) The orders referred to in sub-paragraph (1) are—

- (a) an order requiring either or both parents of a child—
 - (i) to make to the applicant for the benefit of the child; or
 - (ii) to make 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—
 - (i) to secure to the applicant for the benefit of the child; or
 - (ii) to secure to the child himself,

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- such periodical payments, for such term, as may be so specified;
- (c) an order requiring either or both parents of a child—
- (i) to pay to the applicant for the benefit of the child; or
 - (ii) to pay 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—
- (i) to which either parent is entitled (either in possession or in reversion); and
 - (ii) which is specified in the order;
- (e) an order requiring either or both parents of a child—
- (i) to transfer to the applicant, for the benefit of the child; or
 - (ii) to transfer to the child himself,
- such property to which the parent is, or the parents are, entitled (either in possession or in reversion) as may be specified in the order.
- (3) The powers conferred by this paragraph may be exercised at any time.
- (4) An order under sub-paragraph (2)(a) or (b) may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.
- (5) Where a court makes an order under this paragraph—
- (a) it may at any time make a further such order under sub-paragraph (2)(a), (b) or (c) with respect to the child concerned if he has not reached the age of 18;
 - (b) it may not make more than one order under sub-paragraph (2)(d) or (e) against the same person in respect of the same child.
- (6) On making, varying or discharging a residence order the court may exercise any of its powers under this Schedule even though no application has been made to it under this Schedule.
- (7) Where a child is a ward of court, the High Court may exercise any of its powers under this Schedule even though no application has been made to it.

Orders for financial relief for persons over 18

- 3.—(1) 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 an educational establishment or undergoing training 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 paragraph,
- the court may make one or both of the orders mentioned in sub-paragraph (2).
- (2) The orders are—
- (a) an order requiring either or both of the applicant's parents to pay to the applicant such periodical payments, for such term, as may be specified in the order;
 - (b) an order requiring either or both of the applicant's parents to pay to the applicant such lump sum as may be so specified.
- (3) An application may not be made under this paragraph by any person if, immediately before he reached the age of 16, a periodical payments order was in force with respect to him.

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(4) No order shall be made under this paragraph at a time when the parents of the applicant are living with each other in the same household.

(5) An order under sub-paragraph (2)(a) may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.

(6) In sub-paragraph (3) “periodical payments order” means an order made under—

(a) this Schedule;

(b) Article 25 or 29 of the Matrimonial Causes (Northern Ireland) Order 1978^{F4}; or

(c) the Domestic Proceedings (Northern Ireland) Order 1980^{F5};

[^{F6}(e) Part 1 or 8 of Schedule 15 to the Civil Partnership Act 2004 (financial relief in the High Court or county court etc.);

(f) Schedule 16 to the 2004 Act (financial relief in court of summary jurisdiction etc.);]

for the making or securing of periodical payments.

(7) The powers conferred by this paragraph shall be exercisable at any time.

(8) Where the court makes an order under this paragraph it may while that order remains in force make further such orders.

F4 1978 NI 15

F5 1980 NI 5

F6 2004 c. 33

Duration of orders for financial relief

4.—(1) The term to be specified in an order for periodical payments made under paragraph 2(2)(a) or (b) in favour of a child may begin with the date of the making of an application for the order in question or any later date or a date ascertained in accordance with sub-paragraph (8) or (10) but—

(a) shall not in the first instance extend beyond the child's seventeenth birthday unless the court thinks it right in the circumstances of the case to specify a later date; and

(b) shall not in any event extend beyond the child's eighteenth birthday.

(2) Head (b) of sub-paragraph (1) shall not apply in the case of a child if it appears to the court that—

(a) the child is, or will be or (if an order were made without complying with that head) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or

(b) there are special circumstances which justify the making of an order without complying with that head.

(3) An order for periodical payments made under paragraph 2(2)(a) or 3(2)(a) shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

(4) Where an order is made under paragraph 2(2)(a) or (b) requiring periodical payments to be made or secured to the parent of a child, the order shall cease to have effect if—

(a) any parent making or securing the payments; and

(b) any parent to whom the payments are made or secured,

live together for a period of more than six months.

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(5) An order for periodical payments made under paragraph 2(2)(a) or (b) in favour of a child to whom head (a) of sub-paragraph (2) applies shall cease to have effect in the event of his ceasing to receive instruction or undergo training as mentioned in that head.

(6) An order for periodical payments made under paragraph 3(2)(a) in favour of an applicant to whom head (a) of paragraph 3(1) applies shall cease to have effect in the event of his ceasing to receive instruction or undergo training as mentioned in that head.

(7) Where an order for periodical payments made under paragraph 2(2)(a) or (b) or paragraph 3(2)(a) ceases to have effect by virtue of sub-paragraph (5) or (6), the person to whom the periodical payments are directed by the order to be made shall give notice of the event mentioned in sub-paragraph (5) or (6) to the court; and any person failing without reasonable excuse to give such a notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(8) Where—

- (a) a^{F7} maintenance assessment (“the ^{F7} current assessment”) is in force with respect to a child; and
- (b) before the end of the period of six months beginning with the date on which the ^{F7} current assessment was made, an application is made for an order under paragraph 2(2)(a) or (b) for periodical payments in favour of that child,

the term to be specified in any such order made on that application may be expressed to begin on, or at any time after, the earliest permitted date.

(9) For the purposes of sub-paragraph (8) “the earliest permitted date” is whichever is the later of—

- (a) the date six months before the application for the order was made; or
- (b) the date on which the ^{F7} current assessment took effect or, where successive ^{F7} maintenance assessments have been continuously in force with respect to that child, the first of ^{F7} those assessments took effect.

(10) Where—

- (a) a^{F7} maintenance assessment ceases to have effect^{F8} or is cancelled by or under any provision of the Child Support (Northern Ireland) Order 1991^{F9}; and
- (b) before the end of the period of six months beginning with the relevant date, an application is made for an order for periodical payments under paragraph 2(2)(a) or (b) in favour of a child with respect to whom that ^{F7} maintenance assessment was in force immediately before it ceased to have effect^{F8} or was cancelled,

the term to be specified in any such order, or in any interim order under paragraph 11, made on that application may begin with the relevant date or any later date.

(11) In sub-paragraph (10)(b) “the relevant date” means—

- (a) where the ^{F7} maintenance assessment ceased to have effect, the date on which it so ceased,^{F8} and
- (b) where the ^{F7} maintenance assessment was cancelled, the later of—
 - (i) the date on which the person who cancelled it did so; or
 - (ii) the date from which the cancellation first had effect.

F7 prosp. in pt. subst. by 2000 c. 4 (NI)

F8 prosp. in pt. rep. by 2000 c. 4 (NI)

F9 1991 NI 23

Matters to which court is to have regard in making orders for financial relief

5.—(1) In deciding whether to exercise its powers under paragraph 2 or 3, 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 each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each person mentioned in sub-paragraph (4) 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 2 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 2 against a person on the basis that he is not the father of the child, it shall record in the order that the order is made on that basis.

(4) The persons referred to in sub-paragraph (1) are—

- (a) in relation to a decision whether to exercise its powers under paragraph 2, any parent of the child;
- (b) in relation to a decision whether to exercise its powers under paragraph 3, the mother and father of the child;
- (c) the applicant for the order;
- (d) any other person in whose favour the court proposes to make the order.

Provisions relating to lump sums

6.—(1) Without prejudice to the generality of paragraph 2, an order under that paragraph for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses—

- (a) incurred in connection with the birth of the child or in maintaining the child; and
- (b) reasonably incurred before the making of the order,

to be met.

(2) The amount of any lump sum required to be paid by an order made by a court of summary jurisdiction under paragraph 2 or 3 shall not exceed £1000 or such larger amount as the Lord Chancellor may^[F10], after consultation with the Lord Chief Justice, by order fix for the purposes of this sub-paragraph.

(3) The power of the court under paragraph 2 or 3 to vary or discharge an order for the making or securing of periodical payments by a parent shall include power to make an order under that provision for the payment of a lump sum by that parent.

(4) The amount of any lump sum which a parent may be required to pay by virtue of sub-paragraph (3) shall not, in the case of an order made by a court of summary jurisdiction, exceed the

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maximum amount that may at the time of the making of the order be required to be paid under sub-paragraph (2), but a court of summary jurisdiction may make an order for the payment of a lump sum not exceeding that amount even though the parent was required to pay a lump sum by a previous order under this Order.

(5) An order made under paragraph 2 or 3 for the payment of a lump sum may provide for the payment of that sum by instalments.

(6) Where the court provides for the payment of a lump sum by instalments the court, on an application made either by the person liable to pay or the person entitled to receive that sum, shall have power to 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.

F10 Words in Sch. 1 para. 6(2) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 100; S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)

Variation, etc., of orders for periodical payments

7.—(1) In exercising its powers under paragraph 2 or 3 to vary or discharge an order for the making or securing of periodical payments the court shall have regard to all the circumstances, including any change in any of the matters to which the court was required to have regard when making the order.

(2) The power of the court under paragraph 2 or 3 to vary an order for the making or securing of periodical payments shall include power to suspend any provision of the order temporarily and to revive any provision so suspended.

(3) Where on an application under paragraph 2 or 3 for the variation or discharge of an order for the making or securing of periodical payments 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, except that, subject to sub-paragraph (11), the date shall not be earlier than the date of the making of the application.

(4) An application for the variation of an order made under paragraph 2 for the making or securing of periodical payments to or for the benefit of a child may, if the child has reached the age of 16, be made by the child himself.

(5) Where an order for the making or securing of periodical payments made under paragraph 2 ceases to have effect on the date on which the child reaches the age of 16, or at any time after that date but before or on the date on which he reaches the age of 18, the child may apply to the court which made the order for an order for its revival.

(6) If on such an application it appears to the court that—

- (a) the child is, will be or (if an order were made under this sub-paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or
- (b) there are special circumstances which justify the making of an order under this sub-paragraph,

the court shall have power by order to revive the order from such date as the court may specify, not being earlier than the date of the making of the application.

(7) Any order which is revived by an order under sub-paragraph (6) may be varied or discharged under that sub-paragraph on the application of any person by whom or to whom payments are required to be made under the revived order.

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(8) An order for the making or securing of periodical payments made under paragraph 2 may be varied or discharged, after the death of either parent, on the application of a guardian of the child concerned.

(9) An order for the making or securing of periodical payments made under paragraph 2 which is revived under sub-paragraph (6) in favour of a child to whom head (a) of that sub-paragraph applies shall cease to have effect in the event of his ceasing to receive instruction or undergo training as mentioned in that head.

(10) Where an order for the making or securing of periodical payments made under paragraph 2 ceases to have effect by virtue of sub-paragraph (9), the person to whom the periodical payments are directed by the order to be made shall give notice of the event mentioned in that sub-paragraph to the court; and any person failing without reasonable excuse to give such a notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(11) Sub-paragraph (12) applies where—

- (a) an order under paragraph 2(2)(a) or (b) for the making or securing of periodical payments in favour of more than one child (“the order”) is in force;
- (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;
- (c) a^{F11} maintenance assessment (“^{F11}the assessment”) is made with respect to one or more, but not all, of the children in whose favour those payments are to be made; and
- (d) an application is made, before the end of the period of six months beginning with the date on which^{F11} the assessment was made, for the variation or discharge of the order.

(12) Where this sub-paragraph applies, the court may, in exercise of its powers under paragraph 2 to vary or discharge the order, direct that the variation or discharge shall take effect from the date on which^{F11} the assessment took effect or any later date.

F11 prosp. in pt. subst. by 2000 c. 4 (NI)

Variation of orders for periodical payments etc. made by court of summary jurisdiction

8.—(1) Subject to sub-paragraphs (7) and (8), the power of a court of summary jurisdiction—

- (a) under paragraph 2 or 3 to vary an order for the making of periodical payments, or
- (b) under paragraph 6(6) to vary an order for the payment of a lump sum by instalments,

shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under sub-paragraphs (a) to (d) of Article 85(3) of the Magistrates' Courts (Northern Ireland) Order 1981^{F12}.

(2) In any case where—

- (a) a court of summary jurisdiction has made an order under this Schedule for the making of periodical payments or for the payment of a lump sum by instalments, and
- (b) payments under the order are required to be made by any method of payment falling within Article 85(7) of the Magistrates' Courts (Northern Ireland) Order 1981 (standing order, etc.),

any person entitled to make an application under this Schedule for the variation of the order (in this paragraph referred to as “the applicant”) may apply to the clerk of petty sessions for the order to be varied as mentioned in sub-paragraph (3).

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(3) Subject to sub-paragraph (5), where an application is made under sub-paragraph (2), the clerk, after serving written notice of the application on any interested party and allowing that party, within the period of 14 days from the date of the serving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made to the collecting officer.

(4) The clerk may proceed with an application under sub-paragraph (2) notwithstanding that any such interested party as is referred to in sub-paragraph (3) has not received written notice of the application.

(5) Where an application has been made under sub-paragraph (2), the clerk may, if he considers it inappropriate to exercise his power under sub-paragraph (3), refer the matter to the court which, subject to sub-paragraphs (7) and (8), may vary the order by exercising one of its powers under sub-paragraphs (a) to (d) of Article 85(3) of the Magistrates' Courts (Northern Ireland) Order 1981.

(6) Paragraph (5) of Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981 (power of court to order that account be opened) shall apply for the purposes of sub-paragraphs (1) and (5) as it applies for the purposes of that Article.

(7) Before varying the order by exercising one of its powers under sub-paragraphs (a) to (d) of Article 85(3) of the Magistrates' Courts (Northern Ireland) Order 1981, the court shall have regard to any representations made by the parties to the application.

(8) If the court does not propose to exercise its power under sub-paragraph (c) or (d) of paragraph (3) of Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981, the court shall, unless upon representations expressly made in that behalf by the applicant for the order it is satisfied that it is undesirable to do so, exercise its power under sub-paragraph (b) of that paragraph.

(9) None of the powers of the court, or of the clerk of petty sessions, conferred by this paragraph shall be exercisable in relation to an order under this Schedule for the making of periodical payments, or for the payment of a lump sum by instalments, which is not a qualifying maintenance order (within the meaning of Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981).

(10) In sub-paragraphs (3) and (4) “interested party”, in relation to an application made by the applicant under sub-paragraph (2), means a person who would be entitled to be a party to an application for the variation of the order made by the applicant under any other provision of this Schedule if such an application were made.

F12 1981 NI 26

Variation of orders for secured periodical payments after death of parent

9.—(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.

(2) 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.

(3) 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 end of the period of six months referred to in sub-paragraph (2) 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.

(4) Sub-paragraph (3) 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 paragraph.

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(5) 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 paragraph 7(1) shall include the changed circumstances resulting from the death of the parent.

(6) In considering for the purposes of sub-paragraph (2) the question when representation was first taken out, a grant limited to part of the estate of the deceased 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.

(7) In this paragraph “secured periodical payments order” means an order for secured periodical payments under paragraph 2(2)(b).

Financial relief under other statutory provisions

10.—(1) This paragraph applies where a residence order is made with respect to a child at a time when there is in force an order (“the financial relief order”) made under any statutory provision other than this Order and requiring a person to contribute to the child's maintenance.

(2) Where this paragraph applies, the court may, on the application of—

- (a) any person required by the financial relief 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 financial relief 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

11.—(1) Where an application is made under paragraph 2 or 3 the court may, at any time before it disposes of the application, make an interim order—

- (a) requiring either or both parents to make such periodical payments, at such times and for such term as the court thinks fit; and
- (b) giving any direction which the court thinks fit.

(2) An interim order made under this paragraph may provide for payments to be made from such date as the court may specify, except that, subject to paragraph 4(8) and (10), the date shall not be earlier than the date of the making of the application under paragraph 2 or 3.

(3) An interim order made under this paragraph shall cease to have effect when the application is disposed of or, if earlier, on the date specified for the purposes of this paragraph in the interim order.

(4) An interim order in which a date has been specified for the purposes of sub-paragraph (3) may be varied by substituting a later date.

Alteration of maintenance agreements

12.—(1) In this paragraph and in paragraph 13 “maintenance agreement” means any agreement in writing made with respect to a child (including an agreement made before the commencement of this paragraph) which—

- (a) is or was made between the father and mother of the child; and
- (b) contains provision with respect to the making or securing of payments, or the disposition or use of any property, for the maintenance or education of the child,

and any such provisions are in this paragraph and paragraph 13 referred to as “financial arrangements”.

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(2) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in Northern Ireland, then either party may apply to the court for an order under this paragraph.

(3) If the court to which the application is made is satisfied either—

(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 that 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.

(4) If the maintenance agreement is altered by an order under this paragraph, the agreement shall have effect thereafter as if the alteration had been made by agreement between the parties and for valuable consideration.

(5) Where a court decides to make an order under this paragraph altering the maintenance agreement—

(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 (as the case may be) 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 sub-paragraphs (1) and (2) of paragraph 4 as if the order were an order under paragraph 2(2)(a) or (b).

(6) A court of summary jurisdiction shall not entertain an application under sub-paragraph (2) unless both the parties to the agreement are resident in Northern Ireland and at least one of the parties is resident within the county court division which includes the petty sessions district for which the court sits, and shall not have power to make any order on such an application 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.

(7) 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 statutory provision to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

13.—(1) Where a maintenance agreement provides for the continuation, after the death of one of the parties, of payments for the maintenance of a child and that party dies domiciled in Northern Ireland, the surviving party or the personal representatives of the deceased party may apply to the High Court or a county court for an order under paragraph 12.

(2) If a maintenance agreement is altered by a court on an application under this paragraph, the agreement shall have effect thereafter as if the alteration had been made, immediately before the death, by agreement between the parties and for valuable consideration.

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(3) An application under this paragraph shall not, except with leave of the High Court or a county court, be made after the end of the period of six months from the day on which representation in regard to the estate of the deceased is first taken out.

(4) In considering for the purposes of sub-paragraph (3) the question when representation was first taken out, a grant limited to part of the estate of the deceased 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) A county court shall not entertain an application under this paragraph, or an application for leave to make an application under this paragraph, unless it would have jurisdiction to hear and determine proceedings for an order under Article 4 of the Inheritance (Provision for Family and Dependents) (Northern Ireland) Order 1979^{F13} in relation to the deceased's estate by virtue of Article 24 of that Order.

(6) The provisions of this paragraph shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiry of the period of six months referred to in sub-paragraph (3) on the ground that they ought to have taken into account the possibility that a court might grant leave for an application by virtue of this paragraph to be made by the surviving party after that period.

(7) Sub-paragraph (6) shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this paragraph.

F13 1979 NI 8

Notice of change of address

14.—(1) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made by a court of summary jurisdiction under this Schedule shall give notice of any change of address to such person (if any) as may be specified in the order.

(2) Any person failing without reasonable excuse to give such a notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Direction for settlement of instrument by conveyancing counsel

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

Financial provision for child resident in country outside Northern Ireland

16.—(1) Where one parent of a child lives in Northern Ireland and the child lives outside Northern Ireland with—

- (a) another parent of his;
- (b) a guardian of his; or
- (c) a person in whose favour a residence order is in force with respect to the child,

the court shall have power, on an application made by any of the persons mentioned in heads (a) to (c), to make one or both of the orders mentioned in paragraph 2(2)(a) and (b) against the parent living in Northern Ireland.

(2) Any reference in this Order to the powers of the court under paragraph 2(2) or to an order made under paragraph 2(2) shall include a reference to the powers which the court has by virtue of sub-paragraph (1) or (as the case may be) to an order made by virtue of sub-paragraph (1).

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Contribution by an authority to child's maintenance

17.—(1) Where a child lives, or is to live, with a person as the result of a residence order, an authority may make contributions to that person towards the cost of the accommodation and maintenance of the child.

(2) Sub-paragraph (1) does not apply where the person with whom the child lives, or is to live, is a parent of the child or the husband or wife^[F14] or civil partner] of a parent of the child.

F14 2004 c. 33

SCHEDULE 2

Article 18(2).

PROVISION OF SERVICES FOR FAMILIES: SPECIFIC POWERS AND DUTIES

Identification of children in need

1. Every authority shall take reasonable steps to identify the extent to which there are children in need within the authority's area.

Provision of information

2.—(1) Every authority shall publish information—

- (a) about services provided by the authority under Articles 18, 19, 21,^[F15] 34C to 34E, 35A and 35B]; and
- (b) where the authority considers it appropriate, about the provision by others (including, in particular, voluntary organisations) of services which the authority has power to provide under those Articles.

(2) Every authority shall take such steps as are reasonably practicable to ensure that those who might benefit from the services receive the information relevant to them.

F15 2002 c. 11 (NI)

^[F16]Children's services plans

F16 SR 1998/261

2A.—(1) Every Board shall, on or before 31st March 1999—

- (a) review the services provided within its area under Articles 18, 21, 23, 27,^[F17] 34C to 34E, 35A and 35B]; and
- (b) having regard to that review and the most recent reviews under Article 20, prepare and publish a plan for the provision of services under Part IV.

(2) Every Board—

- (a) shall review at least once on or before 31st March 2000 and then at least once in each financial year thereafter, the plan prepared by it under sub-paragraph (1)(b) (as modified or last substituted under this sub-paragraph); and

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- (b) may, having regard to that review and to the most recent reviews under Article 20, prepare and publish—
 - (i) modifications (or, as the case may be, further modifications) to the plan reviewed; or
 - (ii) a plan in substitution for that plan.
- (3) In carrying out any review under this paragraph and in preparing any plan or modification to a plan, a Board shall consult—
 - (a) every [^{F18}Health and Social Care trust] the whole or any part of whose area lies within the Board's area;
 - (b) every education and library board the whole or any part of whose area lies within the Board's area;
 - (c) every district council the whole or any part of whose district lies within the Board's area;
 - (d) such voluntary organisations as appear to the Board—
 - (i) to represent the interests of persons who use or are likely to use services provided by the Board under Part IV; or
 - (ii) to provide services in the Board's area which, were they to be provided by the Board, might be categorised as services provided under that Part;
 - (e) the Northern Ireland Housing Executive;
 - (f) the Chief Constable;
 - (g) the Probation Board for Northern Ireland;
 - (h) such other persons as appear to the Board to be appropriate; and
 - (i) such other persons as the Department may direct.
- (4) Every Board shall, within 28 days of receiving a written request from the Department, submit to it a copy of—
 - (a) the plan prepared by the Board under sub-paragraph (1); or
 - (b) where that plan has been modified or substituted, the plan as modified or last substituted.]

F17 2002 c. 11 (NI)

F18 Words in Sch. 2 para. 2A(3)(a) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(c) (with Sch. 6 para. 1(3)); S.R. 2009/114, art. 2

Maintenance of register of disabled children

3.—(1) Every authority shall open and maintain a register of disabled children within the authority's area.

(2) The register may be kept by means of a computer.

Assessment of children's needs

4. Where it appears to an authority that a child within the authority's area is in need, the authority may assess his needs for the purposes of this Order at the same time as any assessment of his needs is made under—

- (a) the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978^{F19};
- (b) the Education^{F20} (Northern Ireland) Order 1996];
- (c) the Disabled Persons (Northern Ireland) Act 1989^{F21}; or
- (d) any other statutory provision.

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F19 1978 c. 53

F20 1996 NI 1

F21 1989 c. 10

Prevention of neglect and abuse

5.—(1) Every authority shall take reasonable steps, through the provision of services under Part IV, to prevent children within the authority's area suffering ill-treatment or neglect.

(2) Where an authority believes that a child who is at any time within the authority's area—

- (a) is likely to suffer harm; but
- (b) lives or proposes to live in the area of another authority,

the authority shall inform that other authority.

(3) When informing that other authority the authority shall specify—

- (a) the harm that it believes the child is likely to suffer; and
- (b) (if it can) where the child lives or proposes to live.

Provision of accommodation for another person to protect child

6.—(1) Where—

- (a) it appears to an authority that a child who is living on particular premises is suffering, or is likely to suffer, ill-treatment at the hands of another person who is living on those premises; and
- (b) that other person proposes to move from the premises,

the authority may assist that other person to obtain alternative accommodation.

(2) Assistance given under this paragraph may be in cash.

(3) Paragraphs (7) to (9) of Article 18 shall apply in relation to assistance given under this paragraph as they apply in relation to assistance given under that Article.

Services for disabled children

7. Every authority shall provide services designed—

- (a) to minimise the effect on disabled children within the authority's area of their disabilities; and
- (b) to give such children the opportunity to lead lives which are as normal as possible.

Steps to reduce need for care proceedings, etc.

8. Every authority shall take reasonable steps designed—

- (a) to reduce the need to bring—
 - (i) proceedings for care or supervision orders with respect to children within the authority's area;
 - (ii) criminal proceedings against such children;
 - (iii) any family or other proceedings with respect to such children which might lead to them being placed in the authority's care; or
 - (iv) proceedings under the inherent jurisdiction of the High Court with respect to children;
- (b) to encourage children within the authority's area not to commit criminal offences; and

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- (c) to avoid the need for children within the authority's area to be placed in secure accommodation.

Provision for children living with their families

9. Every authority shall make such provision as the authority considers appropriate for the following services to be available with respect to children in need within the authority's area while they are living with their families—

- (a) advice, guidance and counselling;
- (b) occupational, social, cultural or recreational activities;
- (c) home help (which may include laundry facilities);
- (d) facilities for, or assistance with, travelling to and from home for the purpose of taking advantage of any other service provided under this Order or of any similar service;
- (e) assistance to enable the child concerned and his family to have a holiday.

Family centres

10.—(1) Every authority shall provide such family centres as the authority considers appropriate in relation to children within its area.

(2) “Family centre” means a centre at which any of the persons mentioned in sub-paragraph (3) may—

- (a) attend for occupational, social, cultural or recreational activities;
- (b) attend for advice, guidance or counselling; or
- (c) be provided with accommodation while he is receiving advice, guidance or counselling.

(3) The persons are—

- (a) a child;
- (b) his parents;
- (c) any person who is not a parent of his but who has parental responsibility for him;
- (d) any other person who is looking after him.

Maintenance of the family home

11. Every authority shall take such steps as are reasonably practicable, where any child within the authority's area who is in need and whom the authority is not looking after is living apart from his family—

- (a) to enable him to live with his family; or
- (b) to promote contact between him and his family,

if, in the opinion of the authority, it is necessary to do so in order to safeguard or promote his welfare.

Duty to consider racial groups to which children in need belong

12. Every authority shall, in making any arrangements—

- (a) for the provision of day care within the authority's area; or
- (b) designed to encourage persons to act as authority foster parents,

have regard to the different racial groups to which children within the authority's area who are in need belong.

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SCHEDULE 3

Article 54(2).

SUPERVISION ORDERS

Meaning of “responsible person”

1. In this Schedule, “the responsible person”, in relation to a supervised child, means—
 - (a) any person who has parental responsibility for the child; and
 - (b) any other person with whom the child is living.

Power of supervisor to give directions to supervised child

- 2.—(1) A supervision order may require the supervised child to comply with any directions given by the supervisor which require him to do all or any of the following things—
 - (a) to live at any place specified in the directions for any period so specified;
 - (b) to present himself to any person specified in the directions at any place and on any day so specified;
 - (c) to participate in activities specified in the directions on any day so specified.
- (2) It shall be for the supervisor to decide whether, and when, and to what extent, he exercises his power to give directions and to decide the form of any directions which he gives.
- (3) Sub-paragraph (1) does not confer on a supervisor power to give directions in respect of any medical or psychiatric examination or treatment (which are matters dealt with in paragraphs 4 and 5).

Imposition of obligations on responsible person

- 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 child complies with any direction given by the supervisor under paragraph 2;
 - (b) that he take all reasonable steps to ensure that the supervised child 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 child is required to attend with him.
- (3) A supervision order may require any person who is a responsible person in relation to the supervised child to keep the supervisor informed of his address, if it differs from the child's.

Psychiatric and medical examinations

- 4.—(1) A supervision order may require the supervised child—
 - (a) to submit to a medical or psychiatric examination; or
 - (b) to submit to any such examination as directed by the supervisor.
- (2) Any such examination shall be required to be conducted—
 - (a) by, or under the direction of, such medical practitioner as may be specified in the order;
 - (b) at a place specified in the order and at which the supervised child is to attend as a non-resident patient; or
 - (c) at a hospital at which the supervised child is, or is to attend as, a resident patient.

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(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 medical practitioner, that—

- (a) the child may be suffering from a physical or mental condition that requires, and 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—

- (a) where the child has sufficient understanding to make an informed decision, that he consents to its inclusion; and
- (b) that satisfactory arrangements have been, or can be, made for the examination.

(5) In this paragraph and paragraph 5 “hospital” does not include special accommodation within the meaning of the Mental Health (Northern Ireland) Order 1986^{F22}.

F22 1986 NI 4

Psychiatric and medical treatment

5.—(1) Where a court which proposes to make or vary a supervision order is satisfied, on the evidence of a medical practitioner appointed for the purposes of Part II of the Mental Health (Northern Ireland) Order 1986, that the mental condition of the supervised child—

- (a) is such as requires, and may be susceptible to, treatment; but
- (b) is not such as to warrant his detention in pursuance of a hospital order under Part III of that Order,

the court may include in the order a requirement that the supervised child shall, for a period specified in the order, submit to such treatment as is so specified.

(2) The treatment specified in accordance with sub-paragraph (1) must be—

- (a) by, or under the direction of, such medical practitioner as may be specified in the order;
- (b) as a non-resident patient at such a place as may be so specified; or
- (c) as a resident patient in a hospital.

(3) Where a court which proposes to make or vary a supervision order is satisfied, on the evidence of a medical practitioner, that the physical condition of the supervised child is such as requires, and may be susceptible to, treatment, the court may include in the order a requirement that the supervised child shall, for a period specified in the order, submit to such treatment as is so specified.

(4) The treatment specified in accordance with sub-paragraph (3) must be—

- (a) by, or under the direction of, such medical practitioner as may be specified in the order;
- (b) as a non-resident patient at such place as may be so specified; or
- (c) as a resident patient in a hospital.

(5) No court shall include a requirement under this paragraph in a supervision order unless it is satisfied—

- (a) where the child has sufficient understanding to make an informed decision, that he consents to its inclusion; and
- (b) that satisfactory arrangements have been, or can be, made for the treatment.

(6) If a medical practitioner by whom or under whose direction a supervised child is being treated in pursuance of a requirement included in a supervision order by virtue of this paragraph is unwilling to continue to treat or direct the treatment of the supervised child or is of the opinion that—

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- (a) the treatment should be continued beyond the period specified in the order;
- (b) the supervised child needs different treatment;
- (c) he is not susceptible to treatment; or
- (d) he does not require further treatment,

the practitioner shall make a report in writing to that effect to the supervisor.

(7) On receiving a report under this paragraph the supervisor shall refer it to the court, and on such a reference the court may make an order cancelling or varying the requirement.

Life of supervision order

6.—(1) Subject to sub-paragraph (2) and Article 179 (effect and duration of orders, etc.), a supervision order shall cease to have effect at the end of the period of one year beginning with the date on which it was made.

(2) A supervision order shall also cease to have effect if an event mentioned in section 25(1) (a) or (b) of the Child Abduction and Custody Act 1985^{F23} (termination of existing orders) occurs with respect to the child.

(3) Where the supervisor applies to the court to extend, or further extend, a supervision order the court may extend the order for such period as it may specify.

(4) A supervision order may not be extended so as to run beyond the end of the period of three years beginning with the date on which it was made.

F23 1985 c. 60

Information to be given to supervisor, etc.

7.—(1) A supervision order may require the supervised 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) The responsible person in relation to any child with respect to whom a supervision order is 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.

Selection of supervisor

8. A supervision order shall not designate an authority as the supervisor unless—

- (a) the authority agrees; or
- (b) the supervised child lives or will live within the authority's area.

Effect of supervision order on earlier orders

9. The making of a supervision order with respect to any child brings to an end any earlier care or supervision order which—

- (a) was made with respect to that child; and
- (b) would otherwise continue in force.

Regulations

10. The Department may make regulations with respect to the exercise by an authority of its functions where a child has been placed under its supervision by a supervision order.

SCHEDULE 4

Article 55(8).

EDUCATION SUPERVISION ORDERS

Interpretation

1. In this Schedule—

“1986 Order” means the Education and Libraries (Northern Ireland) Order 1986^{F24};

“parent” has the meaning assigned to it by Article 2(2D) of the 1986 Order.

F24 [1986 NI 3](#)

Effect of orders

2.—(1) Where an education supervision order is in force with respect to a child, it shall be the duty of the supervisor—

(a) to advise, assist and befriend, and give directions to—

(i) the supervised child; and

(ii) 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—

(i) the supervised child; or

(ii) 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 Order.

(2) Before giving any directions under sub-paragraph (1) the supervisor shall, so far as is reasonably practicable, ascertain the wishes and feelings of—

(a) the child; and

(b) 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.

3.—(1) Where an education supervision order is in force with respect to a child, the duties of the child's parents under Article 45 of, and Schedule 13 to, the 1986 Order (duty to secure education of

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children and to secure regular attendance of registered pupils) 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—
 - (i) served under paragraph 1(2) of Schedule 13 to the 1986 Order with respect to the child; and
 - (ii) 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, the following provisions shall not apply with respect to the child—
 - (i) Article 44 of the 1986 Order (pupils to be educated in accordance with wishes of their parents);
 - (ii) Part I of Schedule 13 to the 1986 Order (school attendance orders);
 - (iii) Articles 36 and 37 of the Education Reform (Northern Ireland) Order 1989^{F25} (parental preference and appeals against admission decisions);
 - (c) a probation order made with respect to the child, while the education supervision order is in force, may not include any requirement relating to the child's attendance at school;
 - (d) any such requirement which was in force with respect to the child immediately before the making of the education supervision order shall cease to have effect.

F25 1989 NI 20

Effect where child also subject to other orders

4.—(1) This paragraph applies where—

- (a) an education supervision order; and
- (b) a supervision order, a probation order^{F26} or^{F27} a juvenile justice centre order],

are in force at the same time with respect to the same child.

(2) Any failure to comply with^{F27} a requirement of or] 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.

F26 prosp. subst. by 2002 c. 26

F27 1998 NI 9

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, the court has (on the application of the education and library board in whose favour the order was made) extended the period during which it is in force.

(3) Such an application may not be made earlier than three months before the date on which the order would otherwise expire.

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(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 three 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.

Discharge of orders

7.—(1) The court may discharge any education supervision order on the application of—

(a) the child concerned;

(b) a parent of his; or

(c) the education and library board concerned.

(2) On discharging an education supervision order, the court may direct the authority within whose area the child lives, or will live, to investigate the circumstances of the child.

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 he shall be guilty of an offence.

(2) It shall be a defence for any person charged with such an offence to prove that—

(a) he took all reasonable steps to ensure that the direction was complied with;

(b) the direction was unreasonable; or

(c) he had complied with—

(i) a requirement included in a supervision order made with respect to the child; or

(ii) 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.

(3) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Persistent failure of child to comply with directions

9.—(1) Where a child with respect to whom an education supervision order is in force persistently fails to comply with any direction given under the order, the education and library board concerned shall notify the appropriate authority.

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(2) Where an authority has been notified under sub-paragraph (1) it shall investigate the circumstances of the child.

(3) In this paragraph “the appropriate authority” means—

- (a) in the case of a child who is being provided with accommodation by or on behalf of an authority, that authority;
- (b) in any other case, the authority in whose area the child lives, or will live.

SCHEDULE 5

Article 91(4).

FOSTER PARENTS: LIMITS ON NUMBER OF FOSTER CHILDREN

Interpretation

1. For the purposes of this Schedule, a person fosters a child if—

- (a) he is an authority foster parent in relation to the child;
- (b) he is a foster parent with whom the child has been placed by a voluntary organisation; or
- (c) he fosters the child privately.

The usual fostering limit

2. Subject to what follows, a person shall not foster more than three children (“the usual fostering limit”).

Siblings

3. A person may exceed the usual fostering limit if the children concerned are all siblings with respect to each other.

Exemption by an authority

4.—(1) A person may exceed the usual fostering limit if he is exempted from it by the authority within whose area he lives.

(2) In considering whether to exempt a person, an authority shall have regard, in particular, to—

- (a) the number of children whom the person proposes to foster;
- (b) the arrangements which the person proposes for the care and accommodation of the fostered children;
- (c) the intended and likely relationship between the person and the fostered children;
- (d) the period of time for which he proposes to foster the children; and
- (e) whether the welfare of the fostered children (and of any other children who are or will be living in the accommodation) will be safeguarded and promoted.

(3) Where an authority exempts a person, the authority 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.

(4) An authority may at any time by notice in writing—

- (a) vary or cancel an exemption; or
- (b) impose, vary or cancel a condition to which the exemption is subject,

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and, in considering whether to do so, the authority shall have regard in particular to the considerations mentioned in sub-paragraph (2).

(5) The Department may make regulations amplifying or modifying the provisions of this paragraph in order to provide for cases where children need to be placed with foster parents as a matter of urgency.

Effects of exceeding fostering limit

5.—(1) A person shall cease to be treated^{F28} for the purposes of this Order and the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003] 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 paragraph 4—
 - (i) he fosters any child not named in the exemption; and
 - (ii) in so doing, he exceeds the usual fostering limit.

(2) Sub-paragraph (1) shall not apply if the children concerned are all siblings in respect of each other.

F28 2003 NI 9

Complaints, etc.

6.—(1) Every authority shall establish a procedure for considering any representations (including any complaint) made to the authority about the discharge of its functions under paragraph 4 by a person exempted or seeking to be exempted under that paragraph.

(2) In carrying out any consideration of representations under sub-paragraph (1), an authority shall comply with any regulations made by the Department for the purposes of this paragraph.

SCHEDULE 6

Article 157.

PROPERTY RIGHTS WHERE PARENTS NOT MARRIED TO EACH OTHER

Succession on intestacy

1.—(1) In Part II of the Administration of Estates Act (Northern Ireland) 1955^{F29} (which deals with the distribution of the estate of an intestate), references (however expressed) to any relationship between two persons shall be construed in accordance with Article 155.

(2) For the purposes of sub-paragraph (1) and that Part of that Act, a person whose father and mother were not married to each other at the time of his birth shall be presumed not to have been survived by his father, or by any person related to him only through his father, unless the contrary is shown.

(3) In section 19(1) of that Act (which relates to the construction of documents), the reference to Part II of that Act, or to the foregoing provisions of that Part, shall in relation to an instrument inter vivos made, or a will coming into operation, after the commencement of this paragraph (but not in relation to instruments inter vivos made or wills coming into operation earlier) be construed as including references to this paragraph.

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(4) This paragraph does not affect any rights under the intestacy of a person dying before the commencement of this paragraph.

F29 1955 c. 24 (NI)

Dispositions of property

2.—(1) In the following dispositions, namely—

- (a) dispositions inter vivos made after the commencement of this paragraph; and
- (b) dispositions by will where the will is made after the commencement of this paragraph,

references (whether express or implied) to any relationship between two persons shall be construed in accordance with Article 155.

(2) The use, without more, of the word “heir” or “heirs” or any expression which is used to create an entailed interest in real or personal property does not show a contrary intention for the purposes of Article 155 as applied by sub-paragraph (1).

(3) In relation to the dispositions mentioned in sub-paragraph (1), section 34 of the Trustee Act (Northern Ireland) 1958^{F30} (which specifies the trust implied by a direction that income is to be held on protective trusts for the benefit of any person) shall have effect as if any reference (however expressed) to any relationship between two persons were construed in accordance with Article 155.

(4) Where under any disposition of real or personal property, any interest in such property is limited (whether subject to any preceding limitation or charge or not) in such a way that it would, apart from this paragraph, devolve (as nearly as the law permits) along with a dignity or title of honour, then—

- (a) whether or not the disposition contains an express reference to the dignity or title of honour; and
- (b) whether or not the property or some interest in the property may in some event become severed from it,

nothing in this paragraph shall operate to sever the property or any interest in it from the dignity or title, but the property or interest shall devolve in all respects as if this paragraph had not come into operation.

(5) This paragraph is without prejudice to Article 42 of the Adoption Order (construction of dispositions in cases of adoption).

(6) In this paragraph “disposition” means a disposition, including an oral disposition, of real or personal property whether inter vivos or by will.

(7) Notwithstanding any rule of law, a disposition made by will executed before the date on which this paragraph comes into operation shall not be treated for the purposes of this paragraph as made on or after that date by reason only that the will is confirmed by a codicil executed on or after that date.

F30 1958 c. 23 (NI)

No special protection for trustees and personal representatives

3. Article 6 of the Family Law Reform (Northern Ireland) Order 1977^{F31} (which enables trustees and personal representatives to distribute property without having ascertained that no person whose parents were not married to each other at the time of his birth, or who claims through such a person, is or may be entitled to an interest in the property) shall cease to have effect.

F31 1977 NI 17

Entitlement to grant of probate, etc.

4.—(1) For the purpose of determining the person or persons who would in accordance with rules of court be entitled to a grant of probate or administration in respect of the estate of a deceased person, the deceased shall be presumed, unless the contrary is shown, not to have been survived—

- (a) by any person related to him whose father and mother were not married to each other at the time of his birth; or
- (b) by any person whose relationship with him is deduced through such a person as is mentioned in head (a).

(2) This paragraph does not apply in relation to the estate of a person dying before the commencement of this paragraph.

SCHEDULE 7

Article 164(5).

JURISDICTION

Commencement of proceedings

1.—(1) The Lord Chancellor may^{F32}, after consultation with the Lord Chief Justice,] by order specify proceedings under this Order which may only be commenced in—

- (a) a specified level of court;
- (b) a court which falls within a specified class of court; or
- (c) a particular court determined in accordance with, or specified in, the order.

(2) The Lord Chancellor may^{F32}, after consultation with the Lord Chief Justice,] by order specify circumstances in which specified proceedings under this Order (which might otherwise be commenced elsewhere) may only be commenced in—

- (a) a specified level of court;
- (b) a court which falls within a specified class of court; or
- (c) a particular court determined in accordance with, or specified in, the order.

(3) Sub-paragraphs (1) and (2) shall also apply in relation to proceedings—

- ^{F33}(a) under Article 31B of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (declarations of parentage); or]
- (b) which are to be dealt with in accordance with an order made under Article 42^{F33} of the Child Support (Northern Ireland) Order 1991] (jurisdiction of courts in certain proceedings under that Order).

(4) The Lord Chancellor may^{F32}, after consultation with the Lord Chief Justice,] by order make provision by virtue of which, where specified proceedings with respect to a child under—

- (a) this Order;
- (b) Article 22 (appeals)^{F33} . . . of the Child Support (Northern Ireland) Order 1991; or
- (c) the High Court's inherent jurisdiction with respect to children,

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have been commenced in or transferred to any court (whether or not by virtue of an order under this Schedule), any other specified family proceedings which may affect, or are otherwise connected with, the child may, in specified circumstances, only be commenced in that court.

(5) A class of court specified in an order under this Schedule may be described by reference to a description of proceedings and may include different levels of court.

F32 Words in Sch. 7 para. 1(1)(2)(4) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 101(2); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)

F33 2000 c. 4 (NI)

Transfer of proceedings

2.—(1) The Lord Chancellor may^[F34], after consultation with the Lord Chief Justice,] by order provide that in specified circumstances the whole, or any specified part of, specified proceedings to which this paragraph applies shall be transferred to—

- (a) a specified level of court;
- (b) a court which falls within a specified class of court; or
- (c) a particular court determined in accordance with, or specified in, the order.

(2) Any order under this paragraph may provide for the transfer to be made at any stage, or specified stage, of the proceedings and whether or not the proceedings, or any part of them, have already been transferred.

(3) The proceedings to which this paragraph applies are—

- (a) any proceedings under this Order;
- ^[F35](aa) any proceedings under Article 31B of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989.]
- (b) any proceedings under Article 22 (appeals)^{F35} . . . of the Child Support (Northern Ireland) Order 1991;
- (c) any other proceedings which—
 - (i) are family proceedings for the purposes of this Order, other than proceedings under the inherent jurisdiction of the High Court; and
 - (ii) may affect, or are otherwise connected with, the child concerned.

(4) Proceedings to which this paragraph applies by virtue of sub-paragraph (3)(c) may only be transferred in accordance with the provisions of an order made under this paragraph for the purpose of consolidating them with proceedings under—

- (a) this Order; or
- (b) the High Court's inherent jurisdiction with respect to children.

(5) An order under this paragraph may make such provision as the Lord Chancellor thinks appropriate^[F36], after consultation with the Lord Chief Justice,] for excluding proceedings to which this paragraph applies from the operation of any statutory provision which would otherwise govern the transfer of those proceedings, or any part of them.

F34 Words in Sch. 7 para. 2(1) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 101(3)(a); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)

F35 2000 c. 4 (NI)

F36 Words in Sch. 7 para. 2(5) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 101(3)(b); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)

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Emergency protection orders

3. In such circumstances as the Lord Chancellor may^{F37}, after consultation with the Lord Chief Justice,] by order specify, the jurisdiction of a court of summary jurisdiction to make an emergency protection order may be exercised by a resident magistrate or a member of a juvenile court panel.

F37 Words in Sch. 7 para. 3 inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 101(4); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)

General

4.—(1) For the purposes of this Schedule—

(a) the commencement of proceedings under this Order includes the making of any application under this Order in the course of proceedings (whether or not those proceedings are proceedings under this Order); and

(b) there are three levels of court, that is to say the High Court, a county court and a court of summary jurisdiction.

(2) In this Schedule “specified” means specified by an order made under this Schedule.

(3) Any order under paragraph 1 may make provision as to the effect of commencing proceedings in contravention of any of the provisions of the order.

(4) The Lord Chancellor may^{F38}, after consultation with the Lord Chief Justice] by order specify county courts for the purposes of Article 166(4).

(5) An order under paragraph 2 may make provision as to the effect of a failure to comply with any of the provisions of the order.

(6) An order under this Schedule may—

(a) make such consequential, incidental or transitional provision as the Lord Chancellor considers expedient^{F39}, after consultation with the Lord Chief Justice], including provision amending any other statutory provision so far as it concerns the jurisdiction of any court or person exercising the powers of a court under any statutory provision;

(b) make provision for treating proceedings which are—

(i) in part proceedings of a kind mentioned in head (a) of paragraph 2(3); and

(ii) in part proceedings of a kind mentioned in head (b) of paragraph 2(3),

as consisting entirely of proceedings of one or other of those kinds, for the purposes of the application of any order made under paragraph 2.

(7) Except to the extent that the Lord Chancellor by order otherwise provides^{F40}, after consultation with the Lord Chief Justice], the jurisdiction of any specified county court under this Order shall be exercisable throughout Northern Ireland (and accordingly Article 3(3)(b) of the County Courts (Northern Ireland) Order 1980^{F41} (jurisdiction exercisable throughout county court division) shall not apply).

F38 Words in Sch. 7 para. 4(4) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 101(5)(a); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)

F39 Words in Sch. 7 para. 4(6)(a) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 101(5)(b); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)

F40 Words in Sch. 7 para. 4(7) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 101(5)(c); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)

F41 1980 NI 3

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SCHEDULE 8

Article 184(1).

TRANSITIONALS AND SAVINGS

Pending proceedings, etc.

1.—(1) Subject to sub-paragraphs (2) and (5), nothing in any provision of this Order (other than the repeals mentioned in sub-paragraph (3)) shall affect any proceedings which are pending immediately before the commencement of that provision.

(2) Proceedings in the exercise of the High Court's inherent jurisdiction with respect to children which are pending in relation to a child who has been placed or allowed to remain in the care of the Department or an authority shall not be treated as pending proceedings after the expiration of one year from the commencement of this sub-paragraph if no final order has been made by then in the exercise of the High Court's inherent jurisdiction in respect of the child's care.

(3) The repeals are those of—

- (a) Article 45(3) of the Matrimonial Causes (Northern Ireland) Order 1978^{F42} (declaration by court that party to marriage unfit to have custody of children of family);
- (b) section 12 of the Criminal Law Amendment Act 1885^{F43} (power to divest person of authority over girl in cases of seduction or prostitution);
- (c) section 1(4) of the Punishment of Incest Act 1908^{F44} (power to divest person of authority over girl in cases of incest).

(4) For the purposes of the following provisions of this Schedule, any reference to an order in force immediately before the commencement of a provision of this Order shall be construed as including a reference to an order made after that commencement in proceedings pending before that commencement.

(5) Sub-paragraph (4) is not to be read as making the order in question have effect from a date earlier than that on which it was made.

(6) An order under Article 169(5) (orders for admissibility of hearsay) may make such provision with respect to the application of the order in relation to proceedings which are pending when the order comes into operation as the Lord Chancellor considers appropriate.

F42 1978 NI 15

F43 1885 c. 69

F44 1908 c. 45

2. Where, immediately before the commencement of Part V, there was in force an order under section 94(4) of the Children and Young Persons Act (Northern Ireland) 1968^{F45} (order directing the Department to bring a child or young person before a juvenile court under subsection (1) of that section), the order shall cease to have effect on the commencement of that Part.

F45 1968 c. 34 (NI)

CUSTODY ORDERS, ETC.

Cessation of declarations of unfitness, etc.

3. Where, immediately before the commencement of Parts II and III, there was in force—

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- (a) a declaration under Article 45(3) of the Matrimonial Causes (Northern Ireland) Order 1978^{F46} (declaration by court that party to marriage unfit to have custody of children of family); or
- (b) an order under section 12 of the Criminal Law Amendment Act 1885^{F47} or section 1(4) of the Punishment of Incest Act 1908^{F48} divesting a person of authority over a girl;

the declaration or, as the case may be, the order shall cease to have effect on the commencement of those Parts.

F46 1978 NI 15

F47 1885 c. 69

F48 1908 c. 45

Orders to which paragraphs 5 to 10 apply

- 4.—(1) In paragraphs 5 to 10 “an existing order” means any order which—
- (a) is in force immediately before the commencement of Parts II and III;
 - (b) was made under any statutory provision mentioned in sub-paragraph (2);
 - (c) determines all or any of the following—
 - (i) who is to have custody of a child;
 - (ii) who is to have care and control of a child;
 - (iii) who is to have access to a child;
 - (iv) any matter with respect to a child's education or upbringing; and
 - (d) is not an order of a kind mentioned in paragraph 11(3).
- (2) The statutory provisions are—
- (a) the Domestic Proceedings (Northern Ireland) Order 1980^{F49};
 - (b) the Matrimonial Causes (Northern Ireland) Order 1978;
 - (c) the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945^{F50};
 - (d) the Matrimonial Causes Act (Northern Ireland) 1939^{F51};
 - (e) the Guardianship of Infants Act 1886^{F52}.
- (3) For the purposes of this paragraph and paragraphs 5 to 10 “custody” includes legal custody, joint as well as sole custody, and parental rights and duties retained under an order under Article 10(4) of the Domestic Proceedings (Northern Ireland) Order 1980, but does not include access.

F49 1980 NI 5

F50 1945 c. 14 (NI)

F51 1939 c. 13 (NI)

F52 1886 c. 27

Parental responsibility of parents

- 5.—(1) Where—
- (a) a child's father and mother were married to each other at the time of his birth; and
 - (b) there is an existing order with respect to the child,

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each parent shall have parental responsibility for the child in accordance with Article 5 as modified by sub-paragraph (3).

(2) Where—

- (a) a child's father and mother were not married to each other at the time of his birth; and
- (b) there is an existing order with respect to the child,

Article 5 shall apply as modified by sub-paragraphs (3) and (4).

(3) The modification is that for Article 5(7) there shall be substituted—

“(7) The fact that a person has parental responsibility for a child does not entitle him to act in a way which would be incompatible with any existing order or any order made under this Order with respect to the child.”.

(4) The modifications are that—

- (a) for the purposes of Article 5(2), where the father has custody or care and control of the child by virtue of any existing order, the court shall be deemed to have made (at the commencement of that Article) an order under Article 7(1) giving him parental responsibility for the child; and
- (b) where by virtue of head (a) a court is deemed to have made an order under Article 7(1) in favour of a father who has care and control of a child by virtue of an existing order, the court shall not bring the order under Article 7(1) to an end at any time while he has care and control of the child by virtue of the order.

Persons who are not parents but who have custody or care and control

6.—(1) Where a person who is not the parent or guardian of a child has custody or care and control of him by virtue of an existing order, that person shall have parental responsibility for him so long as he continues to have that custody or care and control by virtue of the order.

(2) Where sub-paragraph (1) applies, Parts II, III and V shall have effect as modified by this paragraph.

(3) The modifications are that—

(a) for Article 5(7) there shall be substituted—

“(7) The fact that a person has parental responsibility for a child does not entitle him to act in a way which would be incompatible with any existing order or with any order made under this Order with respect to the child.”;

(b) at the end of Article 10(4) there shall be inserted—

“(c) any person who has custody or care and control of a child by virtue of any existing order”; and

(c) at the end of Article 53(1)(c) there shall be inserted—

“(cc) where immediately before the care order was made there was an existing order by virtue of which a person had custody or care and control of the child, that person;”

Persons who have care and control

7.—(1) Sub-paragraphs (2) to (6) apply where a person has care and control of a child by virtue of an existing order, but they shall cease to apply when that order ceases to have effect.

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- (2) Article 10 shall have effect as if for paragraph (5)(c)(i) there were substituted—
“(i) in any case where by virtue of an existing order any person or persons has or have care and control of the child, has the consent of that person or each of those persons;”.
- (3) Article 22 shall have effect as if for paragraph (3)(a) there were substituted—
“(a) who has care and control of the child by virtue of an existing order; or”.
- (4) Article 27 shall have effect as if for paragraph (4)(c) there were substituted—
“(c) where the child is in care and immediately before the care order was made there was an existing order by virtue of which a person had care and control of the child, that person.”
- (5) Articles 159 and 160 shall have effect as if—
- (a) for any reference to a residence order in favour of a parent or guardian there were substituted a reference to any existing order by virtue of which the parent or guardian has care and control of the child;
- (b) for Article 159(3) there were substituted—
“(3) Paragraph (1) shall not apply if the existing order referred to in sub-paragraph (b) of that paragraph was one by virtue of which a surviving parent of the child also had care and control of him.”;
- (c) for Article 160(7) there were substituted—
“(7) Paragraph (5) shall not apply if the existing order referred to in sub-paragraph (b) of that paragraph was one by virtue of which a surviving parent also had care and control of him.”.
- (6) In Schedule 1, paragraphs 2(1) and 16(1) shall have effect as if for the words “in whose favour a residence order is in force with respect to the child” there were substituted the words “who has been given care and control of the child by virtue of an existing order”.

Persons who have access

- 8.—**(1) Sub-paragraphs (2) to (4) apply where a person has access by virtue of an existing order.
- (2) Article 10 shall have effect as if after paragraph (5) there were inserted—
“(5A) Any person who has access to a child by virtue of an existing order is entitled to apply for a contact order.”.
- (3) Article 16(2) shall have effect as if after sub-paragraph (b) there were inserted—
“(bb) any person who has access to the child by virtue of an existing order;”.
- (4) Articles 62(11), 63(13) and 65(10) shall have effect as if in each case after sub-paragraph (d) there were inserted—
“(dd) any person who has been given access to him by virtue of an existing order;”.

Enforcement of certain existing orders

9.—(1) Sub-paragraph (2) applies in relation to any existing order which, but for the repeal by this Order of Article 37 of the Domestic Proceedings (Northern Ireland) Order 1980^{F53} (enforcement of custody orders) might have been enforced as if it were an order requiring a person to give up a child to another person.

(2) Where this sub-paragraph applies, the existing order may, after the repeal mentioned in sub-paragraph (1), be enforced under Article 14 as if—

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- (a) any reference to a residence order were a reference to the existing order; and
 - (b) any reference to a person in whose favour the residence order is in force were a reference to a person to whom actual custody of the child is given by an existing order which is in force.
- (3) In sub-paragraph (2) “actual custody”, in relation to a child, means the actual possession of his person.

F53 1980 NI 5

Discharge of existing orders

10.—(1) The making of a residence order or care order with respect to a child who is the subject of an existing order discharges the existing order.

(2) Where the court makes any Article 8 order (other than a residence order) with respect to a child with respect to whom any existing order is in force, the existing order shall have effect subject to the Article 8 order.

- (3) The court may discharge an existing order which is in force with respect to a child—
- (a) in any family proceedings relating to the child or in which any question arises with respect to the child's welfare; or
 - (b) on the application of—
 - (i) any parent or guardian of the child;
 - (ii) the child himself; or
 - (iii) any person named in the order.

(4) A child may not apply for the discharge of an existing order except with the leave of the court.

(5) The power in sub-paragraph (3) to discharge an existing order includes the power to discharge any part of the order.

(6) In considering whether to discharge an order under the power conferred by sub-paragraph (3) the court shall, if the discharge of the order is opposed by any party to the proceedings, have regard in particular to the matters mentioned in Article 3(3).

CHILDREN IN CARE

Children in compulsory care

11.—(1) Sub-paragraph (2) applies where, immediately before the commencement of Part V—

- (a) a person is in the care of the Department or an authority by virtue of any order mentioned in sub-paragraph (3); or
- (b) there is in force a parental rights order under section 104 of the Children and Young Persons Act (Northern Ireland) 1968^{F54} with respect to a person.

(2) Where this sub-paragraph applies, then, on and after the commencement of Part V—

- (a) the order in question shall be deemed to be a care order;
- (b) if the person was in the care of an authority immediately before that commencement, that authority shall be deemed to be the authority designated in that deemed care order, or if the person was in the care of the Department, the authority in whose area he is immediately before that commencement shall be deemed to be the authority designated in that deemed care order; and

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(c) any reference to a child in the care of an authority shall include a reference to a person who is the subject of such a deemed care order,
and the provisions of this Order shall apply accordingly, subject to paragraph 12.

(3) The orders referred to in sub-paragraph (1)(a) are—

- (a) an order committing a person to the care of a fit person under section 66, 74, 95, 96, 97, 143 or 144 of the Children and Young Persons Act (Northern Ireland) 1968;
- (b) an order which by virtue of regulations under section 101 of the Children Act 1989^{F55} has effect as if it were an order under section 95(1)(b) of the Children and Young Persons Act (Northern Ireland) 1968 committing a person to the care of an authority;
- (c) an order under—
 - (i) section 74 of the Social Work (Scotland) Act 1968^{F56};
 - (ii) section 25 of the Children and Young Persons Act 1969^{F57};
- (d) an order under—
 - (i) Article 46 of the Matrimonial Causes (Northern Ireland) Order 1978^{F58};
 - (ii) Article 12 of the Domestic Proceedings (Northern Ireland) Order 1980^{F59};
 - (iii) Article 27(1)(b) of the Adoption Order;
- (e) an order of the High Court in the exercise of its inherent jurisdiction with respect to children.

F54 1968 c. 34 (NI)

F55 1989 c. 41

F56 1968 c. 49

F57 1969 c. 54

F58 1978 NI 15

F59 1980 NI 5

12.—(1) This sub-paragraph applies to a child who has been placed or allowed to remain in the care of the Department or an authority in the exercise of the High Court's inherent jurisdiction and who immediately before the expiration of one year from the commencement of paragraph 1(2) is still in the care of the Department or an authority.

(2) Where in respect of a child to whom sub-paragraph (1) applies proceedings have ceased by virtue of paragraph 1(2) to be treated as pending, paragraph 11(2) shall apply on the expiration of one year from the commencement of paragraph 1(2) as if the child was in care pursuant to an order specified in paragraph 11(3)(e).

(3) Sub-paragraphs (4) and (5) only apply where a child who is the subject of a care order by virtue of paragraph 11(2) is a person falling within sub-paragraph (3)(d) or (e) of that paragraph.

(4) Subject to sub-paragraph (5), where a court, on making the order, or at any time thereafter, gave directions under—

- (a) Article 46(5)(a) of the Matrimonial Causes (Northern Ireland) Order 1978^{F60}; or
- (b) in the exercise of the High Court's inherent jurisdiction with respect to children,

as to the exercise by the Department or an authority of any powers, those directions shall, subject to the provisions of Article 44 and regulations made under that Article, continue to have effect (regardless of any conflicting provision in this Order other than Article 44 or in such regulations) until varied or discharged by a court under this sub-paragraph.

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(5) Where directions referred to in sub-paragraph (4) are to the effect that a child be placed in accommodation provided for the purpose of restricting liberty, then the directions shall cease to have effect upon the expiry of the maximum period specified by regulations under Article 44(3)(a) in relation to children of his description, calculated from the commencement of that Article.

F60 1978 NI 15

Cessation of wardship where child is in care

13.—(1) Where a child who is a ward of court is in the care of the Department or an authority by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children, he shall, on the commencement of Part V, cease to be a ward of court.

(2) Where immediately before the commencement of Part V a child was in the care of the Department or an authority and as a result of an order made in the exercise of the High Court's inherent jurisdiction with respect to children continued to be in the care of the Department or an authority and was made a ward of court, he shall, on the commencement of Part V, cease to be a ward of court.

(3) Sub-paragraphs (1) and (2) do not apply in proceedings which are pending.

Children placed with parent, etc., while in compulsory care

14.—(1) This paragraph applies where a child is deemed by paragraph 11 to be in the care of the Department or an authority under an order which is deemed by that paragraph to be a care order.

(2) If, immediately before the commencement of Part IV, the child was allowed to be under the control of—

- (a) a parent or guardian under section 105(3) or 145(1) of the Children and Young Persons Act (Northern Ireland) 1968,^{F61} or
- (b) a person who, before the child was in the care of the Department or an authority, had care and control of the child by virtue of an order falling within paragraph 4,

on and after that commencement the provision made by and under Article 27(5) shall apply as if the child had been placed with the person in question in accordance with that provision.

F61 1968 c. 34 (NI)

Children in voluntary care

15.—(1) This paragraph applies where, immediately before the commencement of Part IV, a child—

- (a) was in the care of the Department or an authority under section 103 of the Children and Young Persons Act (Northern Ireland) 1968; or
- (b) was deemed by virtue of subsection (7) of that section to have come within the care of the Department or an authority.

(2) Where this paragraph applies, the child shall, after the commencement of Part IV, be treated for the purposes of this Order as a child who is provided with accommodation under Part IV, but he shall cease to be so treated once he ceases to be so accommodated in accordance with the provisions of that Part.

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Boarded out children

16.—(1) Where, immediately before the commencement of Part IV, a child in the care of the Department or an authority—

(a) was—

(i) boarded out with a person under section 114(1)(a) of the Children and Young Persons Act (Northern Ireland) 1968; or

(ii) allowed to be under the control of a person under section 105(3) or 145(1) of that Act; and

(b) the person with whom he was boarded out or, as the case may be, under whose control he was allowed to be was not a person falling within paragraph 14(2)(a) or (b),

after the commencement of that Part, he shall be treated (subject to sub-paragraph (2)) as having been placed with an authority foster parent and shall cease to be so treated when he ceases to be placed with that person in accordance with the provisions of this Order.

(2) Regulations made under Article 27(2)(a) shall not apply in relation to a person who is an authority foster parent by virtue of sub-paragraph (1) before the end of the period of twelve months beginning with the commencement of Part IV and accordingly that person, if the child was boarded out with him as mentioned in sub-paragraph (1)(a)(i), shall for that period be subject to terms and regulations mentioned in section 114(1)(a) of the Children and Young Persons Act (Northern Ireland) 1968 as if that section had not been repealed by this Order.

Children in care to qualify for advice and assistance

17. Any reference in Part IV to a person qualifying for advice and assistance shall be construed as including a reference to a person within the area of the authority in question who is under 21 and who was, at any time after reaching the age of 16 but while still a child a person falling within paragraph 11(1), 15(1) or 30(1).

Emigration of children in care

18. Where the Head of the Department is considering whether to give his consent under section 118 of the Children and Young Persons Act (Northern Ireland) 1968 to arrangements for the emigration of a child in the care of the Department but immediately before the repeal of that section by this Order he has not decided whether to give his consent, that section shall continue to apply (regardless of that repeal) until the Head of the Department has determined whether to give his consent.

Contributions for maintenance of children in care

19.—(1) Where, immediately before the commencement of Part IV, there was in force an order made (or having effect as if made) under any of the provisions mentioned in sub-paragraph (2), then, after the commencement of that Part—

(a) the order shall have effect as if made under Article 41(2) against a person liable to contribute; and

(b) Articles 38 to 43 shall apply to the order, subject to the modifications in sub-paragraph (3).

(2) The provisions referred to in sub-paragraph (1) are—

(a) Article 13(4) of the Domestic Proceedings (Northern Ireland) Order 1980;

(b) Article 27(2) of the Adoption Order;

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(c) section 156 of the Children and Young Persons Act (Northern Ireland) 1968, (provisions empowering the court to make an order requiring a person to make periodical payments to the Department or an authority in respect of a child in care).

(3) The modifications are that in Article 41—

- (a) in paragraph (4), sub#paragraph (a) shall be omitted;
- (b) for paragraph (6) there shall be substituted—

“(6) Where—

- (a) a contribution order is in force;
- (b) the authority serves a contribution notice under Article 40; and
- (c) the contributor and the authority reach an agreement under Article 40(7) in respect of the contribution notice,

the effect of the agreement shall be to discharge the order from the date on which it is agreed that the agreement shall take effect.” ; and

(c) at the end of paragraph (10) there shall be inserted—

“and

- (c) where the order is against a person who is not a parent of the child, shall be made with due regard to—
 - (i) 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;
 - (ii) whether he did so knowing that the child was not his child;
 - (iii) the liability of any other person to maintain the child.” .

Supervision orders

Orders under the 1968 Act

20.—(1) This paragraph applies to any supervision order made under the Children and Young Persons Act (Northern Ireland) 1968—

- (a) which places a child under the supervision of the Department or an authority; and
- (b) which is in force immediately before the commencement of Part V.

(2) On and after the commencement of Part V, the order shall be deemed to be a supervision order made under Article 50 and—

- (a) any requirement of the order that the child reside with a named individual shall continue to have effect while the order remains in force, unless the court otherwise directs;
- (b) any other requirement imposed by the court, or directions given by the supervisor, shall be deemed to have been imposed or given under the appropriate provisions of Schedule 3.

(3) Where, immediately before the commencement of Part V, the order had been in force for a period of more than six months, it shall cease to have effect at the end of the period of six months from the commencement of that Part unless—

- (a) the court directs that it shall cease to have effect at the end of a different period (which shall not exceed three years);

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- (b) it ceases to have effect earlier in accordance with Article 179 (effect and duration of orders, etc.); or
 - (c) it would have ceased to have had effect earlier had this Order not been made.
- (4) Where sub-paragraph (3) applies, paragraph 6 of Schedule 3 shall not apply.
- (5) Where, immediately before the commencement of Part V, the order had been in force for a period of six months or less it shall cease to have effect in accordance with Article 179 (effect and duration of orders, etc.) and paragraph 6 of Schedule 3 unless—
- (a) the court directs that it shall cease to have effect at the end of a different period (which shall not exceed three years); or
 - (b) it would have ceased to have had effect earlier had this Order not been made.
- 21.—**(1) This paragraph applies to any supervision order made under the Children and Young Persons Act (Northern Ireland) 1968—
- (a) which places a child under the supervision of an education and library board; and
 - (b) which is in force immediately before the commencement of Part V.
- (2) On and after the commencement of Part V, the order shall be deemed to be an education supervision order made under Article 55 and—
- (a) any requirement of the order that the child reside with a named individual shall continue to have effect while the order remains in force, unless the court otherwise directs;
 - (b) any other requirement imposed by the court, or directions given by the supervisor, shall be deemed to be directions under Schedule 4.
- (3) Where, immediately before the commencement of Part V, the order had been in force for a period of more than six months, it shall continue to have effect until the end of the period of six months from the commencement of that Part unless—
- (a) the court directs that it shall continue to have effect until a different date (which shall not be later than either the date on which the child ceases to be of compulsory school age or the end of the period of three years from the making of the order);
 - (b) it ceases to have effect earlier in accordance with sub-paragraph (4); or
 - (c) it would have ceased to have effect earlier had this Order not been made.
- (4) The order shall cease to have effect on the making of a care order.
- (5) Where sub-paragraph (3) applies, paragraph 5 of Schedule 4 shall not apply.
- (6) Where, immediately before the commencement of Part V, the order had been in force for a period of six months or less, it shall cease to have effect in accordance with paragraph 5 of Schedule 4 unless—
- (a) the court directs that it shall continue to have effect until a different date (which shall not be later than either the date on which the child ceases to be of compulsory school age or the end of the period of three years from the making of the order);
 - (b) it would have ceased to have effect earlier had this Order not been made.

Other supervision orders

- 22.—**(1) This paragraph applies to any order for the supervision of a child which was in force immediately before the commencement of Part V and was made under—
- (a) Article 47 of the Matrimonial Causes (Northern Ireland) Order 1978^{F62};
 - (b) Article 11 of the Domestic Proceedings (Northern Ireland) Order 1980^{F63};

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(c) Article 27(1)(a) of the Adoption Order.

(2) The order shall not be deemed to be a supervision order made under any provision of this Order but shall nevertheless continue in force for a period of one year from the commencement of Part V unless—

- (a) the court directs that it shall cease to have effect at the end of a lesser period, or
- (b) it would have ceased to have had effect earlier had this Order not been made.

F62 1978 NI 15

F63 1980 NI 5

Place of safety orders

23.—(1) This paragraph applies to—

- (a) any order or warrant authorising the taking or removal of a child to a place of safety which—
 - (i) was made, or issued, under any of the provisions mentioned in sub-paragraph (2); and
 - (ii) was in force immediately before the commencement of Part V; and
- (b) any interim order made under section 101(1) of the Children and Young Persons Act (Northern Ireland) 1968^{F64}.

(2) The provisions referred to in sub-paragraph (1)(a)(i) are—

- (a) section 8 of the Children and Young Persons Act (Northern Ireland) 1968 (children improperly kept);
- (b) section 18(1) of that Act (detention of child in place of safety);
- (c) section 32 of that Act (warrant to search for or remove child);
- (d) Article 35 of the Adoption Order (removal of protected child from unsuitable surroundings).

(3) The order or warrant shall continue to have effect as if this Order were not in operation.

(4) Any statutory provision repealed by this Order shall continue to have effect in relation to the order or warrant so far as is necessary for the purposes of securing that the effect of the order is what it would have been if this Order were not in operation.

(5) Sub-paragraph (4) does not apply to the power to make an interim order or further interim order given by section 101 of the Children and Young Persons Act (Northern Ireland) 1968.

(6) Where, immediately before section 32 or 99 of the Children and Young Persons Act (Northern Ireland) 1968 is wholly or partly repealed by this Order, a child is being detained under the powers granted by that section, he may continue to be detained in accordance with that section.

F64 1968 c. 34 (NI)

Voluntary homes

24.—(1) This paragraph applies to a voluntary home which is registered in the register kept for the purposes of section 127 of the Children and Young Persons Act (Northern Ireland) 1968 by the Department.

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(2) Where a voluntary home to which this paragraph applies is being carried on immediately before the commencement of Part VIII, that home shall be deemed to have been registered under that Part by the authority in whose area the home is situated on the last anniversary of the original registration to fall before the commencement of that Part.

Foster children

25.—(1) This paragraph applies where—

- (a) immediately before the commencement of Part IX, a person is providing a child to whom section 1 of the Children and Young Persons Act (Northern Ireland) 1968 applies with care and maintenance; and
- (b) the circumstances of the case are such that, had Parts IX and X then been in operation, he would have been treated for the purposes of this Order as a child who was being provided with accommodation in a children's home and not as a child who was being privately fostered.

(2) If the child continues to be cared for and maintained as before, Article 95(1) and (3) shall not apply in relation to him if—

- (a) an application for registration of the home in question is made under Article 96 before the end of the period of three months beginning with the day on which Part IX comes into operation; and
- (b) the application has not been refused or, if it has been refused—
 - (i) the period for an appeal against the decision has not expired; or
 - (ii) an appeal against the refusal has been made but has not been determined or abandoned.

(3) While Article 95(1) and (3) do not apply, the child shall be treated as a privately fostered child for the purposes of Part X.

Child minders

26.—(1) Sub-paragraph (2) applies where, immediately before the commencement of Part XI, any premises are registered under section 11 of the Children and Young Persons Act (Northern Ireland) 1968 (registration of premises of child minders).

(2) During the transitional period, the provisions of that Act shall continue to have effect with respect to those premises to the exclusion of Part XI.

(3) Nothing in sub-paragraph (2) shall prevent an authority from registering any person under Part XI with respect to the premises.

(4) In this paragraph “the transitional period” means the period ending with—

- (a) the first anniversary of the commencement of Part XI; or
- (b) if earlier, the date on which an authority registers any person under Part XI with respect to the premises.

Guardians

Existing guardians to be guardians under this Order

27.—(1) Any appointment of a person as guardian for a child which—

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- (a) was made—
 - (i) under section 3 or 6 of the Guardianship of Infants Act 1886^{F65};
 - (ii) under section 12 of the Criminal Law Amendment Act 1885^{F66};
 - (iii) section 6 of the Tenures Abolition Act (Ireland) 1662^{F67}; or
 - (iv) under the High Court's inherent jurisdiction with respect to children; and
- (b) has taken effect before the commencement of Part XV,

shall (subject to sub-paragraph (2)) be deemed, after the commencement of that Part, to be an appointment made and having effect under Article 159 or 160 as the case may be.

(2) Where an appointment of a person as guardian of a child has effect under that Part by virtue of sub-paragraph (1)(a)(ii), the appointment shall not have effect for a period which is longer than any period directed by the court.

F65	1886 c. 27
F66	1885 c. 69
F67	1662 c. 19

Appointment of guardian not yet in effect

- 28.** Any appointment of a person to be a guardian of a child—
- (a) which was made as mentioned in paragraph 27(1)(a)(i) or (iii); but
 - (b) which, immediately before the commencement of Part XV, had not taken effect,
- shall take effect in accordance with that Part (as modified, where it applies, by paragraph 7(5)).

Children accommodated in certain establishments

29. In calculating, for the purposes of Article 174(1)(a) or (2)(a) or Article 175(1)(a) or 177(1)(a) the period of time for which a child has been accommodated any part of that period which fell before commencement of that Article shall be disregarded.

Training school orders

30.—(1) This paragraph applies where, immediately before the commencement of Part V, a person was under the care of the managers of a training school by virtue of a training school order under section 95, 108(a) or 143(6)(b) of the Children and Young Persons Act (Northern Ireland) 1968.

(2) If, on the commencement of Part V, the person has reached the age of 18, the training school order shall cease to have effect.

(3) If, on the commencement of Part V, the person has not reached the age of 18, then, on and after the commencement of that Part—

- (a) the training school order shall be deemed to be a care order;
- (b) the authority in whose area the person is ordinarily resident shall be deemed to be the authority designated in that deemed care order; and
- (c) any reference to a child in the care of an authority shall include a reference to a person who is the subject of such a deemed care order,

and the provisions of this Order shall apply accordingly, subject to sub-paragraphs (4) and (5).

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(4) The deemed care order shall not continue to have effect beyond the date on which the training school order would have ceased to have effect by virtue of section 87(1) of the Children and Young Persons Act (Northern Ireland) 1968.

(5) Before the expiration of the period of six months beginning with the commencement of Part V, the authority referred to in sub-paragraph (3)(b) shall review the case of any person in relation to whom it is the authority designated in the deemed care order in accordance with Article 45 (reviews where child is looked after by an authority).

Miscellaneous

Marriage consents

31.—(1) In the circumstances mentioned in sub-paragraph (2), section 1 of, and the Schedule to, the Marriages Act (Northern Ireland) 1954^{F68} (consent to marriage of minors) shall continue to have effect regardless of the amendments and repeals of provisions of that Act contained in Schedules 9 and 10.

(2) The circumstances are that—

- (a) immediately before the commencement of paragraph 10 of Schedule 9 there is in force—
 - (i) an existing order, as defined in paragraph 4(1); or
 - (ii) an order of a kind mentioned in paragraph 11(1)(b) or (3); and
- (b) section 1 of, and the Schedule to, the Marriages Act (Northern Ireland) 1954 would, but for this Order, have applied to the marriage of the child who is the subject of the order.

F68 1954 c. 21 (NI)

Affiliation orders, etc.

32.—(1) This paragraph applies to the following orders—

- (a) any affiliation order in force immediately before the commencement of Article 158;
- (b) any order which is enforceable in like manner as an affiliation order and is in force immediately before the commencement of Article 158;
- (c) any order made in relation to an order described in head (a) or (b).

(2) The repeal by this Order of any statutory provision relating to affiliation orders shall not affect any order to which this paragraph applies.

(3) Where—

- (a) an application is made to the High Court or a county court for an order under paragraph 2 of Schedule 1 in respect of a child whose parents were not married to each other at the time of his birth; and
- (b) an affiliation order providing for periodical payments is in force in respect of the child by virtue of this Schedule,

the court may direct that the affiliation order shall cease to have effect on such date as may be specified in the direction.

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Property rights where parents not married to each other

33.—(1) In this paragraph “the 1977 Order” means the Family Law Reform (Northern Ireland) Order 1977^{F69}.

(2) The repeal by this Order of Article 3 of the 1977 Order (rights on intestacy) shall not affect any rights arising under the intestacy of a person who dies before the repeal comes into operation.

(3) The repeal by this Order of Article 4 of the 1977 Order (presumption in dispositions of property) shall not affect, or affect the operation of section 3 of the Legitimacy Act (Northern Ireland) 1928^{F70} or section 34 of the Trustee Act (Northern Ireland) 1958^{F71} in relation to—

- (a) any disposition inter vivos made before the date on which the repeal comes into operation; or
- (b) any disposition by will executed before that date.

(4) The repeal by this Order of Article 6 of the 1977 Order shall not affect the liability of trustees or personal representatives in respect of any conveyance or distribution made before the repeal comes into operation.

F69 1977 NI 17
F70 1928 c. 5 (NI)
F71 1958 c. 23 (NI)

Attendance of child before court

34. Section 170 of the Children and Young Persons Act (Northern Ireland) 1968 (power to enforce attendance of child before court) shall apply in relation to any provision of that Act repealed by this Order as if this Order had not been made.

Para.35 rep. by SI 1998/2857

Saving for certain amendments of 1968 Act

36. Notwithstanding the repeal by this Order of Part I of Schedule 16 to the Health and Personal Social Services (Northern Ireland) Order 1972^{F72}, the Children and Young Persons Act (Northern Ireland) 1968 shall continue to have effect subject to the amendments made by paragraphs 2, 4, 7 and 13 of that Schedule.

F72 1972 NI 14

Schedule 9—Amendments

Schedule 10—Repeals

Status:

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