

THE LAW COMMISSION
(Law Com. No. 157)

FAMILY LAW

ILLEGITIMACY
(Second Report)

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The Law Commission was set up by Section 1 of the Law Commissions Act 1965 for the purpose of promoting reform of the law.

The Law Commissioners are-

The Honourable Mr. Justice Beldam, Chairman

Mr. Trevor M. Aldridge

Mr. Brian J. Davenport, Q.C.

Professor Julian Farrand

Professor Brenda Hoggett

The Secretary of the Law Commission is Mr. J.G.H. Gasson and its offices are at Conquest House, 37-38 John Street, Theobalds Road, London WC1N 2BQ.

ILLEGITIMACY

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THE LAW COMMISSION

FAMILY LAW

ILLEGITIMACY

(Second Report)

← [To the Right Honourable the Lord Hailsham of

St. Marylebone, C.H., Lord High Chancellor of Great Britain

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PART I

INTRODUCTION

1.1 In August 1982 we submitted our Report on Illegitimacy¹ to you as part of our family law programme.² Since then the Government has indicated its intention to implement that Report as soon as there is Parliamentary time available for the necessary legislation.³ In 1984 the Scottish Law Commission published their Report on Illegitimacy⁴ and Parliament has implemented that Report in the Law Reform (Parent and Child) (Scotland) Act 1986. The policy underlying the recommendations of each Report is identical: to the greatest extent possible, the legal position of a child born to unmarried parents should be the same as that of one born to married parents, but as between the parents themselves, the mother alone should have parental rights and duties although

¹ Law Com. No. 118.

² Second Programme of Law Reform (1968) Law Com. No. 14, Item XIX: Family Law: "a comprehensive examination of family law ... with a view to its systematic reform and eventual codification."

³ See, for example, Hansard (H.C.) vol. 98, written answers, col. 596.

⁴ Scot. Law Com. No. 82

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the father should be able to acquire these by legal process.⁵ However, the Scottish Act has approached the task of translating these principles into legislative form in an entirely different way from that of the draft Bill attached to our earlier Report (which we shall call "the Report Bill"). Having been asked to look at the matter again, we see significant advantages in the Scottish approach and we also consider that, so far as our different systems of law will allow, there should be consistency on such an important subject. Accordingly, we have concluded that the Bill should be recast in the form annexed to this Report. We have also taken the opportunity to propose a number of minor changes of detail, which we think would go further towards implementing the basic policy of eliminating discrimination.

⁵ Law Com. No. 118, para. 7.26; Scot. Law Com. No. 82, paras. 2.3 - 2.5.

PART II

THE NEW APPROACH

2.1 Despite the basic policy of our earlier Report, there will continue to be a few areas in which there are legal differences between people whose parents have married and those whose parents have not. Accordingly, it will still be necessary to ascribe some people to one category and some to the other. Hence the Legitimacy Act 1976,¹ which modified the common law on legitimacy and provides for legitimation by subsequent marriage, is to be retained, although the time could well come when the differences, as far as the children are concerned, are so small as to make this unnecessary. Should our Reports be implemented, as the Scottish Law Commission have observed, "it would be a matter for argument whether it was any longer justifiable to refer to a legal status of illegitimacy ... Whether minor differences in the rules applying to different classes of persons justify the ascription of a distinct status is a matter for commentators rather than legislators".² In any event, the important differences will not be between the children at all, but between their parents.

2.2 Hitherto, however, English law has generally used adjectives to describe the child rather than his parents. Hence, to avoid the connotations of unlawfulness and illegality which are implicit in the term "illegitimate" our

¹ Which consolidated the Legitimacy Acts of 1926 and 1959.

² Scot. Law Com. No. 82, para. 9.3.

earlier Report recommended replacing it wherever possible with the term "non-marital" and, accordingly, "legitimate" with "marital".³ That policy was followed in the Report Bill. The Scottish Law Commission took a rather different view. They argued that labels of any kind applied to the child are unnecessary, given that in future "it should rarely be necessary to discriminate", and also undesirable, because they would "inevitably take on old connotations".⁴ Instead, they recommended that "future legislation distinguish, where distinctions based on marriage are necessary, between fathers rather than between children" and that "where it is thought necessary to distinguish between people on the basis of whether or not their parents were married to each other at any relevant time ... this should be done expressly in those terms".⁵ Parliament has now endorsed that approach in the Law Reform (Parent and Child) (Scotland) Act 1986.

2.3 Having considered these arguments, we are convinced that the Scottish approach is the better means of carrying the policy of non-discrimination into legislative form. We also think that it would be most unfortunate if the Statute Book were to contain two Acts on the same subject which differed so substantially. Nevertheless, because of the way in which the existing English legislation is cast, it has inevitably been a major task to recast the draft Bill in accordance with the

³ Law Com. No. 118, para. 4.51.

⁴ Scot. Law Com. No. 82, para. 9.2.

⁵ Ibid.

Scottish approach. The draft Bill annexed to this Report⁶ is (with a few changes which we shall explain shortly) to exactly the same effect as the Report Bill but looks very different. So that readers can easily trace their way back into the Report Bill and, more importantly, into the recommendations in our earlier Report we have included a table of derivations.⁷

2.4 One important feature of the new draft Bill is clause 1: this lays down a new rule of construction that references to relationships (for example, between parent and child or brother and sister or uncle and nephew) are to be construed, unless a contrary intention appears, without regard to whether or not any person's mother and father were married to each other at any particular time. This rule is applied to all future enactments and instruments.⁸ In other clauses it is specifically adopted in respect of existing enactments relating to the allocation of parental rights and duties,⁹ succession on intestacy¹⁰ and dispositions of property.¹¹ It will thus be quite clear that, for example, in any proceedings relating to a child's custody or upbringing, the guiding consideration is the welfare of the child rather than the claims of either parent.¹² This approach enables the draft Bill to achieve the legislative changes needed to implement the basic policy without using adjectives which describe the child. In addition, however, clause 1 lays down an important rule for the future: henceforth, it will be unnecessary to use such adjectives in order to encompass the children of unmarried parents or those claiming through them.

⁶ Appendix A.

⁷ Appendix B.

⁸ Clause 1(1).

⁹ Clause 2.

¹⁰ Clause 18.

¹¹ Clause 19.

¹² It is, therefore, not necessary to reproduce Clause 2 of the Report Bill.

as such people will be covered unless a contrary intention is shown. Where it is desired to limit a provision to particular types of relationship it will be necessary to do so expressly.

2.5 Where such distinctions are thought necessary, whether now or in the future, the Bill also contains a provision designed to make them easier to draw without the use of labels attached to the child. The Scottish Law Commission recommended that such distinctions should be expressly in terms of whether or not a person's parents were married to each other. Owing to the complexity of the English law of legitimacy and legitimation, however, it is necessary to provide a little more detail. This is done by clause 1(2), which defines references to a person's parents being or not being married at the time of his birth in the same terms as "marital" and "non-marital" were defined in the Report Bill,¹³ and by clause 1(3), which expands such references to the time of birth to include any time from conception to birth.

2.6 We also consider that it would be desirable to apply the new rule of construction to those existing enactments in which it is at present expressly provided that illegitimate relationships should be treated in the same way as legitimate. This would enable the term "illegitimate" to be removed from much of the statute book and we attach some importance to this. The detailed task of making the appropriate amendments to ensure that the effect of each of these widely differing

¹³ Clause 37 of the Report Bill.

provisions¹⁴ remains unchanged is one which we think suitable for delegated legislation. Clause 30 of the new Bill therefore confers an order-making power upon the Lord Chancellor for this purpose; alternatively, however, a long list of appropriate amendments could be scheduled to the Bill in due course.

¹⁴ For example, section 113(2)(d) of the Housing Act 1985 and section 19(2)(b) of the Registered Homes Act 1984: "an illegitimate [child] [person] shall be treated as the legitimate child of his mother and reputed father."

PART III

MINOR POLICY CHANGES

Parental Rights and Duties of the Father (Clause 4)

3.1 At present, an unmarried father may be granted legal custody of his child, but he cannot share that custody with the mother.¹ The Report Bill provided that a court could grant him the full legal status of parenthood, that is all the parental rights and duties, usually sharing these with the mother in the same way that married parents do.² It was thought that such an order would normally be sought where the mother and father were living together and both wanted it, or where the mother had died without appointing the father testamentary guardian (although in that case he may at present apply to be made guardian), or where the parents had separated and he wanted full parental status rather than simply legal custody.³ However, in providing that the father should share that status with the mother "unless otherwise directed," the Report Bill incidentally gave the court the unprecedented power to remove all the mother's parental authority. We think that this result was unintentional and could be undesirable. The Report Bill also allowed the court to confer on the father any one or more of the elements of parental authority. We also consider that this would be undesirable, particularly in conjunction with the power to remove that element of parental authority from the mother. This would be to invite the

¹ Sections 9(1) and 11A(1) of the Guardianship of Minors Act 1971.

² Clause 4 of the Report Bill.

³ Law Com. No. 118, para. 7.29.

mischief, now judicially frowned upon,⁴ of the so-called "split order" under which one party has the burden of actually caring for the child, while the other is entitled to dictate upon such matters as education, religion, major medical treatment or the like.

3.2 The new clause 4 avoids these difficulties by permitting the court to order that the father shall have all parental authority, sharing it with the mother. Such an order will place him in essentially the same position as a married father. Once the father has acquired full parental status in this way, disputes between the parents will usually be dealt with in the same way as disputes between married parents, either by orders under the Guardianship Act 1973 relating to single issues⁵ or by custody and access orders under the Guardianship of Minors Act 1971. If it is necessary to provide for either parent to retain particular rights and duties apart from actual custody after they have separated, this can be done by a combination of orders under sections 9 and 11A(1) of the 1971 Act. We do not think it right to make provision for the father to apply for authority over individual matters of upbringing where he has not shouldered the whole legal responsibility for the child in the same way that a married father does.

⁴ Dipper v. Dipper [1981] Fam. 31, 45 per Ormrod L.J. and Caffell v. Caffell [1984] F.L.R. 169, 171 per Ormrod L.J.

⁵ Section 1(3).

3.3 There is one respect in which the position of a father who has been granted all the parental rights and duties by means of an order under clause 4 of the draft Bill will differ from that of a married father, in that the court will have power to revoke the order.⁶ This was provided for in our earlier Report and, in the present state of the law relating to family responsibilities, we consider that it should be retained. We recognise that, owing to the widely varying extent to which unmarried fathers in fact assume responsibility towards their children (and indeed towards the mothers who bring those children up), it would not be in the best interests of the children if fathers were automatically to enjoy full parental status.⁷ Where the parents are in fact living together and co-operating in bringing up their children, we hope that such orders will frequently be applied for and granted. However, unless the courts are able to remove parental powers where it subsequently proves not to be in the child's best interests for the father to have them, the courts may be reluctant to make such orders at all. A court will necessarily have to have regard to the extent to which it will be able to protect the child's interests should the need arise in the future and under the present law the powers of the divorce courts in relation to married couples⁸ are somewhat more extensive than those under the Guardianship of Minors Acts. The time may come when the general framework of the law relating to the responsibilities of parents, not only towards their children but also towards one another, is such that this can be reconsidered; but for the time being we consider that the power to revoke these orders, in what we hope will be exceptional circumstances, should be available.

⁶ Clause 4(3); see clause 4 of the Report Bill and new s.8(4) of the 1971 Act.

⁷ See Law Com. No. 118, paras. 4.25-4.26.

⁸ Matrimonial Causes Act 1973, s.42; see also Working Paper No.96, Review of Child Law: Custody (1986), especially Part II, for full discussion.

Agreement to Adoption etc. (Clauses 5, 6 and 7)

3.4 The Report Bill provided that the father's agreement to the child's adoption or freeing for adoption would be required, not only where he had full parental status or, as at present, custody by court order but also where he had a right of access only.⁹ Furthermore, before freeing the child for adoption, a court would have to be satisfied that the father did not intend to apply for any of these orders or that if he did so apply the application would be likely to be refused.¹⁰ Our earlier Report recognised that the arguments for and against including a mere right of access were finely balanced. On the one hand, "such an order clearly suggests that the court believed that a link between father and child should be recognised and fostered".¹¹ On the other hand, a father with access can be heard on the merits of the adoption order in any event.¹² A court which considers that it is in the best interests of the child for the father to continue to have the right of access can always refuse the order, whereas if his agreement is required that agreement may only be dispensed with in defined and limited circumstances in which the interests of the child are not the first and paramount

⁹ Clause 17(1) of the Report Bill.

¹⁰ Clause 17(2) of the Report Bill.

¹¹ Law Com. No. 118, para. 9.11.

¹² Adoption Rules 1984 (S.I. 1984 No. 265) rr.4(2), 9, 10, 15(2), 21 and 23; Magistrates' Courts (Adoption) Rules 1984 (S.I. 1984 No. 611), rr. 4(2), 9, 10, 15(2), 21 and 23.

consideration.¹³ We now consider that a right to access, which may be very limited and may or may not be being exercised, is too flimsy a basis on which to give the father rights which may not be in the best interests of the child. This argument applies with even more force where the court is contemplating freeing the child for adoption before the father has made any application to the court at all.

3.5 On the other hand, the Report Bill would only have given such rights to a father whose parental authority stemmed from an order under what is now clause 4 of the new draft Bill or under the Guardianship of Minors Act 1971. However, it is possible for the father to be granted custodial rights under other legislation, for example in divorce proceedings between the mother and her spouse.¹⁴ We consider that all fathers who have a right to custody, legal or actual custody, or care and control under any court order should be in the same position and clause 7 of the new draft Bill provides for this.

3.6 The same reasoning applies to the other additional powers which are acquired by a father with custodial rights. Thus, a father who has a right to custody, legal or actual custody or care and control under a court order, as well as a father who has full parental status, by virtue of an order under clause 4 of the new Bill, will (i) be able to apply to the court under section 1(3) of the Guardianship Act 1973 to

¹³ Children Act 1975, s.12(2); see also Re W. (An Infant) [1971] A.C. 682.

¹⁴ Matrimonial Causes Act 1973, s.42.

resolve any disagreement with the mother;¹⁵ (ii) become guardian upon the death of the mother under section 3 of the Guardianship of Minors Act 1971; and (iii) have power to appoint a testamentary guardian to act after his own death under section 4 of the 1971 Act.¹⁶ Provisions to this effect are now contained in clauses 5 and 6 of the new Bill.

Heirs (Clause 19)

3.7 The basic policy of both this and our earlier Report means that, unless the contrary intention appears, birth outside marriage should be irrelevant in tracing relationships for the purposes of all dispositions of property. Our earlier Report concluded that this should apply where the word "heir" is used as one of limitation in creating an entail;¹⁷ however, where the word is used as a word of purchase (as for example, in "£4,000 to my heir") it should be an open question for the court to decide whether it does or does not include

¹⁵ At present there is no such machinery apart from wardship.

¹⁶ A father acquires these rights under the present law if he has legal custody at the time of death: Guardianship of Minors Act 1971, s.14(3).

¹⁷ Law Com. No. 118, paras. 8.23 - 8.25.

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people claiming through such a link.¹⁸ Since then, it has been represented to us that it is inconsistent to have a rebuttable presumption of inclusion for entails, while leaving the matter simply as one of construction where the word "heir" is otherwise used. Of course, the word may be used in such a way that no reference to any relationship is intended (as, for example, in "John Smith shall be my heir"). However, where the term clearly does denote or imply a relationship we now think that it should be construed in accordance with the general principle and clause 19(2) achieves that result.

Protection of Trustees and Personal Representatives

(Clause 20)

3.8 The basic policy, that birth outside marriage should be irrelevant, applies both to intestate succession and to the construction of dispositions of property unless a contrary intention appeared. This extends the categories of people who may be able to claim through an "illegitimate link".¹⁹ Our earlier Report recommended a corresponding extension of the protection now given to trustees and personal representatives by section 17 of the Family Law Reform Act 1969, so that they might convey and distribute property without having ascertained that there is no relative who might have a claim by virtue of an "illegitimate link" and would be under "no liability to any such person of whose claim they did not have

¹⁸ Law Com. No. 118, paras. 8.19 - 8.22.

¹⁹ Law Com. No. 118, paras. 8.7-8.25.

notice at the time of the conveyance or distribution".²⁰ The continued discrimination involved in that recommendation is clearly contrary to the basic policy of the Report and we have therefore re-considered it. The original reasoning was that the protection "is necessary to avoid the onerous burden that might otherwise be placed on personal representatives to make difficult (and embarrassing) enquiries....".²¹ On reconsideration, however, we see several persuasive arguments against accepting this reasoning as conclusive.

3.9 In the first place, it may be no more onerous to ascertain whether there is anyone entitled through an "illegitimate link" than it is to ascertain other matters under the general duty to distribute the estate to the right beneficiaries. For example, where a deceased lived or travelled extensively abroad in the course of his life it may be difficult to establish that he did not somewhere contract a valid marriage of which there are issue who are entitled to share in his estate. There may also be doubt about whether the property should be distributed under an intestacy or whether there is an undiscovered will, or, if there is a will, whether it has been overtaken by a later one.

²⁰ Law Com. No. 118, para. 8.29. See also House of Commons Standing Committee B, 29 April 1969, Col. 136.

²¹ Law Com. No. 118, para. 8.29. The Report of The Committee on The Law of Succession in Relation to Illegitimate Persons (1966), Cmnd. 3501 had considered special protection to be necessary.

3.10 In the second place, we consider that the existing protection for personal representatives and trustees, if it is sufficient to cover other difficulties arising in distributing the estate, is also sufficient for this purpose. The principal protection is section 27 of the Trustee Act 1925, under which a trustee or personal representative may advertise for claims; he is then exempt from liability to all claimants except those of whose claim he has notice.²² This was originally thought to be insufficient because "not all personal representatives do advertise (particularly since the expense may, in the case of small estates, be disproportionately heavy)".²³ However, if this point is valid at all, it is equally valid in respect of the many other difficulties and uncertainties against which advertising can provide protection and in respect of which there is no equivalent to section 17 of the 1969 Act. We understand that advertising in the London Gazette and in a local newspaper currently costs about £80. In the case of estates which are small, the liability of the personal representative would be correspondingly small and it should be for the representative to judge, in this as in other matters, whether the expenditure is disproportionate to the risk. We understand that professional personal representatives, such as solicitors and banks, almost invariably advertise, thus making any further protection unnecessary. We also understand that when consulted solicitors generally advise personal representatives to do likewise unless the sum is very small or the personal representative is the sole beneficiary. Repealing section 17 would not affect that situation. It must be that some

²² It is not clear whether notice here means actual or constructive notice.

²³ Law Com. No. 118, para. 8.29, n.69.

unqualified or non-professional personal representatives do not advertise at present and might be affected by a repeal of the section. However, they are also at risk in other respects by failing to advertise and we no longer see any sufficient justification for singling out these particular claims as requiring special measures. The court also has power to relieve a personal representative of liability where he has "acted honestly and reasonably, and ought fairly to be excused ...";²⁴ although the relief is discretionary it appears that it has been more readily granted to those acting without payment than it is to professional trustees.²⁵

3.11 It is important to remember that the advertisements concerned are simply for claims generally and thus carry no implication which might be regarded as embarrassing. In any event, embarrassment may well be thought an insufficient reason for the discrimination involved in the present protection. Where there is some reason to suspect that there might be an "illegitimate link" a conscientious personal representative or trustee would normally make enquiries, however embarrassing, if only to be sure that he will not be exposing the other beneficiaries to a later action against them. Moreover, to compromise the prospects of a person realising his rights through an "illegitimate link" in order to save embarrassment might seem to mark and encourage the

²⁴ Trustee Act 1925, s.61.

²⁵ See, for example, National Trustee Co. of Australasia v. General Finance Co. of Australasia [1905] A.C. 373; Re Waterman's Will Trusts [1952] 2 All ER. 1054 and Re Pauling's Settlement Trusts [1964] Ch.303.

very sense of stigma that the Bill is otherwise seeking to remove.

3.12 Finally, it may not be in the interests of the other beneficiaries that the personal representative's duty to distribute the estate to the right beneficiaries should remain qualified in this way. A person claiming through an "illegitimate link" will still be entitled to trace the assets into their hands, and they might have understandable reason to complain if reasonable enquiries before distribution would have disclosed his existence.

3.13 Accordingly we now conclude that there is no adequate justification for perpetuating this particular form of discrimination and recommend that section 17 of the 1969 Act be repealed. Clause 20 of the new Bill so provides.

Determination of Relationships (Clauses 22 and 23)

3.14 Our earlier Report and Bill made provision for any person to apply for a declaration of his parentage.²⁶ Subsequently, we published our Report on Declarations in Family Matters,²⁷ designed to modernise the law relating to the existing declarations of marital status, legitimacy or legitimation. That Report is shortly to be implemented by Part III of the Family Law Bill 1986. Should our Report on Illegitimacy also be implemented, such need as there is for separate declarations of legitimacy and legitimation will be

²⁶ Law Com. No. 116, paras. 10.13 - 10.14; and clause 27.

²⁷ Law. Com. No. 132 (1984).

yet further reduced.²⁸ In most cases, a declaration of parentage coupled with a declaration (where necessary) that those parents were married to one another at a relevant time, will be sufficient.²⁹ However, it may be necessary to retain these special declarations to meet some very exceptional cases.³⁰ If such declarations are to remain, we think that all should be subject to the same rules, for example as to jurisdiction³¹ and effect.³² Furthermore, it would not be right that those children of unmarried parents who are obliged to seek a declaration of parentage should be subject to a more limited or onerous regime³³ than those who are able to apply for declarations of legitimacy or legitimation when the essential issue is the same. Hence we recommend that declarations of parentage be assimilated to and integrated with the scheme for declarations of legitimacy and

²⁸ In 1984 only 156 declarations were made under section 45 of the Matrimonial Causes Act 1973 (Judicial Statistics Annual Report 1984 (1985) Cmnd. 9599, Table 4.9) and in 1985 only 39 declarations were made (figures supplied by the Lord Chancellor's Department Statistics Branch). These figures relate to all the declarations available under section 45: thus the actual numbers of declarations of legitimacy or legitimation may be even smaller (these figures are not available).

²⁹ See, for example, The Ampthill Peerage [1977] A.C. 547 and Veasey v. Veasey (1981) 11 Fam. Law 249:

³⁰ For example, in cases where the status of legitimacy (or otherwise) under some foreign law is relevant, as in the Canadian case Re MacDonald (1964) 44 D.L.R. (2d.) 206.

³¹ C.f. Law Com. No. 118, para. 10.21 and Law Com. No. 132, para. 3.49.

³² C.f. Law Com. No. 118, paras. 10.37-10.39 and Law Com. No. 132, para. 3.42

³³ Law Com. No. 118, paras. 10.6-10.27.

legitimation which is about to be enacted³⁴ and clause 22 of the new Bill so provides.

3.15 Our earlier Report and Bill also provided for the extension of the court's power to direct the use of blood tests in applications for a declaration of parentage, so that these might be used to ascertain whether a particular person is or is not the father or mother of the applicant.³⁵ Such powers would clearly be an improvement on the present provision in section 20 of the Family Law Reform Act 1969, under which blood tests may only be directed to show whether or not a party is excluded from being the father. Accordingly, we now recommend that they be extended to all three declarations and indeed to any other civil proceedings in which the parentage of any person falls to be determined. Clause 23 of the new Bill provides for this by amendment to the 1969 Act.

3.16 That clause does not, however, include the proposal in our earlier Report that the court in proceedings for a declaration of parentage should have power to dismiss an application if any person named in a blood test direction fails to take a step required for the purpose.³⁶ That power would have been in addition to the court's existing powers to draw such inferences as seem proper from a refusal by a person

³⁴ Family Law Bill 1966, clause 56.

³⁵ Law Com. No. 118, paras. 10.28-10.31.

³⁶ Law Com. No. 118, para. 10.31 and clause 29(4) of the Report Bill.

to comply with a blood test direction³⁷ and to dismiss an application by a person who relies on the presumption of legitimacy if he fails so to comply.³⁸ Furthermore, in proceedings for a declaration of parentage, legitimacy or legitimation, it will be expressly required that the truth of the proposition to be declared be proved to the satisfaction of the court.³⁹ In assimilating the 1986 Bill and the Report's recommendations we have had to reconsider the matter. We now consider that there can be no risk that a court which is not so satisfied will feel obliged to grant a declaration of parentage, merely because such evidence as there is points to a particular person being the parent but a blood test has been refused (presumably because it is to the advantage of both that the applicant be shown to be the child of the alleged father). Accordingly, there seems no good reason in this, as in any other case, to single out declarations of parentage for special and more restrictive rules.

Proof of Paternity

3.17 The Report Bill contains a number of other provisions which require that, where paternity is relevant, it must be

³⁷ Family Law Reform Act 1969, s.23(1).

³⁸ Family Law Reform Act 1969, s.23(2).

³⁹ Family Law Bill 1986, clause 58.

proved to the satisfaction of the court.⁴⁰ The reasons given in the Report for such a provision relate to declarations of parentage,⁴¹ where there may indeed be concern about collusive actions in which the only evidence points to a particular person as the parent but where the court considers this insufficient to justify a declaration. It is, as we have already seen, the general rule in such proceedings that matters be proved to the courts' satisfaction and we remain of the view that it should be so. Similar requirements occur elsewhere in the law where the matters in question may not be disputed but should be clearly demonstrated in order to justify the relief claimed.⁴² However, we doubt whether it is necessary to make special provision for any other case.

3.18 It is not entirely clear what the effect of such a provision will be upon the standard of proof, but if there is an invariable and significant difference between the usual standard of proof upon the balance of probabilities and proof to the satisfaction of the court, the results could be unacceptable. Since 1969 the standard of proof used in rebutting the presumption of legitimacy is the balance of

⁴⁰ Clauses 11, 14(4), 21(b), 22(2) and 23(2) of the Report Bill.

⁴¹ Law Com. No. 118, paras. 10.10, 10.12 and 10.22

⁴² See, for example, Matrimonial Causes Act 1973, s.1(g) and (4), relating to divorce.

probabilities.⁴³ It cannot be right that, as a matter of law, the standard of proof required to show that a particular man is not the father is necessarily less than the standard of proof required to show that he is. As a matter of evidence, it may be easier to show the one than the other, although with the advent of modern blood testing it is often possible to prove a likelihood of paternity to a degree of probability far higher than is possible for many other facts which may be in issue in litigation. The courts will also bear in mind, in appropriate cases, the general principle that the degree of proof should be commensurate with the gravity of the subject matter in dispute.

3.19 We therefore think that it would be unsatisfactory if some special standard of proof were automatically to prevent a child being granted access to or financial support from a man who, after fully fought proceedings, was shown on a balance of probabilities to be the father. Such a special provision might be seen as unnecessarily marking out the issue of paternity amongst the many issues faced by the courts in civil proceedings and as such contrary to the general principle of eliminating unnecessary discrimination in the law. Accordingly, except in relation to declarations, the new Bill does not include express requirements that paternity should be established to the court's satisfaction.

⁴³ Family Law Reform Act 1969, s.20.

Artificial Insemination (Clause 27)

3.20 Our earlier Report recommended that a child conceived through artificial insemination from a donor other than the mother's husband should be treated as the husband's child unless he did not consent to the insemination.⁴⁴ Provision for this is repeated in clause 27 of the new Bill. Since then, the Committee of Enquiry into Human Fertilization and Embryology has published its Report. That Report endorsed our earlier proposals in principle, but recommended that a similar approach be adopted in relation to ovum donation and embryo transfer.⁴⁵ It may therefore be desirable to have a comprehensive scheme dealing with all these techniques, which raise similar difficulties in defining parenthood. To avoid piecemeal measures which may later have to be reconsidered, we can see some advantage in deferring legislation on this subject until a comprehensive scheme can be achieved. We consider, however, the pace of these developments is such that this should not be long delayed.

Insert
signatures
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attached

⁴⁴ Law Com. No. 118, paras. 12.9, 12.11 and 12.26 and clause 34 of the Report Bill.) X

⁴⁵ (1984) Cmd. 9314, recommendations 50-54, paras. 4.17, 4.22, 4.24, 4.25 and 6.8

Close
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(Signed) ROY BELDAM, Chairman
TREVOR M. ALDRIDGE
BRIAN JAVENPORT
JULIAN FARRAND
BRENDA HOGGETT

JOHN GANNON, Secretary
8 September 1986

APPENDIX B

(BOLD)

>

TABLE OF DERIVATIONS (BOLD)

Draft Bill Clause	Report Bill Clause	Report Paragraph
1 (1)	-	-
(2)	37	-
(3)	"	-
2 (1) (a)	22 (1)	14.20
(b)	13	14.22
(c)	2 and Sched. 2, para 29	14.23
(d)	12	14.27 + 14.34
(e)	14	14.13
(f)	20 (5)	14.20 + 14.35
(g)	23 (1)	14.20
(2)	Sched 2, para. 4 (b)	-
3	12 (1)	14.34
4	4	14.24 - 14.26
5	12 (2)	14.27
6	3	14.30 - 14.33
7	17	9.2 - 9.14
8 (1)	19	14.36
(2) - (5)	20 (1) - (4)	14.35
9	18 + Sched. 1	14.48
10	5 (in part)	14.28
11	6 + 7 (in part)	-
12	5 (in part)	14.4, 14.5, 14.7, 14.8 14.12 + 14.14
13	6 + 7 (in part)	14.4, 14.5, 14.7, 14.8 + 14.14
14	8	14.15
15	15	14.18

NFT Bill Clause	Report Bill Clause	Report Paragraph
16	16	6.45-6.46
17	1	14.4
18	24	14.37-14.45
19	25	8.15-8.25
20	-	-
21	26	14.45
22	27 & 28	14.52-14.61
23	29	14.58
24	31	14.69, 14.71 & 14.74
25	32	14.69 & 14.71
26	33	14.71
27	34	14.78-14.82
28	35	14.67
29	36	14.62
30	-	-
31	-	-
32	39	-
33	38 & 40	-
34	41 & 42	-

RESTRICTED

FAMILY LAW REFORM BILL

ARRANGEMENT OF CLAUSES

PART I

GENERAL PRINCIPLE

Clause

1. Parents not being married to have no effect in law on relationships.

PART II

RIGHTS AND DUTIES OF PARENTS ETC.

Parental rights and duties: general

2. Construction of enactments relating to parental rights and duties.
3. Agreements as to exercise of parental rights and duties.

Parental rights and duties where parents not married

4. Parental rights and duties of father.
5. Exercise of parental rights and duties.
6. Appointment of guardians.
7. Rights with respect to adoption.
8. Rights where child in care etc.
9. Consents to marriages.

Orders for custody

10. Orders for custody on application of either parent.
11. Orders for custody in guardianship cases.

Orders for financial relief

12. Orders for financial relief on application of either parent.
13. Orders for financial relief in guardianship cases.
14. Orders for financial relief for persons over eighteen.

Alteration of maintenance agreements

Class

15. Alteration during lives of parties.
16. Alteration after death of one party.

Supplemental

17. Abolition of affiliation proceedings.

PART III

PROPERTY RIGHTS

18. Succession on intestacy.
19. Dispositions of property.
20. No special protection for trustees and personal representatives.
21. Entitlement to grant of probate etc.

PART IV

DETERMINATIONS OF RELATIONSHIPS

22. Declarations of parentage.
23. Provisions as to blood tests.

PART V

REGISTRATION OF BIRTHS

24. Registration of father where parents not married.
25. Re-registration where parents not married.
26. Re-registration after declaration of parentage.

PART VI

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

27. Artificial insemination.
28. Children of void marriages.
29. Evidence of paternity in civil proceedings.

Supplemental

30. Application of section 1 to other enactments.

Class

- 31. Interpretation.
- 32. Text of 1971 Act as amended.
- 33. Amendments, transitional provisions, savings and repeals.
- 34. Short title, commencement and extent.

Schedule 1	TEXT OF 1971 ACT AS AMENDED
Schedule 2	MINOR AND CONSEQUENTIAL AMENDMENTS
Schedule 3	TRANSITIONAL PROVISIONS AND SAVINGS
Schedule 4	REPEALS

DRAFT

OF A

B I L L

TO

Reform the law relating to the consequences of birth outside marriage; to make further provision with respect to the rights and duties of parents and the determination of parentage; and for connected purposes.

A.D. 1986.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

GENERAL PRINCIPLE

1.-(1) In this Act and enactments passed and instruments made after the coming into force of this section, references (however expressed) to any relationship between two persons shall, unless the contrary intention appears, be construed without regard to whether or not the father and mother of either of them, or the father and mother of any person through whom the relationship is deduced, have or had been married to each other at any time.

Parents not being married to have no effect in law on relationships.

(2) In this Act and enactments passed after the coming into force of this section, unless the contrary intention appears, references to a person whose father and mother were married to each other at the time of his birth include, and references to a person whose father and mother were not married to each other at the time of his birth do not include, references to a person who—

- (a) is treated as legitimate by virtue of section 1 of the Legitimacy Act 1976;
 - (b) is a legitimated person within the meaning of section 10 of that Act;
 - (c) is an adopted child within the meaning of Part IV of the Adoption Act 1976;
 - (d) is otherwise treated in law as legitimate,
- and cognate references shall be construed accordingly.

1976 c.31.

1976 c.36.

(3) For the purpose of construing references falling within subsection (2) above, the time of a person's birth shall be

Part I

taken to include any time during the period ending with his birth and beginning with the act of intercourse resulting in his birth or, where there was no such act, his conception.

PART II

RIGHTS AND DUTIES OF PARENTS ETC.

5

Parental rights and duties: general

Construction of enactments relating to parental rights and duties.
1948 c.29.
1969 c.46.

1971 c.3.

1973 c.29.

1975 c.72.

1980 c.5.

1986 c.50.

2.—(1) In the following enactments, namely-

(a) section 42(1) of the National Assistance Act 1948;

(b) section 6 of the Family Law Reform Act 1969;

(c) the Guardianship of Minors Act 1971 (in this Act referred to as "the 1971 Act"); 10

(d) the Guardianship Act 1973 (in this Act referred to Part I of as "the 1973 Act");

(e) Part II of the Children Act 1975;

(f) the Child Care Act 1980 except Part I and sections 13, 24, 64 and 65; 15

(g) section 26(3) of the Social Security Act 1986, references (however expressed) to any relationship between two persons shall, unless the contrary intention appears, be construed in accordance with section 1 above. 20

(2) In subsection (7) of section 1 of the 1973 Act (equality of parental rights) for the words from "or be taken" onwards there shall be substituted the words "and nothing in subsection (1) above shall be taken as applying in relation to a child whose father and mother were not married to each other at the time of his birth". 25

Agreements as to exercise of parental rights and duties.

3. For subsection (2) of section 1 of the 1973 Act (agreements between parents to give up parental rights) there shall be substituted the following subsection-

"(2) Notwithstanding anything in section 85(2) of the Children Act 1975, an agreement may be made between the father and mother of a child as to the exercise by either of them, during any period when they are not living with each other in the same household, of any of the parental rights and duties with respect to the child; but no such agreement shall be enforced by any court if the court is of opinion that it will not be for the benefit of the child to give effect to it." 30
35
40

Parental rights and duties where parents not married

Parental rights and duties of father.

4.—(1) Where the father and mother of a child were not married to each other at the time of his birth, the court may, on the application of the father, order that he shall have all parental rights and duties with respect to the child. 45

(2) Where the father of a child is given all the parental rights and duties by an order under this section, he shall, subject to any order made by the court otherwise than under this section, have those rights and duties jointly with the mother of the child or, if the mother is dead, jointly with any guardian of the child appointed under the 1971 Act.

(3) An order under this section may be discharged by a subsequent order made on the application of the father or mother of the child or, if the mother is dead, any guardian of the child appointed under the 1971 Act.

(4) This section and the 1971 Act shall be construed as if this section were contained in that Act.

5. At the beginning of subsection (3) of section 1 of the 1973 Act (which enables application to be made for the direction of the court where parents disagree on a question affecting the child's welfare) there shall be inserted the words "Subject to subsection (3A) below" and after that subsection there shall be inserted the following subsection—

Exercise of parental rights and duties.

"(3A) Where a child's father and mother were not married to each other at the time of his birth, subsection (3) above does not apply unless—

(a) an order is in force under section 4 of the Family Law Reform Act 1987 giving the father all the parental rights and duties with respect to the child; or

(b) the father has a right to custody, legal or actual custody or care and control of the child by virtue of an order made under any other enactment."

6.—(1) At the end of section 3 of the 1971 Act (rights of surviving parent as to guardianship) there shall be added the following subsections—

Appointment of guardians.

"(3) Where the father and mother of a child were not married to each other at the time of his birth, this section does not apply unless the father satisfies the conditions of subsection (4) of this section.

(4) The father of a child satisfies the conditions of this subsection if—

(b) an order is in force under section 4 of the Family Law Reform Act 1987 giving him all the parental rights and duties with respect to the child; or

(a) he has a right to custody, legal or actual custody or care and control of the child by virtue of an order

Part I

made under any other enactment."

(2) At the end of section 4 of that Act (power of father and mother to appoint testamentary guardians) there shall be added the following subsection-

"(7) Where the father and mother of a child were not married to each other at the time of his birth-

(a) subsection (1) of this section does not apply, and subsection (3) of this section does not apply in relation to a guardian appointed by the mother, unless the father satisfies the conditions of section 3(4) of this Act; and

(b) any appointment under subsection (1) of this section shall be of no effect unless the father satisfies those conditions immediately before his death."

(3) At the end of section 5 of that Act (power of court to appoint guardian for child having no parent etc.) there shall be added the following subsection-

"(3) Where the father and mother of a child were not married to each other at the time of his birth, subsection (1) of this section shall have effect as if for the words 'no parent' there were substituted the words 'no mother, no father satisfying the conditions of section 3(4) of this Act'.

Rights with respect to adoption. 1976 c.36.

7.—(1) In section 18 of the Adoption Act 1976 (which relates to orders declaring a child free for adoption), for subsection (7) there shall be substituted the following subsection-

"(7) Before making an order under this section in the case of a child whose father and mother were not married to each other at the time of his birth and whose father is not his guardian, the court shall satisfy itself in relation to any person claiming to be the father that either-

(a) he has no intention of making-

(i) an application under section 4 of the Family Law Reform Act 1987 for an order giving him all the parental rights and duties with respect to the child; or

(ii) an application under any enactment for an order giving him a right to custody, legal or actual custody or care and control of the

child; or

(b) if he did make such an application, the application would be likely to be refused."

5 (2) In section 72(1) of that Act (interpretation), in the definition of "guardian" for paragraph (b) there shall be substituted the following paragraph-

10 "(b) in the case of a child whose father and mother were not married to each other at the time of his birth, includes the father where-

15 (i) an order is in force under section 4 of the Family Law Reform Act 1987 giving him all the parental rights and duties with respect to the child; or

20 (ii) he has a right to custody, legal or actual custody or care and control of the child by virtue of an order made under any enactment.

8.—(1) In section 70 of the Children and Young Persons Act 1969 (interpretation), after subsection (1) there shall be inserted the following subsection-

Rights where
child in care
etc.
1969 c.54.

25 "(1A) Where, in the case of a child whose father and mother were not married to each other at the time of his birth, an order of any court is in force giving the right to the actual custody of the child to the father, any reference in this Act to the parent of the child includes, unless the contrary intention appears, a reference to the father".

35 (2) After subsection (1) of section 87 of the Child Care Act 1980 (interpretation), there shall be inserted the following subsection-

1980 c.5.

40 "(1A) Where, in the case of a child whose father and mother were not married to each other at the time of his birth, an order is in force under section 4 of the Family Law Reform Act 1987 by virtue of which actual custody of the child is shared between the mother and the father, both the mother and the father shall be treated as parents of the child for the purposes of Part I and sections 13, 24, 45 64 and 65 of this Act."

9. In Schedule 2 to the Marriage Act 1949 (consents required to marriages of persons under 18), for Part II there shall be substituted the following provisions-

Consents to
marriages.
1949 c.76.

50 "IL WHERE THE PARENTS OF THE CHILD WERE NOT MARRIED TO EACH OTHER AT THE TIME OF HIS BIRTH-

Part I

	Circumstances	Person or persons whose consent is required	
	1. Where both parents are alive:		
	(a) if the father has been given by an order of any court the right to the actual custody of the child or the right to consent to the marriage of the child, or both those rights;	The mother and the father.	5
	(b) if the father has not been given either of those rights.	The mother.	10
	2. Where the mother is dead:		
1971 c.3.	(a) if the father is a guardian under the Guardianship of Minors Act 1971 and there is no other guardian;	The father.	15
	(b) if the father is a guardian as mentioned in paragraph (a) above and another guardian has been appointed by the mother or by the court under the Guardianship of Minors Act 1971;	The father and the guardian if acting jointly, or the father or the guardian if the father or guardian is the sole guardian of the child.	20
	(c) if the father is not a guardian and a guardian has been appointed by the mother or by the court under the Guardianship of Minors Act 1971.	The guardian.	25
	3. Where the father is dead:		
	(a) if there is no other guardian;	The mother.	30
	(b) if a guardian has been appointed by the father or by the court under the Guardianship of Minors Act 1971.	The mother and the guardian if acting jointly, or the mother or the guardian if the mother or guardian is the sole guardian of the child.	35
			40

Circumstances	Person or persons whose consent is required
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5	4. Where both parents are dead:	The guardian or guardians appointed by the mother or father or by the court under the Guardianship of Minors Act 1971.
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10 In this Part of this Schedule 'actual custody', in relation to a child, means actual possession of his person."

Orders for custody

15 10. For section 9 of the 1971 Act and the heading preceding that section there shall be substituted the following heading and section-

Orders for custody on application of either parent.

"Orders for custody and financial relief

Orders for custody on application of either parent.

20 9.-(1) The court may, on the application of either parent of a child, make such order regarding-

- (a) the legal custody of the child; and
 - (b) access to the child by either parent,
- as the court thinks fit; and an order under this section may be varied or discharged by a subsequent order made on the application of either parent or, after the death of either parent, on the application of any guardian appointed under this Act.

(2) An order under this section-

- (a) shall not give legal custody to a person other than a parent of the child; and
- (b) shall not be made at any time when the child is free for adoption by virtue of an order made under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978."

1976 c.36.
1978 c.28.

11. For sections 10 and 11 of the 1971 Act there shall be substituted the following section-

Orders for custody in guardianship cases.

Part I

"Orders for custody in guardianship cases.

10.-(1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make such order regarding-

- (a) the legal custody of the child; and
 - (b) access to the child by the parent,
- as the court thinks fit; and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order previously made.

(2) The powers of the court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians-

- (a) power to make such order regarding-
 - (i) the legal custody of the child; and
 - (ii) access to the child by the parent,
 as the court thinks fit; and
- (b) power to vary or discharge any order previously made by virtue of this subsection.

(3) An order shall not be made under or by virtue of this section at any time when the child is free for adoption by virtue of an order made under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978."

Orders for financial relief

Orders for financial relief on application of either parent.

12. After section 11A of the 1971 Act there shall be inserted the following section-

"Orders for financial relief on application of either parent.

11B.-(1) The court may, on the application of either parent of a child, make-

- (a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (2) of this section;
- (b) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;

and an order mentioned in paragraph (a) or (b) of that subsection may be varied or discharged on the application of either parent or, after the

death of either parent, on the application of any guardian appointed under this Act.

(2) The orders referred to in subsection (1) of this section are-

(a) an order requiring one parent to make to the other parent for the benefit of the child, or to the child, such periodical payments, and for such term, as may be specified in the order;

(b) an order requiring one parent to secure to the other parent for the benefit of the child, or to secure to the child, such periodical payments, and for such term, as may be so specified;

(c) an order requiring one parent to pay to the other parent for the benefit of the child, or to the child, such lump sum as may be so specified;

(d) an order requiring either parent to transfer to the other parent for the benefit of the child, or to the child, such property as may be so specified, being property to which the first-mentioned parent is entitled, either in possession or reversion;

(e) an order requiring that a settlement of such property as may be so specified, being property to which either parent is so entitled, be made to the satisfaction of the court for the benefit of the child."

13. After section 11B of the 1971 Act there shall be inserted the following section-

"Orders for financial relief in guardianship cases.

11C.-(1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make-

(a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section;

(b) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;

and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order mentioned in paragraph (a) or (c) of that subsection previously made.

Orders for financial relief in guardianship cases.

Part I

(2) The powers of the court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians-

(a) power to make-

(i) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section;

(ii) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection; and

(b) power to vary or discharge any order mentioned in paragraph (a) or (b) of that subsection previously made.

(3) The orders referred to in subsections (1) and (2) of this section are-

(a) an order requiring the parent to make to the guardian or other guardian for the benefit of the child, or to the child, such periodical payments, and for such term, as may be specified in the order;

(b) an order requiring the parent to secure to the guardian or other guardian for the benefit of the child, or to secure to the child, such periodical payments, and for such term, as may be so specified;

(c) an order requiring the parent to pay to the guardian or other guardian for the benefit of the child, or to the child, such lump sum as may be so specified;

(d) an order requiring the parent to transfer to the guardian or other guardian for the benefit of the child, or to the child, such property as may be so specified, being property to which the parent is entitled, either in possession or reversion;

(e) an order requiring that a settlement of such property as may be so specified, being property to which the parent is so entitled, be made to the satisfaction of the court for the benefit of the child."

14. After section 11C of the 1971 Act there shall be inserted the following section-

Part I

5 "Orders for financial relief for persons over eighteen.

11D.-(1) If, on an application by a person who has attained the age of eighteen and whose parents are not living with each other, it appears to the High Court or a county court-

Orders for financial relief for persons over eighteen.

10 (a) that the applicant is, will be or (if an order were made under this section) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or

15 (b) that there are special circumstances which justify the making of an order under this section,

the court may make one or both of the orders mentioned in subsection (2) of this section.

20 (2) The orders referred to in subsection (1) of this section are-

25 (a) an order requiring either or both of the applicant's parents to pay to the applicant such periodic payments, and for such term, as may be specified in the order; and

30 (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.

35 (3) An application may not be made under this section by any person if, immediately before he attained the age of sixteen, a periodical payments order was in force with respect to him.

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

40 (5) Any order made under this section requiring the making of periodical payments shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

45 (6) An order under this section requiring the making of periodical payments 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.

50 (7) In subsection (3) of this section 'periodical

Part I

1969 c.46.

1973 c.18.

1975 c.72.

1978 c.22.

payments order' means an order made under-

- (a) this Act,
- (b) section 6(3) of the Family Law Reform Act 1969,
- (c) section 23 or 27 of the Matrimonial Causes Act 1973,
- (d) section 34 of the Children Act 1975, or
- (e) Part I of the Domestic Proceedings and Magistrates' Courts Act 1978,

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10

for the making or securing of periodical payments."

Alteration of maintenance agreements

Alteration during lives of parties.

15.—(1) In this section and section 16 below "maintenance agreement" means any agreement in writing made in respect of a child, whether before or after the commencement of this section, being an agreement which-

15

(a) is or was made between the father and mother of the child; and

(b) contains provisions in respect of the making or securing of payments, or the disposition or use of any property, for the maintenance or education of the child;

20

and any such provisions are in this section and that section referred to as "financial arrangements".

25

(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 England and Wales, then, subject to subsection (4) below, either party may apply to the High Court, a county court or a magistrates' court for an order under this section.

30

(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

35

(b) that the agreement does not contain proper financial arrangements with respect to the child,

40

then, subject to subsections (4) and (5) below, 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 that court to be just having regard to all the circumstances; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

45

5 (4) A magistrates' court shall not entertain an application under subsection (2) above unless both the parties to the agreement are resident in England and Wales and at least one of the parties is resident in the commission area (within the meaning of the Justices of the Peace Act 1979) for which the court is appointed, and shall not have power to make any order on such an application except-

10 (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;

15 (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.

(5) Where a court decides to alter an agreement, by an order under this section-

20 (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

25 (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 subsections (1) and (2) of section 12 of the 1971 Act as if the order were an order under section 11B(2)(a) or (b) of that Act.

35 (6) For the avoidance of doubt it is hereby declared that nothing in this section affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

40 **16.**-(1) Where a maintenance agreement provides for the continuation, after the death of one of the parties, of payments for the maintenance of the child and that party dies domiciled in England and Wales, the surviving party or the personal representatives of the deceased party may, subject to subsections (2) and (3) below, apply for an order under section 15 above.

Alteration
after death of
one party.

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

(3) A county court shall not entertain an application under this section, or an application for permission to make an

Part I application under this section, unless it would have jurisdiction to hear and determine proceedings for an order under section 2 of the Inheritance (Provision for Family and Dependants) Act 1975 in relation to the deceased's estate by virtue of section 25 of the County Courts Act 1984 (jurisdiction under the said Act of 1975). 5

1975 c.63.

1984 c.28.

(4) If a maintenance agreement is altered by a court on an application under this section the like consequences shall ensue as if the alteration had been made, immediately before the death, by agreement between the parties and for valuable consideration. 10

(5) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (2) above on the ground that they ought to have taken into account the possibility that a court might permit an application by virtue of this section to be made by the surviving party after that period; but this subsection 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 section. 15 20

(6) In considering for the purposes of subsection (2) above the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time. 25

Supplemental 30

Abolition of affiliation proceedings. 1957 c.55.

17. The Affiliation Proceedings Act 1957 (the provisions of which are superseded by this Part) shall cease to have effect.

PART III

PROPERTY RIGHTS 35

Succession on intestacy. 1925 c.23.

18.—(1) In Part IV of the Administration of Estates Act 1925 (which deals with the distribution of the estate of an intestate), references (however expressed) to any relationship between two persons shall, unless the contrary intention appears, be construed in accordance with section 1 above. 40

(2) For the purposes of subsection (1) above 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 through his father, unless the contrary is shown. 45

(3) In section 50(1) of that Act (which relates to the construction of documents), the reference to Part IV of that Act, or to the foregoing provisions of that Part, shall in

relation to an instrument inter vivos made, or a will or codicil coming into operation, after the coming into force of this section (but not in relation to instruments inter vivos made or wills or codicils coming into operation earlier) be
5 construed as including references to this section.

(4) This section does not affect any rights under the intestacy of a person dying before the coming into force of this section.

19.—(1) In the following dispositions, namely—
10 (a) dispositions inter vivos made on or after the date on which this section comes into force; and
(b) dispositions by will or codicil where the will or codicil is made on or after that date,
15 references (whether express or implied) to any relationship between two persons shall, unless the contrary intention appears, be construed in accordance with section 1 above.

Dispositions of property.

(2) It is hereby declared that 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
20 not show a contrary intention for the purposes of subsection (1) above.

(3) In relation to the dispositions mentioned in subsection (1) above, section 33 of the Trustee Act 1925 (which
25 specifies the trusts 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 section 1 above.

1925 c.19.

(4) Where under any disposition of real or personal
30 property or 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 section, devolve (as nearly as the law permits) along with a dignity or title of honour, then—

35 (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,

40 nothing in this section 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 section had not been enacted.

(5) This section is without prejudice to section 42 of the
45 Adoption Act 1976 (construction of dispositions in cases of adoption).

1976 c.36.

(6) In this section "disposition" means a disposition, including an oral disposition, of real or personal property whether inter vivos or by will or codicil.

Part III

(7) Notwithstanding any rule of law, a disposition made by will or codicil executed before the date on which this section comes into force shall not be treated for the purposes of this section as made on or after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date. 5

No special protection for trustees and personal representatives
1969 c.46.

20. Section 17 of the Family Law Reform Act 1969 (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. 10

Entitlement to grant of probate etc.

21.—(1) For the purpose of determining the person or persons who would in accordance with probate rules 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— 15

(a) by any person related to him whose father and mother were not married to each other at the time of his birth; or 20

(b) by any person whose relationship with him is deduced through such a person as is mentioned in paragraph (a) above. 25

1981 c.54.

(2) In this section "probate rules" means rules of court made under section 127 of the Supreme Court Act 1981.

(3) This section does not apply in relation to the estate of a person dying before the coming into force of this section.

PART IV

30

DETERMINATIONS OF RELATIONSHIPS

Declarations of parentage.
1986 c.00.

22. For section 56 of the Family Law Act 1986 (declarations of legitimacy or legitimation) there shall be substituted the following section—

"Declarations of parentage, legitimacy or legitimation. 56.—(1) Any person may apply to the court for one or more of the following declarations with respect to his parentage, that is to say— 35

(a) a declaration that a person named in the application is his father;

(b) a declaration that a person so named is his mother; 40

(c) a declaration that persons so named are his parents.

(2) Any person may apply to the court for a declaration that he is the legitimate child of his parents.

5

(3) Any person may apply to the court for one (or for one or, in the alternative, the other) of the following declarations, that is to say-

10

(a) a declaration that he has become a legitimated person;

(b) a declaration that he has not become a legitimated person.

(4) A court shall have jurisdiction to entertain an application under this section if, and only if, the applicant-

15

(a) is domiciled in England and Wales on the date of the application, or

(b) has been habitually resident in England and Wales throughout the period of one year ending with that date.

20

(5) Where a declaration is made on an application under subsection (1) above, the prescribed officer of the court shall notify the Registrar General in such a manner, and within such period, as may be prescribed of the making of that declaration.

25

(6) In this section 'legitimated person' means a person legitimated or recognised as legitimated-

30

(a) under section 2 or 3 of the Legitimacy Act 1976;

1976 c.31.

(b) under section 1 or 8 of the Legitimacy Act 1926; or

1976 c.60.

35

(c) by a legitimation (whether or not by virtue of the subsequent marriage of his parents) recognised by the law of England and Wales and effected under the law of another country."

40

23.—(1) For subsections (1) and (2) of section 20 of the Family Law Reform Act 1969 (power of court to require use of blood tests) there shall be substituted the following subsections-

Provisions as to blood tests.
1969 c.46.

45

"(1) In any civil proceedings in which the parentage of any person falls to be determined, the court may, either of its own motion or on an application by any party to the proceedings, give a direction-

50

(a) for the use of blood tests to ascertain whether such tests show that a party to the proceedings is or is not the father or mother of that person;

Part IV

and

- (b) for the taking, within a period specified in the direction, of blood samples from all or any of the following, namely, that person, any party who is alleged to be the father or mother of that person and any other party to the proceedings;

and the court may at any time revoke or vary a direction previously given by it under this subsection.

(2) The person responsible for carrying out blood tests in pursuance of a direction under subsection (1) above shall make to the court a report in which he shall state—

- (a) the results of the tests;
- (b) whether any party to whom the report relates is or is not excluded by the results from being the father or mother of the person whose parentage is to be determined; and
- (c) in relation to any party who is not so excluded, the value, if any, of the results in determining whether that party is the father or mother of that person;

and the report shall be received by the court as evidence in the proceedings of the matters stated in it.

(2A) Where the proceedings in which the parentage of any person falls to be determined are proceedings under section 56 of the Family Law Act 1986, any reference in subsection (1) or (2) of this section to any party to the proceedings shall include a reference to any person named in the application."

(2) In section 23(2) of that Act (failure to comply with direction for taking blood tests) for the word "paternity" there shall be substituted the word "parentage".

PART V

REGISTRATION OF BIRTHS

Registration of father where parents not married.
1953 c.20.

24. For section 10 of the Births and Deaths Registration Act 1953 (in this Act referred to as "the 1953 Act") there shall be substituted the following section—

10.—(1) Notwithstanding anything in the foregoing provisions of this Act, in the case of a child whose father and mother were not married to each other at the time of his birth, no person shall as father of the child be

required to give information concerning the birth of the child, and the registrar shall not enter in the register the name of any person as father of the child except-

- 5 (a) at the joint request of the mother and the person stating himself to be the father of the child (in which case that person shall sign the register together with the mother); or
- 10 (b) at the request of the mother on production of-
- 15 (i) a declaration in the prescribed form made by the mother stating that that person is the father of the child; and
- (ii) a statutory declaration made by that person stating himself to be the father of the child; or
- 20 (c) at the request of that person on production of-
- (i) a declaration in the prescribed form by that person stating himself to be the father of the child; and
- 25 (ii) a statutory declaration made by the mother stating that that person is the father of the child; or
- 30 (d) at the request of the mother or that person (which shall in either case be made in writing) on production of-
- (i) a certified copy of a relevant order; and
- 35 (ii) if the child has attained the age of sixteen, the written consent of the child to the registration of that person as his father.
- 40 (2) Where, in the case of a child whose father and mother were not married to each other at the time of his birth, a person stating himself to be the father of the child makes a request to the registrar in accordance with paragraph
- 45 (c) or (d) of subsection (1) of this section-
- (a) he shall be treated as a qualified informant concerning the birth of the child for the purposes of this Act; and
- 50 (b) the giving of information concerning the birth of the child by that person and the signing of the register by him in the presence of the registrar shall act as a discharge of any duty of any other qualified informant under section
- 55 2 of this Act.

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(3) In this section and section 10A of this Act references to a child whose father and mother were not married to each other at the time of his birth shall be construed in accordance with section 1 of the Family Law Reform Act 1987 and 'relevant order', in relation to a request under subsection (1)(d) that the name of any person be entered in the register as father of a child; means any of the following orders, namely—

- (a) an order under section 4 of the said Act of 1987 which gives that person all the parental rights and duties with respect to the child;
- (b) an order under section 9 of the Guardianship of Minors Act 1971 which gives that person any parental right with respect to the child; and
- (c) an order under section 11B of that Act which requires that person to make any financial provision for the child."

1971 c.3.

Re-registration
where parents
not married.

25. For section 10A of the 1953 Act there shall be substituted the following section—

"Re-
registration
where parents
not married.

10A.—(1) Where there has been registered under this Act the birth of a child whose father and mother were not married to each other at the time of the birth, but no person has been registered as the father of the child, the registrar shall re-register the birth so as to show a person as the father—

- (a) at the joint request of the mother and that person; or
- (b) at the request of the mother on production of—
 - (i) a declaration in the prescribed form made by the mother stating that that person is the father of the child; and
 - (ii) a statutory declaration made by that person stating himself to be the father of the child; or
- (c) at the request of that person on production of—
 - (i) a declaration in the prescribed form by that person stating himself to be the father of the child; and
 - (ii) a statutory declaration made by the mother stating that

that person is the father of the child; or

(d) at the request of the mother or that person (which shall in either case be made in writing) on production of-

(i) a certified copy of a relevant order; and

(ii) if the child has attained the age of sixteen, the written consent of the child to the registration of that person as his father;

but no birth shall be re-registered under this section except in the prescribed manner and with the authority of the Registrar General.

(2) On the re-registration of a birth under this section-

(a) the registrar shall sign the register;

(b) in the case of a request under paragraph (a) or (b) of subsection (1) of this section, or a request under paragraph (d) of that subsection made by the mother of the child, the mother shall also sign the register;

(c) in the case of a request under paragraph (a) or (c) of that subsection, or a request made under paragraph (d) of that subsection by the person requesting to be registered as the father of the child, that person shall also sign the register; and

(d) if the re-registration takes place more than three months after the birth, the superintendent registrar shall also sign the register."

26. After section 14 of the 1953 Act there shall be inserted the following section-

Re-registration after declaration of parentage.

"Re-registration after declaration of parentage.

14A. Where-

(a) the Registrar General receives, by virtue of section 56(5) of the Family Law Act 1986, a notification of the making of a declaration of parentage in respect of any person; and

1986 c.00.

(b) it appears to him that the birth of that person should be re-registered, he shall authorise the re-registration of that person's birth, and the re-registration shall be effected in such manner and at such place as

Part V

may be prescribed."

PART VI

MISCELLANEOUS AND SUPPLEMENTAL

MiscellaneousArtificial
insemination.

27.—(1) Where after the coming into force of this section a child is born in England and Wales as the result of the artificial insemination of a woman who-

- (a) was at the time of the insemination a party to a marriage (being a marriage which had not at that time been dissolved or annulled), and
- (b) was artificially inseminated with the semen of some person other than the other party to that marriage,

then, unless it is proved to the satisfaction of any court by which the matter has to be determined that the other party to that marriage did not consent to the insemination, the child shall be treated in law as the child of the parties to that marriage and shall not be treated as the child of any person other than the parties to that marriage.

(2) Any reference in this section to a marriage includes a reference to a void marriage if at the time of the insemination resulting in the birth of the child both or either of the parties reasonably believed that the marriage was valid; and for the purposes of this section it shall be presumed, unless the contrary is shown, that one of the parties so believed at that time that the marriage was valid.

(3) Nothing in this section shall affect the succession to any dignity or title of honour or render any person capable of succeeding to or transmitting a right to succeed to any such dignity or title.

Children of
void marriages.
1976 c.31.

28.—(1) In subsection (1) of section 1 of the Legitimacy Act 1976 (legitimacy of children of certain void marriages), after the words "the act of intercourse resulting in the birth" there shall be inserted the words "or, where there was no such act, the conception".

(2) At the end of that section there shall be added the following subsections-

"(3) It is hereby declared for the avoidance of doubt that subsection (1) above applies notwithstanding that the belief that the marriage was valid was due to a mistake as to law.

(4) In relation to a child born after the coming into force of section 28 of the Family Law Reform Act 1987, it shall be presumed for the purposes of subsection (1) above, unless the contrary is shown, that one of the parties to

5 the void marriage reasonably believed at the time of the act of intercourse resulting in the birth or, where there was no such act, the conception (or at the time of the celebration of the marriage if later) that the marriage was valid."

10 29.—(1) Section 12 of the Civil Evidence Act 1968 (which relates to the admissibility in evidence in civil proceedings of the fact that a person has been adjudged to be the father of a child in affiliation proceedings) shall be amended as follows.

Evidence of paternity in civil proceedings. 1968 c.64.

(2) For paragraph (b) of subsection (1) there shall be substituted the following paragraph—

15 "(b) the fact that a person has been found to be the father of a child in relevant proceedings before any court in England and Wales or has been adjudged to be the father of a child in affiliation proceedings before any court in the United Kingdom;"

20 (3) In subsection (2) for the words "to have been adjudged" there shall be substituted the words "to have been found or adjudged" and for the words "matrimonial or affiliation proceedings" there shall be substituted the words "other proceedings".

(4) In subsection (6) after the definition of "matrimonial proceedings" there shall be inserted the following definition—

"relevant proceedings" means—

30 (a) proceedings on a complaint under section 42 of the National Assistance Act 1948 or section 26 of the Social Security Act 1986;

1948 c.29.
1986 c.50.

(b) proceedings on an application for an order under any of the following, namely—

35 (i) section 6 of the Family Law Reform Act 1969;

1969 c.46.

(ii) the Guardianship of Minors Act 1971;

1971 c.3.

(iii) section 34(1)(a), (b) or (c) of the Children Act 1975;

1975 c.72.

40 (iv) section 47 of the Child Care Act 1980; and

1980 c.5.

(v) section 4 of the Family Law Reform Act 1987;

45 (c) proceedings on an application under section 35 of the said Act of 1985 for the revocation of a custodianship order;"

Supplemental

30.—(1) The Lord Chancellor may by order make provision for the construction in accordance with section 1 above of such enactments passed before the coming into force of that section as may be specified in the order.

Application of section 1 to other enactments.

Part VI

(2) An order under this section shall so amend the enactments to which it relates as to secure that they continue the same effect, notwithstanding the making of the order.

(3) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Interpretation.

31. In this Act-

1953 c.20.

"the 1953 Act" means the Births and Deaths Registration Act 1953;

1971 c.3.

"the 1971 Act" means the Guardianship of Minors Act 1971;

1973 c.29.

"the 1973 Act" means the Guardianship Act 1973.

Text of 1971 Act as amended.

32. The 1971 Act (excluding consequential amendments of other enactments and savings) is set out in Schedule 1 to this Act as it will have effect, subject to sections 33(2) and 34(3) below, when all the amendments and repeals made in it by this Act come into force.

Amendments, transitional provisions, savings and repeals.

33.—(1) The enactments mentioned in Schedule 2 to this Act shall have effect subject to the amendments there specified, being minor amendments and amendments consequential on the provisions of this Act.

(2) The transitional provisions and savings in Schedule 3 to this Act shall have effect.

(3) The inclusion in this Act of any express saving or amendment shall not be taken as prejudicing the operation of sections 16 and 17 of the Interpretation Act 1978 (which relate to the effect of repeals).

(4) The enactments mentioned in Schedule 4 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

Short title, commencement and extent.

34.—(1) This Act may be cited as the Family Law Reform Act 1987.

(2) This Act shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint; and different days may be so appointed for different provisions or different purposes.

(3) Without prejudice to the transitional provisions contained in Schedule 3 to this Act, an order under subsection (2) above may make such further transitional provisions as appear to the Lord Chancellor to be necessary or expedient in connection with the provisions brought into force by the order, including-

(a) such adaptations of the provisions so brought

into force; and

- (b) such adaptations of any provisions of this Act then in force,

5 as appear to him necessary or expedient in consequence of the partial operation of this Act.

(4) The following provisions of this Act extend to Scotland and Northern Ireland, namely-

- 10 (a) section 33(1) and paragraphs 12 and 13 of Schedule 2;
- (b) section 33(4) and Schedule 4 so far as relating to the Maintenance Orders Act 1950; and
- (c) this section.

1950 c.37.

(5) Subject to subsection (4) above, this Act extends to England and Wales only.

SCHEDULES

Section 32.

SCHEDULE 1

TEXT OF 1971 ACT AS AMENDED

[In the provisions set out in this Schedule the words inserted by the Bill are set out in heavy type]

5

ARRANGEMENT OF SECTIONS

General principles

1. Principle on which questions relating to custody, upbringing etc of children are to be decided.

Appointment, removal and powers of guardians

10

3. Rights of surviving parent as to guardianship.
4. Power of father and mother to appoint testamentary guardians.
5. Power of court to appoint guardian for child having no parent etc.
6. Power of High Court to remove or replace guardian.
7. Disputes between joint guardians.

15

Orders for custody and financial relief

9. Orders for custody on application of either parent.
10. Orders for custody in guardianship cases.
- 11A. Further provisions relating to orders for custody.
- 11B. Orders for financial relief on application of either parent.
- 11C. Orders for financial relief in guardianship cases.
- 11D. Orders for financial relief for persons over eighteen.
12. Duration of orders for periodical payments.
- 12A. Matters to which court is to have regard in making order for financial relief.

20

25

Orders for custody and financial relief

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- 12B Provisions relating to lump sums.
- 12C Variation etc. of orders for periodical payments.
- 5 12D. Variation of orders for secured periodical payments after death of parent.
13. Enforcement of orders for custody and maintenance.
- 13A. Restriction on removal of child from England and Wales.
- 10 13B. Direction for settlement of instrument by conveyancing counsel.

Access to children by grandparents

- 14A. Access to children by grandparents.

Jurisdiction and procedure

15. Courts having jurisdiction under this Act.
- 15 16. Appeals and procedure.
17. Saving for powers of High Court and other courts.

Supplementary

20. Short title, interpretation, extent and commencement.
- 20 An Act to consolidate certain enactments relating to the guardianship and custody of minors.

(Formal enacting words)General principles

- 25 /—(1) Where in any proceedings before any court (whether or not a court as defined in section 15 of this Act)—
- (a) the legal custody or upbringing of a child; or
- (b) the administration of any property belonging to or held on trust for a child, or the application of the income thereof,
- 30 is in question, the court in deciding that question, shall regard the welfare of the child as the first and paramount consideration, and shall not take into consideration whether

Principle on which questions relating to custody, upbringing etc. of children are to be decided.

Sch. 1

from any other point of view the claim of the father in respect of such legal custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.

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5

Appointment, removal and powers of guardians

Rights of surviving parent as to guardianship.

3—(1) On the death of the father of a child, the mother, if surviving, shall, subject to the provisions of this Act, be guardian of the child either alone or jointly with any guardian appointed by the father; and—

10

(a) where no guardian has been appointed by the father; or

(b) in the event of the death or refusal to act of the guardian or guardians appointed by the father,

the court may, if it thinks fit, appoint a guardian to act jointly with the mother.

15

(2) On the death of the mother of a child, the father, if surviving, shall, subject to the provisions of this Act, be guardian of the child either alone or jointly with any guardian appointed by the mother; and—

20

(a) where no guardian has been appointed by the mother; or

(b) in the event of the death or refusal to act of the guardian or guardians appointed by the mother,

the court may, if it thinks fit, appoint a guardian to act jointly with the father.

25

(3) Where the father and mother of a child were not married to each other at the time of his birth, this section does not apply unless the father satisfies the conditions of subsection (4) of this section.

30

(4) The father of a child satisfies the conditions of this subsection if—

(a) an order is in force under section 4 of the Family Law Reform Act 1987 giving him all the parental rights and duties with respect to the child; or

35

(b) he has a right to custody, legal or actual custody or care and control of the child by virtue of an order made under any other enactment.

Power of father and mother to appoint testamentary guardians.

4—(1) The father of a child may by deed or will appoint any person to be guardian of the child after his death.

40

(2) The mother of a child may by deed or will appoint any person to be guardian of the child after her death.

(3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the child so long as the mother or father remains alive unless the mother or father objects to his so acting.

45

(4) If the mother or father so objects, or if the guardian so appointed considers that the mother or father is unfit to have the custody of the **child**, the guardian may apply to the court, and the court may either—

- 5 (a) refuse to make any order (in which case the mother or father shall remain sole guardian); or
 (b) make an order that the guardian so appointed—
 (i) shall act jointly with the mother or father; or
 10 (ii) shall be the sole guardian of the **child**.

(5) Where guardians are appointed by both parents, the guardians so appointed shall, after the death of the surviving parent, act jointly.

- 15 (6) If under section 3 of this Act a guardian has been appointed by the court to act jointly with a surviving parent, he shall continue to act as guardian after the death of the surviving parent; but, if the surviving parent has appointed a guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the surviving parent.

- 20 (7) Where the father and mother of a child were not married to each other at the time of his birth—

- (a) subsection (1) of this section does not apply, and subsection (3) of this section does not apply in relation to a guardian appointed by the mother, unless the father satisfies the conditions of section 3(4) of this Act;
 25 (b) any appointment under subsection (1) of this section shall be of no effect unless the father satisfies those conditions immediately before his death.
 30

- 5 —(1) Where a **child** has no parent, no guardian of the person, and no other person having parental rights with respect to him, the court, on the application of any person, may, if it thinks fit, appoint the applicant to be the guardian of the **child**.
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Power of court to appoint guardian for child having no parent etc.

- (2) A court may entertain an applicant under this section to appoint a guardian of a **child** notwithstanding that parental rights and duties with respect to the **child** are vested in a local authority or a voluntary organisation by virtue of a resolution under section 3 or 4 of the Child Care Act 1980.
 40

- (3) Where the father and mother of a child were not married to each other at the time of his birth, subsection (1) of this section shall have effect as if for the words "no parent" there were substituted the words "no mother, no father satisfying the conditions of section 3(4) of this Act".
 45

6 The High Court may in its discretion on being satisfied that it is for the welfare of the **child** remove from his office any testamentary guardian or any guardian appointed

Power of High Court to remove or replace guardian.

Sch. 1

or acting by virtue of this Act, and may also, if it deems it to be for the welfare of the child, appoint another guardian in place of the guardian so removed.

Disputes between joint guardians.

7 Where two or more persons act as joint guardians of a child and they are unable to agree on any question affecting the welfare of the child, any of them may apply to the court for its direction and the court may make such order regarding the matters in difference that it may think proper.

5

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Orders for custody and financial relief

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Orders for custody on application of either parent.

9—(1) The court may, on the application of either parent of a child, make such order regarding—

- (a) the legal custody of the child; and
- (b) access to the child by either parent,

as the court thinks fit; and an order under this section may be varied or discharged by a subsequent order made on the application of either parent or, after the death of either parent, on the application of any guardian appointed under this Act.

15

(2) An order under this section—

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- (a) shall not give legal custody to a person other than a parent of the child; and
- (b) shall not be made at any time when the child is free for adoption by virtue of an order made under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978.

1976 c.36.
1978 c.28.

25

(3) An order shall not be made under or by virtue of this section at any time when the child is free for adoption by virtue of an order made under section 18 of the Adoption Act 1976 or section 18 of the Adoption (Scotland) Act 1978.

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Orders for custody in guardianship cases.

10—(1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make such order regarding—

- (a) the legal custody of the child; and
- (b) access to the child by the parent,

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as the court thinks fit; and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order previously made.

(2) The powers of the court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians—

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- (a) power to make such order regarding—
 - (i) the legal custody of the child; and

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- (ii) access to the child by the parent, as the court thinks fit; and
- (b) power to vary or discharge any order previously made by virtue of this subsection.

5 ~~11A~~—(1) An order shall not be made under section 9 or 10 of this Act giving the legal custody of a child to more than one person; but where the court makes an order under one of those sections giving the legal custody of a child to any person it may order that a parent of the child who is not
 10 given the legal custody of the child shall retain all or such as the court may specify of the parental rights and duties comprised in legal custody (other than the right to the actual custody of the child) and shall have those rights and duties jointly with the person who is given the legal custody
 15 of the child.

Further provisions relating to orders for custody.

(2) Where the court makes an order under section 9 or 10 of this Act the court may direct that the order, or such provision thereof as the court may specify, shall not have effect until the occurrence of an event specified by the court or the expiration of a period so specified; and where the
 20 court has directed that the order or any provision thereof shall not have effect until the expiration of a specified period, the court may, at any time before the expiration of that period, direct that the order, or that provision thereof,
 25 shall not have effect until the expiration of such further period as the court may specify.

(3) Any order made in respect of a child under section 9 or 10 of this Act shall cease to have effect when the child attains the age of eighteen.

30 ~~11B~~—(1) The court may, on the application of either parent of a child, make—

Orders for financial relief on application of either parent.

- (a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (2) of this section;
- 35 (b) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;

and an order mentioned in paragraph (a) or (b) of that subsection may be varied or discharged on the application of
 40 either parent or, after the death of either parent, on the application of any guardian appointed under this Act.

(2) The orders referred to in subsection (1) of this section are—

- 45 (a) an order requiring one parent to make to the other parent for the benefit of the child, or to the child, such periodical payments, and for such term, as may be specified in the order;
- 50 (b) an order requiring one parent to secure to the other parent for the benefit of the child, or to secure to the child, such periodical payments, and

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Orders for
financial
relief in
guardianship
cases.

- for such term, as may be so specified;
- (c) an order requiring one parent to pay to the other parent for the benefit of the child, or to the child, such lump sum as may be so specified;
- (d) an order requiring either parent to transfer to the other parent for the benefit of the child, or to the child, such property as may be so specified, being property to which the first-mentioned parent is entitled, either in possession or reversion; 5
- (e) an order requiring that a settlement of such property as may be so specified, being property to which either parent is so entitled, be made to the satisfaction of the court for the benefit of the child. 10
- 11C—(1) Where the court makes an order under section 4(4) of this Act that a person shall be sole guardian of a child to the exclusion of a parent, the court may make— 15
- (a) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section; 20
- (b) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection;
- and the powers conferred by this subsection may be exercised at any time and include power to vary or discharge any order mentioned in paragraph (a) or (c) of that subsection previously made. 25
- (2) The powers of the court under section 7 of this Act to make orders regarding matters in difference between joint guardians shall include, where a parent of the child is one of the joint guardians— 30
- (a) power to make—
- (i) in the case of proceedings in the High Court or a county court, one or more of the orders mentioned in subsection (3) of this section; 35
- (ii) in the case of proceedings in a magistrates' court, one or both of the orders mentioned in paragraphs (a) and (c) of that subsection; and 40
- (b) power to vary or discharge any order mentioned in paragraph (a) or (b) of that subsection previously made.
- (3) The orders referred to in subsections (1) and (2) of this section are— 45
- (a) an order requiring the parent to make to the guardian or other guardian for the benefit of the child, or to the child, such periodical payments, and for such term, as may be specified in the order; 50
- (b) an order requiring the parent to secure to the guardian or other guardian for the benefit of the

child, or to secure to the child, such periodical payments, and for such term, as may be so specified;

- 5 (c) an order requiring the parent to pay to the guardian or other guardian for the benefit of the child, or to the child, such lump sum as may be so specified;
- 10 (d) an order requiring the parent to transfer to the guardian or other guardian for the benefit of the child, or to the child, such property as may be so specified, being property to which the parent is entitled, either in possession or reversion;
- 15 (e) an order requiring that a settlement of such property as may be so specified, being property to which the parent is so entitled, be made to the satisfaction of the court for the benefit of the child.

11D—(1) If, on an application by a person who has attained the age of eighteen and whose parents are not living with each other, it appears to the High Court or a county court—

Orders for financial relief for persons over eighteen.

- 20 (a) that the applicant is, will be or (if an order were made under this section) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or
 - 25 (b) that there are special circumstances which justify the making of an order under this section,
- 30 the court may make one or both of the orders mentioned in subsection (2) of this section.

(2) The orders referred to in subsection (1) of this section are—

- 35 (a) an order requiring either or both of the applicant's parents to pay to the applicant such periodic payments, and for such term, as may be specified in the order; and
- (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.

40 (3) An application may not be made under this section by any person if, immediately before he attained the age of sixteen, a periodical payments order was in force with respect to him.

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

(5) Any order made under this section requiring the making of periodical payments shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

50 (6) An order under this section requiring the making of periodical payments may be varied or discharged by a

- Sch. 1 subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.
- (7) In subsection (3) of this section 'periodical payments order' means an order made under—
- 1969 c.46. (a) this Act, 5
- 1973 c.18. (b) section 6(3) of the Family Law Reform Act 1969,
- 1975 c.72. (c) section 23 or 27 of the Matrimonial Causes Act 1973,
- 1978 c.22. (d) section 34 of the Children Act 1975, or 10
- (e) Part I of the Domestic Proceedings and Magistrates' Courts Act 1978,
- for the making or securing of periodical payments.
- Duration of orders for periodical payments.
- 12—(1) The term to be specified in an order for periodical payments made by virtue of section 11B(2)(a) or 11C(3)(a) 15
- 11B(2)(b) or 11C(3)(b) of this Act 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 but—
- (a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age (that is to say, the age that is for the time being that limit by virtue of section 35 of the Education Act 1944 together with any Order in Council made under that section) unless the court 20
- thinks it right in the circumstances in the case to specify a later date: and 25
- (b) shall not in any event, subject to subsection (2) below, extend beyond the date of the child's eighteenth birthday. 30
- (2) Paragraph (b) of subsection (1) above 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 paragraph would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or 35
- (b) there are special circumstances which justify the making of an order without complying with that paragraph. 40
- (3) An order for secured periodical payments made by virtue of section 11B(2)(a) or 11C(3)(a) of this Act shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order. 45

12A In deciding whether to exercise its powers under section 11B, 11C or 11D of this Act and, if so, in what manner, the court shall have regard to all the circumstances of the case including the following matters, that is to say—

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

- 5 (a) the income, earning capacity, property and other financial resources which the mother or father of the child has or is likely to have in the foreseeable future;
- 10 (b) the financial needs, obligations and responsibilities which the mother or father of the child 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;
- 15 (e) any physical or mental disability of the child.

12B (1) Without prejudice to the generality of sections 11B and 11C of this Act, an order under any of those provisions for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses reasonably incurred before the making of the order to be met, being liabilities or expenses incurred in connection with the birth of the child or in maintaining the child.

Provisions relating to lump sums.

25 (2) The amount of any lump sum required to be paid by an order made by the magistrates' court under section 11B, 11C or 11D of this Act shall not exceed £500 or such larger amount as the Secretary of State may from time to time by order fix for the purposes of this subsection.

30 Any order made by the Secretary of State under this subsection shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

35 (3) The power of the court under section 11B, 11C or 11D of this Act 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 the said section 11B, 11C or 11D, as the case may be, for the payment of a lump sum by that parent.

40 (4) The amount of any lump sum which a parent may be required to pay by virtue of subsection (3) above shall not, in the case of an order made by a magistrates' court, exceed the maximum amount that may at the time of the making of the order be required to be paid under subsection (2) above, but a magistrates' court may make an order for the payment of a lump sum not exceeding that amount notwithstanding that the parent was required to pay a lump sum by a previous order under this Act.

50 (5) An order made under section 11B, 11C or 11D of this Act for the payment of a lump sum may provide for the payment of that sum by instalments and 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

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pay or the person entitled to receive that sum, shall have power to vary that order by varying the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable.

Variation etc.
of orders for
periodical
payments.

12C—(1) In exercising its powers under section 11B, 11C or 11D of this Act to vary or discharge an order for the making or securing of periodical payments the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order. 5 10

(2) The power of the court under section 11B, 11C or 11D of this Act to vary an order for the making or securing of periodical payments shall include power to suspend any provision thereof temporarily and to revive any provision so suspended. 15

(3) Where on an application under section 11B, 11C or 11D of this Act for the variation or discharge of an order for the making or securing of periodical payments the court varies the payment 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, no being earlier than the date of the making of the application. 20

(4) An application for the variation of an order made under section 11B or 11C of this Act for the making or securing of periodical payments to or for the benefit of a child may, if the child has attained the age of sixteen, be made by the child himself. 25

(5) Where an order for the making of periodical payments made under section 11B or 11C of this Act ceases to have effect on the date on which the child attains the age of 16 or at any time after that date but before or on the date on which he attains the age of 18, the child may apply— 30

(a) in the case of an order made by the High Court or a county court, to the court which made the order, or 35

(b) in the case of an order made by a magistrates' court, to the High Court or a county court,
for an order for the revival of the first mentioned order.

(6) If on such an application it appears to the High Court or county court that— 40

(a) the child is, or will be, or if an order were made under this subsection would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or 45

(b) there are special circumstances which justify the making of an order under this subsection,
the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application. 50

(7) Any order made under section 11B or 11C of this Act by the High Court or a county court which is revived by an order under subsection (5) above may be varied or discharged under section 11B or 11C of this Act, as the case may be, on the application of any person by whom or to whom payments are required to be made under the order.

(8) Any order made under section 11B or 11C of this Act by a magistrates' court which is revived by an order of the High Court or a county court under subsection (5) above—

(a) for the purposes of the variation and discharge of the order, shall be treated as an order of the court by which it was revived and may be varied or discharged by that court on the application of any person by whom or to whom payments are required to be made under the order; and

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

12D —(1) Where the parent liable to make payments under a secured periodical payments order has died, the persons who may apply for the variation or discharge of the order shall include the personal representatives of the deceased parent, and no application for the variation of the order shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that parent is first taken out.

Variation of orders for secured periodical payments after death of parent.

(2) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (1) of this section on the ground that they ought to have taken into account the possibility that the court might permit an application for variation to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the variation of an order in accordance with this section.

(3) Where an application to vary a secured periodical payments order is made after the death of the parent liable to make payments under the order, the circumstances to which the court is required to have regard under section 12C(1) of this Act shall include the changed circumstances resulting from the death of that parent.

(4) In considering for the purposes of subsection (1) of this section the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

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(5) In this section "secured periodical payments order" means an order for secured periodical payments made by virtue of section 11B(2)(b) or 11C(3)(b) of this Act.

Enforcement of orders for custody and maintenance.	<p>13—(1) Where an order made by a magistrates' court under this Act contains a provision committing to any person the actual custody of any child, a copy of the order may be served on any person in whose actual custody the child may for the time being be, thereupon the provision may, without prejudice to any other remedy open to the person given the custody, be enforced under section 63(3) of the Magistrates' Courts Act 1980 as if it were an order of the court requiring the person so served to give up the child to the person given the custody.</p> <p>(2) 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 magistrates' court under this Act shall give notice of any change of address to such person (if any) as may be specified in the order, and any person failing without reasonable excuse to give such a notice shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.</p> <p>(3) Any order for the payment of money made by a magistrates' court under this Act shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980.</p>	5 10 15 20 25
1980 c.43.		
Restriction on removal of child from England and Wales.	<p>13A—(1) Where the court makes—</p> <p>(a) an order under section 9 or 10 of this Act regarding the legal custody of a child, or</p> <p>(b) an interim order under section 2(4) of the Guardianship Act 1973 containing provision regarding the legal custody of a child,</p>	30
1973 c.29.	<p>the court, on making the order or at any time while the order is in force, may, if an application is made under this section, by order direct that no person shall take the child out of England and Wales while the order under this section is in force, except with the leave of the court.</p> <p>(2) An order made under subsection (1) above may be varied or discharged by a subsequent order.</p> <p>(3) An application for an order under subsection (1) above, or for the variation or discharge of such an order, may be made by any party to the proceedings in which the order mentioned in paragraph (a) or (b) of that subsection was made.</p>	35 40
Direction for settlement of instrument by conveyancing counsel.	<p>13B Where the High Court or a county court decides to make an order under this Act for the securing of periodical payments or for the transfer or settlement of property, it may direct that the matter be referred to one of the conveyancing counsel of the court for him to settle a proper instrument to be executed by all necessary parties.</p>	45

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Access to children by grandparents

14A—(1) The court, on making an order under section 9 of this Act, or at any time while such an order is in force, may on the application of a grandparent of the child make such order requiring access to the child to be given to the grandparents as the court thinks fit. Access to children by grandparents.

(2) Where one parent of a child is dead, or both parents are dead, the court may, on an application made by a parent of a deceased parent of the child, make such order requiring access to the child to be given to the applicant as the court thinks fit.

(3) Section 11A(2) of this Act shall apply in relation to an order made under this section as it applies in relation to an order under section 9 or 10 of this Act.

(4) The court shall not make an order under this section with respect to a child who is for the purposes of Part III of the Child Care Act 1980 in the care of a local authority.

(5) Where the court has made an order under subsection (1) above requiring access to a child to be given to a grandparent, the court may vary or discharge that order on an application made—

- (a) by that grandparent, or
- (b) by either parent of the child, or
- (c) if before 1st December 1985 the court has made an order under section 9 of this Act giving the legal custody of the child to a person other than one of the parents, by that person.

(6) Where the court has made an order under subsection (2) above requiring access to a child to be given to a grandparent, the court may vary or discharge that order on an application made—

- (a) by that grandparent, or
- (b) by any surviving parent of the child, or
- (c) by any guardian of the child.

(7) Section 6 of the Guardianship Act 1973 shall apply in relation to an application under this section as it applies in relation to an application under section 5 or 9 of this Act, and any reference to a party to the proceedings in subsection (2) or (3) of the said section 6 shall include— 1973 c.29.

- (a) in the case of an application under subsection (1) or (2) above, a reference to the grandparent who has made an application under either of those subsections,
- (b) in the case of an application under subsection (5) or (6) above, a reference to the grandparent who has access to the child under the order for the variation or discharge of which the application is made.

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(8) Where, at any time after an order with respect to a child has been made under subsection (1) above, no order is in force under section 9 of this Act with respect to that child, the order made under subsection (1) above shall cease to have effect.

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Jurisdiction and procedure

Courts having jurisdiction under this Act.

15—(1) Subject to the provisions of this section "the court" for the purposes of this Act means the High Court, any county court or any magistrates' court, except that provision may be made by rules of court that in the case of such applications to a county court, or such applications to a magistrates' court, as are prescribed, only such county courts, or as the case may be such magistrates' courts, as are prescribed shall be authorised to hear those applications.

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(2) A magistrates' court shall not be competent to entertain—

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(b) any application involving the administration or application of any property belonging to or held in trust for a child or the income thereof.

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(2A) It is hereby declared that any power conferred on a magistrates' court under this Act is exercisable notwithstanding that any party to the proceedings is residing outside England and Wales.

(2B) Where any party to the proceedings on an application to a magistrates' court under this Act resides outside the United Kingdom and does not appear at the time and place appointed for the hearing of the application, the court shall not hear the application unless it is proved to the satisfaction of the court, in such manner as is prescribed, that such steps as are prescribed have been taken to give to that party notice of the application and of the time and place appointed for the hearing of it.

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(2C) In this section "prescribed" means prescribed by rules of court.

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Financial provision for child resident in country outside England and Wales.

15A—(1) Where one parent of a child resides in England and Wales and the other parent and the child reside outside England and Wales, the court shall have power, on an application made by that other parent, to make one or both of the orders mentioned in section 11B(2)(a) and (b) of this Act against the parent resident in England and Wales ; and in relation to such an application section 11B(2)(a) and (b) shall have effect as if for any reference to the parent excluded from actual custody there were substituted a reference to the parent resident in England and Wales.

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(2) Any reference in this Act to the powers of the court under section 11B(2) of this Act or to an order made under the said section 11B(2) shall include a reference to the

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powers which the court has by virtue of subsection (1) above or, as the case may be, to an order made by virtue of subsection (1) above.

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Appeals and procedure.

5 (3) Subject to subsection (4) of this section, where on an application to a magistrates' court under this Act the court makes or refuses to make an order, an appeal shall lie to the High Court.

10 (4) Where an application is made to a magistrates' court under this Act, and the court considers that the matter is one which would more conveniently be dealt with by the High Court, the magistrates' court shall refuse to make an order, and in that case no appeal shall lie to the High Court.

15 (5) In relation to applications made to a magistrates' court under section 14A of this Act regarding access to a child by a grandparent or under section 3(3) or 4(3A) of the Guardianship Act 1973 for the discharge or variation of a supervision order or, as the case may be, an order giving the care of a child to a local authority or an order, requiring payments to be made to an authority to whom care of a child is so given, rules made under section 144 of the Magistrates' Courts Act 1980 may make provision as to the persons who are to be made defendants on the application; and if on any such application there are two or more defendants, the power of the court under section 64(1) of the Magistrates' Courts Act 1980 shall be deemed to include power, whatever adjudication the court makes on the complaint, to order any of the parties to pay the whole part of the costs of all or any of the other parties.

1973 c.29.

1980 c.43.

35 (6) On an appeal under subsection (3) of this section the High Court shall have power to make such orders as may be necessary to give effect to its determination of the appeal including such incidental or consequential orders as appear to the court to be just, and, in the case of an appeal from a decision of a magistrates' court on an application for or in respect of an order for the making of periodical payments, the High Court shall have power to order that its determination of the appeal shall have effect from such date as the court thinks fit, not being earlier than the date of the making of the application to the magistrates' court.

45 (7) Without prejudice to the generality of subsection (6) above, where, on an appeal under subsection (3) of this section in respect of an order of a magistrates' court requiring a parent of a child to make periodical payments, the High Court reduces the amount of those payments or discharges the order, the High Court shall have power to order the person entitled to payments under the order of the magistrates' court to pay to that parent such sum in respect of payments already made by the parent in compliance with the order as the High Court thinks fit and if any arrears are due under the order of the magistrates' court, the High Court shall have power to remit the payment of those arrears or any part thereof.

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(8) Any order of the High Court made on an appeal under subsection (3) of this section (other than an order directing that an application shall be re-heard by a magistrates' court) shall for the purposes of the enforcement of the order and for the purposes of any power to vary, revive or discharge orders conferred by section 9(1), 10(1) or (2)(b), 11B(1), 11C(1) or (2)(b), 11D(6), 12B(5) or 12C(2) of this Act or section 3(3) or 4(3A) of the Guardianship Act 1973 be treated as if it were an order of the magistrates' court from which the appeal was brought and not of the High Court.

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Saving for powers of High Court and other courts.

17—(1) Nothing in this Act shall restrict or affect the jurisdiction of the High Court to appoint or remove guardians or otherwise in respect of children.

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Supplementary

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Short title, interpretation and extent.

20—(1) This Act may be cited as the Guardianship of Minors Act 1971.

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

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

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

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

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"maintenance" includes education.

(2A) In this Act—

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

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(b) references to the father and mother of a child not being married to each other at the time of his birth,

shall be construed in accordance with section 1 of the Family Law Reform Act 1987.

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(2B) References in this Act to the parents of an applicant living with each other shall be construed as references to their living with each other in the same household.

(3) References in this Act to any enactment are references thereto as amended, and include references thereto as applied, by any other enactment.

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(4) This Act—

1950 c.37.

(a) so far as it amends the Maintenance Orders Act 1950 extends to Scotland and Northern Ireland,

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but, save as aforesaid, extends to England and Wales only.

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SCHEDULE 2

Section 33(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

The Maintenance Orders (Facilities for Enforcement) Act
1920 (c.33)

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1. In section 6(2) of the Maintenance Orders (Facilities for Enforcement) Act 1920—

- (a) for the words "in like manner as an order of affiliation" there shall be substituted the words "as a magistrates' court maintenance order";
- (b) at the end of that subsection there shall be inserted the words—

"In this subsection 'magistrates' court maintenance order' has the same meaning as in section 150(1) of the Magistrates' Courts Act 1980 c.43."

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The Trustee Act 1925 (c.19)

2. At the end of section 33 of the Trustee Act 1925 there shall be added the following subsection—

- "(4) In relation to the dispositions mentioned in section 19(1) of the Family Law Reform Act 1987, this section shall have effect as if any reference (however expressed) to any relationship between two persons were construed in accordance with section 1 of that Act."

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The Administration of Estates Act 1925 (c.23)

3. At the end of section 50 of the Administration of Estates Act 1925 there shall be added the following subsection—

- "(3) In subsection (1) of this section the reference to this Part of this Act, or to the foregoing provisions of this Part of this Act, shall in relation to an instrument inter vivos made, or a will or codicil coming into operation, after the coming into force of section 18 of the Family Law Reform Act 1987 (but not in relation to instruments inter vivos made or wills or codicils coming into operation earlier) be construed as including references to that section."

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4. At the end of section 52 of that Act there shall be added the words "and references (however expressed) to any relationship between two person shall, unless the contrary intention appears, be construed in accordance with section 1 of the Family Law Reform Act 1987".

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The National Assistance Act 1948 (c.29)

5. In section 42 of the National Assistance Act 1948 (liability to maintain spouse and children), for subsection (2) there shall be substituted the following subsection—

"(2) Any reference in subsection (1) of this section to a person's children shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

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6. In section 43 of that Act (recovery of cost of assistance from persons liable for maintenance), for subsection (6) there shall be substituted the following subsection—

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"(6) An order under this section shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980."

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7. Section 44 of that Act (affiliation orders) shall cease to have effect.

8. In section 56(1) of that Act (legal proceedings), after the words "any sum due under this Act to a local authority" there shall be inserted the words "(other than a sum due under an order made under section 43 of this Act)".

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The Marriage Act 1949 (c.76)

9. In the Marriage Act 1949 for the words "an infant", wherever they occur in sections 3, 16 or 28 or in Schedule 2, there shall be substituted the words "a child" and for the words "the infant", wherever they occur in section 3 or in Schedule 2, there shall be substituted the words "the child".

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10. In section 78 of that Act—

(a) in subsection (1) for the definition of "infant" there shall be substituted the following definition—

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"'child' means a person under the age of eighteen;" and

(b) after that subsection there shall be inserted the following subsection—

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(1A) References in this Act to the parents of a child being or not being married to each other at the time of his birth shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

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11. In Schedule 2 to that Act for the heading to Part I there shall be substituted the following heading—

"I. WHERE THE PARENTS OF THE CHILD WERE MARRIED TO EACH OTHER AT THE TIME OF HIS BIRTH"

The Maintenance Orders Act 1950 (c.37)

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12. In section 16(2)(a) of the Maintenance Orders Act

1950-

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- (a) for sub-paragraph (iii) there shall be substituted the following sub-paragraph-

"(iii) section 11B, 11C(1) or 11D of the Guardianship of Minors Act 1971 or section 2(3) or 2(4A) of the Guardianship Act 1973;"

- (b) sub-paragraph (iv) shall cease to have effect;

- (c) the sub-paragraph (vi) inserted by the Children Act 1975 shall cease to have effect;

- (d) in the sub-paragraph (vi) inserted by the Supplementary Benefits Act 1976 the words from "or section 4 of the Affiliation Proceedings Act 1957" to the end shall cease to have effect.

13. In section 18 of that Act for subsection (2) there shall be substituted the following subsection-

"(2) Every maintenance order registered under this Part of this Act in a magistrates' court in England and Wales shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980."

The Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c.65)

14. In section 2(1) of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951, for paragraph (d) of the proviso there shall be substituted the following paragraph-

"(d) an order for alimony, maintenance or other payments which has been made under sections 21 to 33 of the Matrimonial Causes Act 1973 or under section 11B, 11C(1) or 11D of the Guardianship of Minors Act 1971 or section 2(4A) of the Guardianship Act 1973;"

The Births and Deaths Registration Act 1953 (c.20)

15. In section 9(4) of the 1953 Act for "(b) or (c)" there shall be substituted "(b), (c) or (d)".

16. In section 34(2) of that Act for the words "required by law" there shall be substituted the words "required or permitted by law".

The Maintenance Orders Act 1958 (c.39)

17. In section 3 of the Maintenance Orders Act 1958 for subsection (2) there shall be substituted the following subsection-

"(2) Subject to the provisions of the next following subsection, an order registered in a magistrates' court shall be enforceable as a magistrates' court maintenance order within the

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meaning of section 150(1) of the Magistrates' Courts Act 1980."

The Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 (c.63)

18. In section 2 of the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 (restriction of publicity for certain proceedings)- 5

(a) in subsection (1) the word "and" following paragraph (b) shall cease to have effect and there shall be inserted at the end the following paragraph- 10

"(e) proceedings under section 56(1) of the Family Law Act 1986 (declarations of parentage);";

(b) in subsection (3) for the words "subsection (1)(a) or (d)" there shall be substituted the words "subsection (1)(d) or (e)". 15

The Family Law Reform Act 1969 (c.46)

19.-(1) Section 6 of the Family Law Reform Act 1969 (maintenance for wards of court) shall be amended as follows. 20

(2) At the end of subsection (1) there shall be added the words "and references (however expressed) to any relationship between two persons shall be construed in accordance with section 1 of the Family Law Reform Act 1987". 25

(3) For subsection (3) there shall be substituted the following subsection-

"(3) Section 12 of the Guardianship of Minors Act 1971 (duration of orders for maintenance) and subsections (4), (5) and (6) of section 12C of that Act (variation and revival of orders for periodical payments) shall apply in relation to an order made under subsection (2) of this section as they apply in relation to an order made by the High Court under section 11B of that Act." 30 35

(4) In subsection (5) (which provides that an order under that section shall cease to have effect if the parents of the ward reside together for a period of three months after the making of the order) for the words "three months" there shall be substituted the words "six months". 40

(5) Subsection (6) (which provides that no order shall be made under that section requiring any person to make any payment towards the maintenance or education of an illegitimate child) shall cease to have effect. 45

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

20. In section 70 of the Children and Young Persons Act 1969, after subsection (1A) there shall be inserted the

following subsection—

5 "(1B) In subsection (1A) of this section the reference to a child whose father and mother were not married to each other at the time of his birth shall be construed in accordance with section 1 of the Family Law Reform Act 1987 and 'actual custody', in relation to a child, means actual possession of his person."

The Administration of Justice Act 1970 (c.31)

10 21. In Schedule 8 to the Administration of Justice Act 1970—

(a) for paragraph 4(a) there shall be substituted—

15 "(a) section 11B, 11C or 11D of the Guardianship of Minors Act 1971 or section 2(3) or 2(4A) of the Guardianship Act 1973 (payments for maintenance of persons who are or have been in guardianship);";

(b) paragraph 5 shall cease to have effect.

20 The Guardianship of Minors Act 1971 (c.3)

22. Without prejudice to any other amendment of the 1971 Act made by this Act, for the words "minor", "minor's" and "minors", wherever occurring in that Act otherwise than in the expression "the Guardianship of Minors Act 1971", there shall be substituted the words "child", "child's" and "children" respectively.

23. In section 5(2) of that Act for the words from "notwithstanding" to the end there shall be substituted the words "notwithstanding that parental rights and duties with respect to the child are vested in a local authority or a voluntary organisation by virtue of a resolution under section 3 or 4 of the Child Care Act 1980".

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

25.-(1) Section 12 of that Act shall be amended as follows.

40 (2) In subsection (1) for the words "an order made under section 9, 10 or 11 of this Act for the making of periodical payments" there shall be substituted the words "an order for periodical payments made by virtue of section 11B(2)(a) or (b) or 11C(3)(a) or (b) of this Act".

45 (3) In subsection (3) for the words "Any order made under section 9, 10 or 11 of this Act requiring the making of periodical payments" there shall be substituted the words "An order for periodical payments made by virtue of section 11B(2)(a) or 11C(3)(a) of this Act".

26. In section 12A of that Act for the words "section 9(2), 10(1)(b) or 11(b)" there shall be substituted the words "section 11B, 11C or 11D".

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27.-(1) Section 12B of that Act shall be amended as follows.

(2) In subsection (1) for the words "section 9(2), 10(1)(b) and 11(b)" there shall be substituted the words "sections 11B and 11C", the words "in maintaining the minor" shall be omitted and there shall be added at the end the words "being liabilities or expenses incurred in connection with the birth of the child or in maintaining the child".

(3) In subsection (2) for the words "section 9(2), 10(1)(b) or 11(b)" there shall be substituted the words "section 11B, 11C or 11D".

(4) In subsections (3) and (5) for the words "section 9, 10 or 11", in each place where they occur, there shall be substituted the words "section 11B, 11C or 11D".

(5) In subsection (3) after the words "for the making" there shall be inserted the words "or securing" and the words "of a minor" shall cease to have effect.

28.-(1) Section 12C of that Act shall be amended as follows.

(2) In subsections (1) to (3) for the words "section 9, 10 or 11" there shall be substituted the words "section 11B, 11C or 11D" and after the words "for the making" there shall be inserted the words "or securing".

(3) In subsection (4) for the words "section 9, 10 or 11" there shall be substituted the words "section 11B or 11C" and after the words "for the making" there shall be inserted the words "or securing".

(4) For subsection (5) there shall be substituted the following subsections-

"(5) Where an order for the making of periodical payments made under section 11B or 11C of this Act ceases to have effect on the date on which the child attains the age of 16 or at any time after that date but before or on the date on which he attains the age of 18, the child may apply-

(a) in the case of an order made by the High Court or a county court, to the court which made the order, or

(b) in the case of an order made by a magistrates' court, to the High Court or a county court,

for an order for the revival of the first mentioned order.

(6) If on such an application it appears to the High Court or county court that-

(a) the child is, or will be, or if an order were made under this subsection would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not

he is also, or will also be, in gainful employment; or

- (b) there are special circumstances which justify the making of an order under this subsection,

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

(7) Any order made under section 11B or 11C of this Act by the High Court or a county court which is revived by an order under subsection (5) above may be varied or discharged under section 11B or 11C of this Act, as the case may be, on the application of any person by whom or to whom payments are required to be made under the order.

(8) Any order made under section 11B or 11C of this Act by a magistrates' court which is revived by an order of the High Court or a county court under subsection (5) above—

- (a) for the purposes of the variation and discharge of the order, shall be treated as an order of the court by which it was revived and may be varied or discharged by that court on the application of any person by whom or to whom payments are required to be made under the order; and
- (b) for the purposes of the enforcement of the order, shall be treated as an order of the magistrates' court by which the order was originally made."

29. After that section there shall be inserted the following section—

"Variation of orders for secured periodical payments after death of parent. 12D.—(1) Where the parent liable to make payments under a secured periodical payments order has died, the persons who may apply for the variation or discharge of the order shall include the personal representatives of the deceased parent, and no application for the variation of the order shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that parent is first taken out.

(2) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (1) of this

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section on the ground that they ought to have taken into account the possibility that the court might permit an application for variation to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the variation of an order in accordance with this section. 5

(3) Where an application to vary a secured periodical payments order is made after the death of the parent liable to make payments under the order, the circumstances to which the court is required to have regard under section 12C(1) of this Act shall include the changed circumstances resulting from the death of that parent. 10 15

(4) In considering for the purposes of subsection (1) of this section the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time. 20 25

(5) In this section 'secured periodical payments order' means an order for secured periodical payments made by virtue of section 11B(2)(b) or 11C(3)(b) of this Act." 30 35

30. In section 13 of that Act for subsection (3) there shall be substituted the following subsection-

"(3) Any order for the payment of money made by a magistrates' court under this Act shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980". 35 40

31. In section 13A(1) of that Act, for the words "section 9(1), 10(1)(a) or 11(a)" there shall be substituted the words "section 9 or 10". 40 45

32. After that section there shall be inserted the following sections-

Direction for settlement of instrument by conveyancing counsel.

13B. Where the High Court or a county court decides to make an order under this Act for the securing of periodical payments or for the transfer or settlement of property, it may direct that the matter be referred to one of the conveyancing counsel of the court for him to settle a proper instrument to be executed by all necessary parties." 45 50

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

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

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

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

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

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

15 (2) In subsection (1)-

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

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

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

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

30 37. In section 20 of that Act for subsection (2) there shall be substituted the following subsections-

"(2) In this Act, unless the context otherwise requires-

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

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

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

'maintenance' includes education.

(2A) In this Act-

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

(b) references to the father and mother of a child not being married

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to each other at the time of his birth, shall be construed in accordance with section 1 of the Family Law Reform Act 1987.

(2B) References in this Act to the parents of an applicant living with each other shall be construed as references to their living with each other in the same household." 5

The Attachment of Earnings Act 1971 (c.32)

38. In Schedule 1 to the Attachment of Earnings Act 1971- 10

(a) for paragraph 5(a) there shall be substituted the following paragraph—

"(a) section 11B, 11C or 11D of the Guardianship of Minors Act 1971 or section 2(3) or 2(4A) of the Guardianship Act 1973 (payments for maintenance of persons who are or have been in guardianship);"; 15

(b) paragraph 6 shall cease to have effect.

The Maintenance Orders (Reciprocal Enforcement Act 1972 (c.18) 20

39. In section 8 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 for subsection (4) there shall be substituted the following subsection—

"(4) An order which by virtue of this section is enforceable by a magistrates' court shall be enforceable as if it were a magistrates' court maintenance order made by that court. 25

In this subsection "magistrates' court maintenance order" has the same meaning as in section 150(1) of the Magistrates' Courts Act 1980." 30

40. In section 27 of that Act—

(a) in subsection (2) for the words from "appointed for the commission area" to the words "as the case may be" there shall be substituted the words "acting for the petty session district"; 35

(b) in subsection (9) the words "section 5(5) of the Affiliation Proceedings Act 1957" shall cease to have effect. 40

41. In section 28 of that Act after "19(1)(ii)" there shall be inserted "20A".

42. In section 28A(3) of that Act, in paragraph (e) after "19(1)(ii)" there shall be inserted "20A".

43.—(1) Section 30 of that Act shall be amended as follows. 45

(2) For subsection (1) there shall be substituted the following subsection—

5 "(1) Section 12C(5) of the Guardianship of Minors Act 1971 (revival by High Court or county court of orders for periodical payments) shall not apply in relation to an order made on a complaint for an order under section 11B of that Act."

(3) In subsection (2) for the words "to which subsection (1) above applies" there shall be substituted the words "for an order under section 11B of that Act".

10 (4) In subsection (3) the words "the Affiliation Proceedings Act 1957 or", the words "paragraph (b) of section 2(1) of the said Act of 1957 (time for making complaint) or", the words "(provision to the like effect) as the case may be", the words "three years or" and the words "in the case of a
15 complaint under the said Act of 1924" shall cease to have effect.

(5) In subsection (5) the words "the said Act of 1957 or" and the words "as the case may be" shall cease to have effect.

20 (6) In subsection (6) the words "or an affiliation order under the said Act of 1957" shall cease to have effect.

44. In section 33 of that Act, for subsection (3) there shall be substituted the following subsection—

25 "(3) An order which by virtue of subsection (1) above is enforceable by a magistrates' court shall be enforceable as if it were a magistrates' court maintenance order made by that court.

30 In this subsection "magistrates' court maintenance order" has the same meaning as in section 150(1) of the Magistrates Courts Act 1980."

45.-(1) Section 41 of that Act shall be amended as follows.

(2) Subsection (1) shall cease to have effect.

35 (3) In subsection (2) for the words "sections 9, 10 or 11" there shall be substituted the words "section 11B or 11C".

(4) In subsection (2A), paragraph (a) shall cease to have effect and for paragraph (b) there shall be substituted the following paragraph—

40 "(b) an application made under section 11B or 11C of the Guardianship of Minors Act 1971 for the revocation or variation of an order for the periodical payment of money made under the said section 11B or 11C,".

45 (5) In subsection (2B), paragraph (a) shall cease to have effect and in paragraph (b) for the words "section 9, 10 or 11" there shall be substituted the words "section 11B or 11C".

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The Matrimonial Causes Act 1973 (c.18)

46. In section 27 of the Matrimonial Causes Act 1973 for subsection (6B) there shall be substituted the following subsection-

"(6B) Where a periodical payments order made in favour of a child under this section ceases to have effect on the date on which the child attains the age of sixteen or at any time after that date but before or on the date on which he attains the age of eighteen, then if, on an application made to the court for an order under this subsection, it appears to the court that-

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

the court shall have power by order to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application, and to exercise its power under section 31 of this Act in relation to any order so revived."

The Guardianship Act 1973 (c.29)

47. Without prejudice to any other amendment of Part I of the 1973 Act made by this Act, for the words "minor" and "minors", wherever occurring in that Part otherwise than in the expressions "the Guardianship of Minors Act 1971" and "the Guardianship of Minors Acts 1971 and 1973", there shall be substituted the words "child" and "children" respectively.

48.-(1) Section 2 of that Act shall be amended as follows.

(2) For subsection (2) there shall be substituted the following subsection-

"(2) Where an application is made under section 9 of the Guardianship of Minors Act 1971 for the legal custody of a child, then subject to sections 3 and 4 below-

- (a) if by virtue of the making of, or refusal to make, an order on that application the actual custody of the child is given to, or retained by, a parent of the child, but it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person,

the court may make an order that the child shall be under the supervision of a specified local authority or under the supervision of a probation officer;

(b) if it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parents, the court may commit the care of the child to a specified local authority."

(3) For subsections (4) and (5) there shall be substituted the following subsections—

"(4) Subject to the provisions of this section, where an application is made under section 9 of the Guardianship of Minors Act 1971 the court, at any time before it makes a final order or dismisses the application, may, if by reason of special circumstances the court thinks it proper, make an interim order containing any such provision regarding the legal custody of and right of access to the child as the court has power to make under that section.

(4A) Subject to the provisions of this section, where an application is made under section 11B of the Guardianship of Minors Act 1971, the court, at any time before it makes a final order or dismisses the application, may make an interim order requiring either parent to make to the other or to the child such periodical payments towards the maintenance of the child as the court thinks fit.

(5) Where under section 16(4) of the Guardianship of Minors Act 1971 the court refuses to make an order on an application under section 9 or 11B of that Act on the ground that the matter is one that would more conveniently be dealt with by the High Court, the court shall have power—

(a) in the case of an application under section 9 of that Act, to make an order under subsection (4) above,

(b) in the case of an application under section 11B of that Act, to make an order under subsection (4A) above".

(4) In subsection (5B) for the words "section 9" there shall be substituted the words "section 11B".

(5) For subsection (5E) there shall be substituted the following subsection—

"(5E) On an application under section 9 or 11B of the Guardianship of Minors Act 1971 the court shall not have power to make more than

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- one interim order under this section with respect to that application, but without prejudice to the powers of the court under this section on any further such application."
- (6) Subsection (6) shall cease to have effect. 5
49. In section 4 of that Act-
- (a) in subsection (3) after the words "section 9" there shall be inserted the words "or 11B"; and
- (b) subsection (3D) shall cease to have effect.
- 50.-(1) Section 5 of that Act shall be amended as follows. 10
- (2) For subsections (1) and (2) there shall be substituted the following subsections-
- "(1) There shall be no appeal under section 16 of the Guardianship of Minors Act 1971 from an interim order under subsection (4A) of section 2 above. 15
- (2) Section 9 of the Guardianship of Minors Act 1971 shall apply in relation to an interim order made under this Act on an application under that section as if the interim order had been made under that section. 20
- (2A) Section 13 of the Guardianship of Minors Act 1971 shall apply in relation to an interim order made under this Act as if the interim order had been made under that Act." 25
51. In section 5A of that Act for subsections (1) and (2) there shall be substituted the following subsections-
- "(1) Where any of the following orders is made, that is to say-
- (a) an order under section 9 of the Guardianship of Minors Act 1971 which gives the right to the actual custody of a child to one of the parents of the child, 30
- (b) an order under section 11B of that Act which requires periodical payments to be made or secured to a parent of the child, 35
- (c) an interim order under section 2(4) above which gives the right to the actual custody of a child to a parent of the child, 40
- (d) an interim order under section 2(4A) above which requires periodical payments to be made to a parent of the child, 45
- that order shall be enforceable notwithstanding that the parents of the child are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently live 50

with each other; but that order shall cease to have effect if after that date the parents of the child marry each other or live with each other for a period exceeding six months.

5 (2) Where any of the following orders is made, that is to say-

10 (a) an order under section 11B of the Guardianship of Minors Act 1971 which requires periodical payments to be made or secured to a child,

(b) an order under section 2(2)(i), 2(2)(ii) or 2(3) above,

15 (c) an interim order under section 2(4A) requiring periodical payments to be made to a child,

20 then, unless the court otherwise directs, that order shall be enforceable notwithstanding that the parents of the child are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently live with each other.

25 (2A) Where an order is made under section 11D of the Guardianship of Minors Act 1971 requiring periodical payments to be made to a person who has attained the age of eighteen, then unless the court otherwise directs, that order shall be enforceable notwithstanding that the parents of that person, although they are not living with each other at the date of the order, subsequently live with each other."

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52. Before section 9 of that Act there shall be inserted the following section-

35 "Interpretation 8A.—(1) In this Part of this Act 'child', of Part I. except where used to express a relationship, means a person who has not attained the age of eighteen.

(2) In this Part of this Act—

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

(b) references to the father and mother of a child not being married to each other at the time of his birth,

45 shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

The Social Security Act 1975 (c.14)

53. In section 25(1) of the Social Security Act 1975 there

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shall be added at the end the words "or

- (c) if the woman and her late husband were residing together immediately before his death, the woman is pregnant as the result of being artificially inseminated with the semen of some person other than her husband."

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The Children Act 1975 (c.72)

54. In section 33 of the Children Act 1975, after subsection (9) there shall be inserted the following subsection—

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"(9A) In this Part of this Act references (however expressed) to any relationship between two persons shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

15

55.—(1) Section 34 of that Act shall be amended as follows.

(2) Subsection (3) shall cease to have effect.

(3) In subsection (5) for the words "(5A), (5B), (5C), (5D), (5E) and (6) there shall be substituted the words "(4A)", (5A), (5B), (5C), (5D) and (5E)" and for the words "section 2(2)(b) and (4)(a)" there shall be substituted the words "section 2(2)(b) and (4A)".

20

56. In section 35 of that Act, for subsection (10) there shall be substituted the following subsections—

25

"(10) Where an order under section 34(1)(b) ceases to have effect on the date on which the child attains the age of 16 or at any time after that date but before or on the date on which he attains the age of 18, the child may apply to an authorised court, other than a magistrates' court, for an order for the revival of that order, and if, on such an application, it appears to the court that—

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(a) the child is, or will be, or if an order were made under this subsection would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

35

(b) there are special circumstances which justify the making of an order under this subsection,

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the court shall have power by order to revive the order made under section 34(1)(b) from such date as the court may specify, not being earlier than the date of the making of the application and to vary or revoke under this section any order so revived.

50

(10A) Any order made by a magistrates' court under section 34(1)(b) which is revived by an order under subsection (10) shall for the purposes of the enforcement of the order be treated as an order made by the magistrates' court by which the order was originally made."

57. In section 36 of that Act, subsection (5A) shall cease to have effect.

58. In section 37(3) of that Act, for the words "section 9 (orders for custody and maintenance)" there shall be substituted the words "section 9 (orders for custody)".

59. In section 43 of that Act, for subsection (3) there shall be substituted the following subsection-

"(3) An order for the payment of money made by a magistrates' court under section 34 shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980."

60. Section 45 of that Act (affiliation order on application of custodian) shall cease to have effect.

The Adoption Act 1976 (c.36)

61. At the end of section 18 of the Adoption Act 1976 there shall be added the following subsection-

"(8) In subsection (7) the reference to a child whose father and mother were not married to each other at the time of his birth shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

62. In section 72 of that Act, after subsection (1) there shall be inserted the following subsection-

"(8) In the definition of 'guardian' in subsection (1) the reference to a child whose father and mother were not married to each other at the time of his birth shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

The Domestic Proceedings and Magistrates' Courts Act 1978
(c.22)

63. After section 20 of the Domestic Proceedings and Magistrates' Courts Act 1978 there shall be inserted the following section-

"Revival of orders for periodical payments.

20A.-(1) Where an order made by a magistrates' court under this Part of this Act for the making of periodical payments to or in respect of a child (other than an interim maintenance order) ceases to have effect on the date on which the child attains the age of 16 or at any time after that date but before or on the date on which he attains the age of 18, the

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child may apply to the High Court or a county court for an order for the revival of the order of the magistrates' court, and if, on such an application, it appears to the High Court or county court that-

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(a) the child is, or will be, or if an order were made under this subsection would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

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(b) there are special circumstances which justify the making of an order under this subsection,

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

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(2) Where an order made by a magistrates' court is revived by an order of the High Court or a county court under subsection (1) above, then-

(a) for the purposes of the variation and discharge of the revived order, that order shall be treated as an order of the court by which it was revived and may be varied or discharged by that court on the application of any person by whom or to whom payments are required to be made under the order, and

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

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64. In section 32 of that Act for subsection (1) there shall be substituted the following subsection-

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"(1) An order for the payment of money made by a magistrates' court under this Part of this Act shall be enforceable as a magistrates' court maintenance order."

65. In section 88(1) of that Act after the definition of "local authority" there shall be inserted the following definition-

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" 'magistrates' court maintenance order' has the same meaning as in section 150(1) of the Magistrates' Courts Act 1980".

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66. In Schedule 1 to that Act-

(a) after paragraph 3 there shall be inserted the

following paragraph-

"3A. Any order for the payment of money in force under the Matrimonial Proceedings (Magistrates' Courts) Act 1960 (including any such order made under that Act by virtue of paragraph 1 above) shall be enforceable as a magistrates' court maintenance order."

(b) in paragraph 4 for the words "paragraph 2 or 3" there shall be substituted the words "paragraph 2, 3 or 3A".

The Interpretation Act 1978 (c.30)

67. At the end of Schedule 1 to the Interpretation Act 1978, there shall be added the following heading and entry—

"Construction of certain references to relationships

In relation to England and Wales—

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

(b) references to a person whose father and mother were or were not married to each other at the time of his birth; and

(c) references cognate to references falling within paragraph (b) above,

shall be construed in accordance with section 1 of the Family Law Reform Act 1987. [The date on which that section comes into force]".

68. In paragraph 4 of Schedule 2 to that Act, the words "earlier than the commencement of this Act" shall cease to have effect and after the word "specified", wherever it occurs, there shall be inserted the words "or described".

The Child Care Act 1980 (c.5)

69. In section 47 of that Act, for subsection (4) there shall be substituted the following subsections—

"(4) A contribution order shall be enforceable as a magistrates' courts maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980, except that any powers conferred on a magistrates' court by that Act shall as respects a contribution order be exercisable, and exercisable only, by a magistrates' court appointed for the commission area where the contributor is for the time being residing.

(5) Where a contribution order is made requiring the father of a child whose parents were not married to each other at the time of his birth to make contributions in respect of the child, the father shall keep the local authority to whom the contributions are required to be made informed of his address; and if he fails to do so, he shall be guilty of an offence and

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liable on summary conviction to a fine not exceeding level 1 on the standard scale."

70. Sections 49 and 50 of that Act (affiliation orders) shall cease to have effect.

71. In section 55 of that Act-

(a) subsection (3) shall cease to have effect; and

(b) in subsection (5) the words from "and any jurisdiction conferred by this section in affiliation proceedings" to the end of the subsection shall cease to have effect.

72. In section 86 of that Act for paragraphs (a) and (b) there shall be substituted the words "of an order made by a court under section 47 or 48 of this Act".

73.—(1) Section 87 of that Act shall be amended as follows.

(2) In subsection (1), in the definition of "relative" the words from "and includes" onwards shall cease to have effect.

(3) After subsection (1A) there shall be inserted the following subsection—

"(1B) The following, namely—

(a) in this Act except Part I and sections 13, 24, 64 and 65 references (however expressed) to any relationship between two persons; and

(b) in subsection (1A) the reference to a child whose father and mother were not married to each other at the time of his birth,

shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

The Magistrates' Courts Act 1980 (c.43)

74. In section 58(2)(a) of the Magistrates' Courts Act 1980 for the words "an affiliation order or order enforceable as an affiliation order" there shall be substituted the words "a magistrates' court maintenance order".

75. In section 64 of that Act for subsection (4) there shall be substituted the following subsection—

"(4) Any costs awarded on a complaint for a maintenance order, or for the enforcement, variation, revocation, discharge or revival of such an order, against the person liable to make payments under the order shall be enforceable as a sum ordered to be paid by a magistrates' court maintenance order."

76. In section 80(1) of that Act for the words "an affiliation order or an order enforceable as an affiliation order" there shall be substituted the words "a magistrates' court maintenance order".

77. In section 93(1) of that Act for the words "an affiliation order or order enforceable as an affiliation order" there shall be substituted the words "a magistrates' court maintenance order".

78. In section 94 of that Act for the words "an affiliation order or order enforceable as an affiliation order" there shall be substituted the words "a magistrates' court maintenance order".

78. In section 95 of that Act for the words "an affiliation order or an order enforceable as an affiliation order" there shall be substituted the words "a magistrates' court maintenance order".

79. In section 100 of that Act for paragraph (b) there shall be substituted the following paragraph-

"(b) on any application made by or against that person for the making of a magistrates' courts maintenance order, or for the variation, revocation, discharge or revival of such an order".

80. In section 150(1) of that Act-

(a) the definition of "affiliation order" shall cease to have effect;

(b) after the definition of "London Commission area" there shall be inserted-

"magistrates' court maintenance order" means a maintenance order enforceable by a magistrates' court;

"maintenance order" means any order specified in Schedule 8 to the Administration of Justice Act 1970 and includes such an order which has been discharged, if any arrears are recoverable thereunder;".

The Civil Jurisdiction and Judgments Act 1982 (c.27)

81.—(1) Section 5 of the Civil Jurisdiction and Judgments Act 1982 shall be amended as follows.

(2) After subsection (5) there shall be inserted the following subsection-

"(5A) A maintenance order which by virtue of this section is enforceable by a magistrates' court in England and Wales shall be enforceable in the same manner as a magistrates' court maintenance order made by that court.

In this subsection 'magistrates' court maintenance order' has the same meaning as in section 150(1) of the Magistrates' Courts Act 1980."

(3) In subsection (6) the words "England and Wales or" shall cease to have effect.

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The Social Security Act 1986 (c.50)

82. In section 24 of the Social Security Act 1986 (recovery of expenditure on supplementary benefits from persons liable for maintenance), subsections (2) and (3) shall cease to have effect and for subsection (7) there shall be substituted the following subsection—

"(7) An order under this section shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980."

83. Section 25 of that Act (affiliation orders) shall cease to have effect.

84. In section 26 of that Act, for subsection (4) there shall be substituted the following subsection—

"(4) Any reference in subsection (3) above to a person's children shall be construed in accordance with section 1 of the Family Law Reform Act 1987."

Section 33(2).

SCHEDULE 3

TRANSITIONAL PROVISIONS AND SAVINGS

Applications pending under amended or repealed enactments

1. This Act (including the repeals and amendments made by it) shall not have effect in relation to any application made under any enactment repealed or amended by this Act if that application is pending at the time when the provision of this Act which repeals or amends that enactment comes into force.

References to provisions of Adoption Act 1976

1976 c.36.

2. In relation to any time before the coming into force of section 38 of the Adoption Act 1976, the reference in section 1(2) of this Act to Part IV of that Act shall be construed as a reference to Schedule 1 to the Children Act 1975.

1975 c.72.

3. In relation to any time before the coming into force of section 18 of the Adoption Act 1976, any reference—

(a) in section 7(1) of paragraph 60 of Schedule 2 to this Act; or

(b) in section 9(2) or 10(3) of the 1971 Act as substituted by this Act,

to or to subsection (7) of the said section 18 shall be construed as a reference to or to subsection (8) of section 14 of the Children Act 1975.

4. In relation to any time before the coming into force of section 72(1) of the Adoption Act 1976, the reference in section 7(2) of this Act to that section shall be construed as a reference to section 107(1) of the Children Act 1975.

5. In relation to any time before the coming into force of section 42 of the Adoption Act 1976, the reference in section 19 of this Act to that section shall be construed as a reference to paragraph 1 of Schedule 1 to the Children Act 1975.

References to provisions of the Adoption (Scotland) Act 1978

6. In relation to any time before the coming into force of section 18 of the Adoption (Scotland) Act 1978, any reference in section 9(2) or 10(3) of the 1971 Act as substituted by this Act to the said section 18 shall be construed as a reference to section 14 of the Children Act 1975.

Affiliation orders

7.—(1) Any affiliation order made under the Affiliation Proceedings Act 1957 which is in force immediately before the coming into force of section 17 of this Act shall not be affected by the repeal by this Act of that Act, and the provisions of that Act of 1957 (and the provisions of the Magistrates' Courts Act 1980 as they have effect immediately before the coming into force of any of the amendments made to that Act of 1980 by Schedule 3 to this Act) shall, after the coming into force of section 17 of this Act, continue to apply in relation to such an order and to an affiliation order made by virtue of paragraph 1 above.

(2) Any reference in this paragraph to an affiliation order made under the Affiliation Proceedings Act 1957 includes a reference to—

(a) an affiliation order made, or having effect as if made, by virtue of section 44 of the National Assistance Act 1948, section 49 or 50 of the Child Care Act 1980 or section 25 of the Social Security Act 1986; and

(b) any order made in relation to such an order; and the reference to the provisions of that Act of 1957 shall be construed accordingly.

8. Where—

(a) an application is made to the High Court or a county court for an order under section 11B of the 1971 Act 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, if it thinks fit, 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

1969 c.46.

9. The repeal by this Act of section 14 of the Family Law Reform Act 1969 shall not affect any rights arising under the intestacy of a person dying before the coming into force of the repeal.

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1925 c.19.

10. The repeal by this Act of section 15 of the Family Law Reform Act 1969 shall not affect, or affect the operation of section 33 of the Trustee Act 1925 in relation to-

- (a) any disposition inter vivos made before the date on which the repeal comes into force; or 10
 (b) any disposition by will or codicil executed before that date.

11. The repeal by this Act of section 17 of the Family Law Reform Act 1969 shall not affect the liability of trustees or personal representatives in respect of any conveyance or distribution made before the coming into force of the repeal. 15

Registration of births

12. Where-

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- (a) a child whose parents were not married to each other at the time of his birth has been born in England and Wales before the date on which section 24 of this Act comes into force;
 (b) the birth has not been registered under the 1953 Act before that date; and 25
 (c) an order has been made under section 4 of the Affiliation Proceedings Act 1957 naming any person as the putative father of the child,

the mother of the child, on production of a certified copy of the order, may request the registrar to enter the name of that person as the father of the child under section 10 of the 1953 Act as if the order made under the said section 4 were an order under section 11B of the 1971 Act. 30

13. Where-

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- (a) the birth of a child whose parents were not married to each other at the time of his birth has been registered under the 1953 Act before the date on which section 25 of this Act comes into force;

(b) no person has been registered as the father of the child; and 40

1957 c.55.

- (c) an order has been made under section 4 of the Affiliation Proceedings Act 1957 naming any person as the father of the child,

the mother of the child, on production of a certified copy of the order, may request the registrar to re-register the birth so as to show as the father of the child the person named in the order. 45

SCHEDULE 4

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Section 35(4).

REPEALS

Chapter	Short title	Extent of repeal
11 & 12 5 Geo.6 c.29.	The National Assistance Act 1948.	Section 42(2). Section 44.
14 Geo.6 c.37.	The Maintenance Orders Act 1950.	Section 3. In section 16(2)(a)- (a) paragraph (iv); (b) the paragraph (vi) inserted by the Children Act 1975; (c) in the paragraph (vi) inserted by the Supplementary Benefits Act 1976 the words from "or section 4 of the Affiliation Proceedings Act 1957" to the end.
3 & 4 Eliz.2 c.18.	The Army Act 1955.	In section 150(5) the words from "references to a sum ordered to be paid" to the end.
3 & 4 Eliz.2 c.19.	The Air Force Act 1955.	In section 150(5) the words from "references to a sum ordered to be paid" to the end.
5 & 6 Eliz.2 c.53.	The Naval Discipline Act 1957.	In section 101(5) the words "and includes an affiliation order within the meaning of the Affiliation Orders Act 1914".
5 & 6 Eliz.2 c.55.	The Affiliation Proceedings Act 1957.	The whole Act.
6 & 7 Eliz.2 c.39.	The Maintenance Orders Act 1958.	In section 21(1) the words "affiliation order".

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Chapter	Short title	Extent of repeal	
7 & 8 Eliz.2 c.73.	The Legitimacy Act 1959.	The whole Act.	
1968 c.63.	The Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968.	In section 2(1), the word "and" following paragraph (c).	5
1969 c.46.	The Family Law Reform Act 1969.	Sections 14 and 15. Section 17. Section 27.	10
1970 c.31.	The Administration of Justice Act 1970.	In Schedule 8, paragraph 5.	15
1971 c.3.	The Guardianship of Minors Act 1971.	In section 12B(3), the words "of a minor". Section 14 and the heading preceding that section.	20
1971 c.32.	The Attachment of Earnings Act 1971.	In Schedule 1, paragraph 6.	
1972 c.18.	The Maintenance Orders (Reciprocal Enforcement) Act 1972.	Section 3(3). In section 27(9), the words "section 5(5) of the Affiliation Proceedings Act 1957". In section 30— (a) in subsection (3) the words "the Affiliation Proceedings Act 1957 or", the words "paragraph (b) of section 2(1) of the said Act of 1957 (time for making complaint) or" the words "(provision to the like effect) as the case may be", the words "three years or" and the words "in the case of a complaint under the said Act of 1924"; (b) in subsection (5) the words "the said	25 30 35 40 45

Chapter	Short title	Extent of repeal
5		Act of 1957" and the words "as the case may be"; (c) in subsection (6) the words "or an affiliation order under the said Act of 1957".
10		In section 41- (a) subsection (1); (b) in subsection (2A), paragraph (a); (c) in subsection (2B), paragraph (a).
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1972 c.49.	The Affiliation Proceedings (Amendment) Act 1972.	The whole Act.
20	1973 c.29. The Guardianship Act 1973.	Section 2(6). Section 4(3D).
	1974 c.4. The Legal Aid Act 1974.	In Schedule 1, paragraph 2 of Part I.
25	1975 c.72. The Children Act 1975.	Section 34(3). Section 36(5A). Section 45. In section 85(2) the words "(which relate to separation agreements between husband and wife)". Section 93(1) and (2). In Schedule 3, paragraphs 7, 9, 14 and 75(1).
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1976 c.36.	The Adoption Act 1976.	In Schedule 3, paragraph 16.
40	1978 c.22. The Domestic Proceedings and Magistrates' Courts Act 1978.	In section 20, subsections (10) and (13). In section 36(1), paragraph (c). Section 38(2). Section 41.
45		In section 45, subsections (2) and (3). In Schedule 2, paragraphs 30 and 44.

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Chapter	Short title	Extent of repeal	
1980 c.5.	The Child Care Act 1980.	Sections 49 and 50. In section 52(1), paragraph (b). In section 54(1) and (2) the words "49, 50". In section 55, subsection (3) and, in subsection (5), the words from "and any jurisdiction conferred by this section in affiliation proceedings" to the end. In section 87(1), in the definition of "relative", the words from "and includes" to the end. In Schedule 2, paragraphs 4 and 5 and in paragraph 7 the words "49, 50". In Schedule 5, paragraphs 6 to 8.	5 10 15 20 25
1980 c.43.	The Magistrates' Courts Act 1980.	In section 59(2) the words "an affiliation order". In section 65(1)- (a) in paragraph (b) the words "or section 44"; (b) paragraph (d); (c) in paragraph (i) the words "or section 19"; (d) in paragraph (k) the words "49 or 50". Section 92(3). In section 150(1), the definition of "affiliation order".	30 35 40
1981 c.54.	The Supreme Court Act 1981.	In Schedule 1, in paragraph 3(b)(iii), the words "affiliation or".	45
1982 c.24.	The Social Security and Housing Benefits Act 1982.	In Schedule 4, paragraph 1.	

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Chapter	Short title	Extent of repeal
1986 c.50.	The Social Security Act 1986.	In section 24, subsections (2) and (3). Section 25.