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THE CHILDREN ACT, 1948
AND
THE NURSERIES AND CHILD-MINDERS
REGULATION ACT, 1948

Edited by

A. C. L. MORRISON, C.B.E.

*Formerly Senior Chief Clerk of
the Metropolitan Magistrates' Courts*

MISS M. M. WELLS, M.A.

of Gray's Inn, Barrister-at-Law

E. ETON, D.S.O., T.D.

*Formerly Assistant Education Officer to
the London County Council*

L. G. BANWELL

*Chief Clerk of
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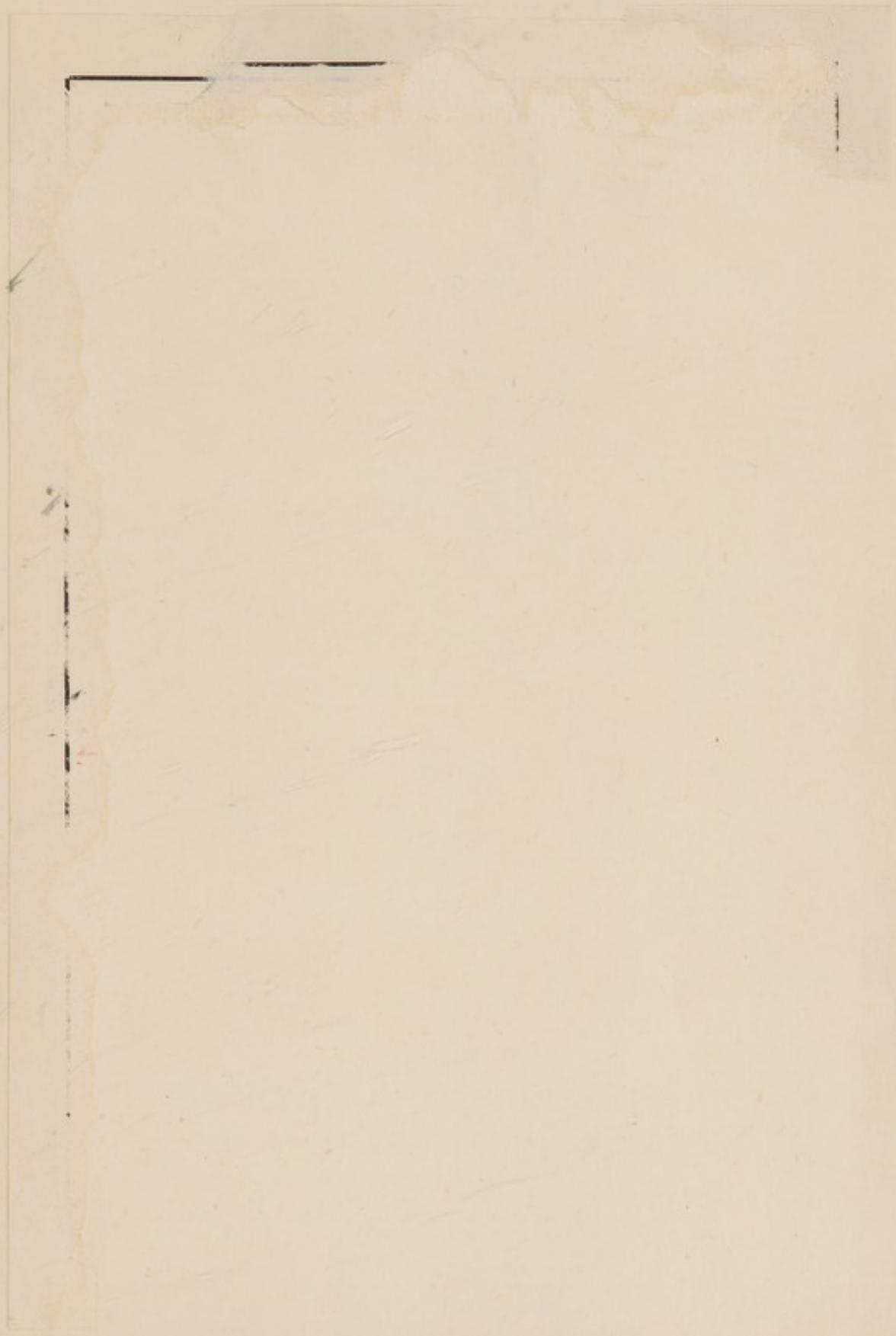
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References to Public General Statutes (other than to Acts or sections printed in the volume) are followed by a reference to the volume and page in Halsbury's Complete Statutes of England where the Act or section will be found; thus:

Family Allowances Act, 1945, s. 3; 38 Halsbury's Statutes 343.

ENGLISH AND EMPIRE DIGEST

References to cases include a reference to the volume, page and number in the English and Empire Digest where the case will be found, thus:

Brooks v. Blount, [1923] 1 K.B. 257; 28 Digest 217, 766.

THE ALL ENGLAND LAW REPORTS

The citations of the reports of cases decided since the beginning of 1939 include a reference to the All England Law Reports, thus:

Carltona, Ltd. v. Works Commissioners, [1943] 2 All E. R. 560.

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PREFACE

As this book is to some extent a companion volume to Clarke-Hall and Morrison's "Law Relating to Children and Young Persons", the publishers thought it not unfitting that I should be associated with its authorship, and that Mr. Banwell, who had already collaborated with me in two editions and two supplements to that work, should again do so. The annotation of the statutes is, however, the work of Miss Wells, and the introductory note to the Children Act was written by Colonel Eton; and to these two belong the major share of credit for whatever merits the book possesses. Mr. Banwell has given particular attention to that which concerns the work of the Juvenile Courts. My part has been to consider what they have written, to make a few changes and suggestions which, I hope, have been of some help, and to ensure continuity with the earlier work.

New statutes like the Children Act and the Nurseries and Child-Minders Regulation Act, are sure to provide problems for local authorities and their officers, magistrates, clerks and social workers in many spheres. It is hoped that these may find the full annotations, copious cross-references and citation of relevant statutory provisions and decided cases, of some service in their task of making the new Acts work satisfactorily.

A. C. L. M.

September, 1948.

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INTRODUCTION

The main object of this Act, as its full title shows, is—

“ to make further provision for the care or welfare up to age of 18 and, in certain cases for further periods, of boys and girls when they are without parents or have been lost or abandoned by or are living away from their parents or when their parents are unfit or unable to take care of them.”

It replaces on more generous and imaginative lines the powers and duties which the local authority had under the Poor Law in regard to the above categories of children. It lays down the administrative arrangements which the local authority are to adopt for discharging their functions under this Act together with similar functions for the care or welfare of children under certain other Acts, especially the Children and Young Persons Act 1933, and it concentrates under the Home Office the central control over the maintenance and care of children in England and Wales which was previously divided between the Home Office and the Ministry of Health.

The Act applies to England and Wales and, with necessary adaptations, also to Scotland, and came into operation on 5th July, 1948, simultaneously with the National Assistance Act, 1948, which terminated three and a half centuries of Poor Law. The break-up of the Poor Law has been pending ever since the Royal Commission issued their majority and minority Reports in 1909. It is of interest to recall that the minority Report, which was the more progressive in outlook, advocated the transference of the services performed by the Boards of Guardians in respect of various classes of destitute persons to the existing committees of the local authority which had to deal with the corresponding classes of persons who were not destitute. Thus public responsibility for destitute children would have been exercised through education committees along with their duties to non-destitute children. Within the last 40 years some particular forms of assistance given under the Poor Law have been provided for in separate Acts. In 1929 the Local Government Act (s. 5), directed local authorities to have regard to the desirability of exercising the powers they had under those separate Acts in giving those forms of assistance instead of doing so by way of poor relief. In this way, for instance, the maintenance of destitute educable children who were physically or mentally handicapped became an educational provision because the Education Acts empowered local education authorities to board and lodge as well as to educate handicapped children. It had been hoped that certain provisions of the Education Act, 1921 (ss. 17 and 23), could have been interpreted so as similarly to remove the maintenance of destitute normal children from the Poor Law, but the Board of Education of that day could not accept that view. Had it been otherwise, it is not too much to say that the need for the Children Act, 1948, might not have arisen. Local education authorities are now enabled by the Education Act, 1944, to provide “boarding education” for normal children by agree-

ment with their parents, and the Children Act, 1948, makes it clear (ss. 12 and 13) that the local authority may, within reason, use for children in their care the same boarding schools or other boarding accommodation as used for children not in their care. It should be appreciated that the Children Act, 1948, does not replace the provisions of the old Poor Law for the maintenance of children with their parents. Domiciliary assistance, if needed by parents or guardians to supplement family allowances and national insurance benefits, will be a matter for the National Assistance Board and not the local authority. The local authority, however, have certain duties under the National Assistance Act, 1948 (s. 20), to provide temporary accommodation for persons in urgent need thereof through unforeseen emergencies. It is to be presumed that it will not be necessary in such temporary emergencies to separate parents and children, if suitable accommodation for both in the same place is available. Such temporary accommodation (*e.g.* rest centres), has been widely provided since 1939 under war emergency legislation. But a child over 3 must not be accommodated in a home (of an institutional kind) provided for adults under the National Assistance Act, 1948, for more than 14 days, except with the Home Secretary's consent. There would be nothing to prevent the authority from accommodating the parents under the National Assistance Act and the children under the Children Act.

THE COMMITTEES OF INQUIRY

The strain to which the whole nation was subjected by the second world war brought to the surface—as wars have done before—defects and weaknesses in the social structure. Whilst a war for national survival was still being waged, investigations into various phases of the social services were being sponsored by the Government. Prominent among the matters investigated was the replacement by something more in accordance with the public sense of social justice and security, of various provisions for helping people in adversity which had become incorporated in the historic system of the Poor Law. It was as if the work of the Poor Law Commission of 40 years earlier was being resumed, but in a spirit of urgency and with a resolve to translate results into action. The provision for the public care of children deprived of an ordinary and decent home life was forced upon the attention of the nation by the mass evacuation of children from the towns and districts exposed to enemy attack, and also by the necessity of taking into public care a great number of children whose mothers, as well as fathers, had been called upon to take a direct share in the nation's total war effort. In 1945 the Home Secretary and the Ministers of Health and Education appointed an inter-departmental committee, under the chairmanship of Miss Myra Curtis, to inquire into the methods of providing for children deprived of a normal home life. A committee with a somewhat similar "remit" was appointed by the Secretary of State for Scotland under Mr. J. L. Clyde, K.C. The appointment of these Committees had been stimulated not only by the experiences of evacuation but also by assertions in letters to the Press and in other publications that methods and conditions in some of the permanent children's homes conducted by local authorities and by voluntary organisations were bad. Also, at about the same time, the public conscience had been stirred by the report of a Government inquiry into the circumstances of the death of a child boarded out by one local authority in the

Foster parents etc. meant always good
↓

area of another, where the foster parents had been convicted of cruelty and neglect amounting to manslaughter, and where there had been failure between the two authorities properly to visit the child. The reports of both committees were published in 1946. The Clyde Committee's investigations were not so wide as those of the Curtis Committee because there was already in existence in Scotland an Advisory Council inquiring into the conditions in remand homes and approved schools and other cognate matters. Moreover, the number of homeless children in Scotland is only about one-seventh of the number in England and Wales. The conclusions of both committees in regard to the public care of children of the same categories are so much in general agreement that it will usually be sufficient here when mentioning their views on any particular matter to refer only to the Curtis Committee's Report. This report was the first comprehensive official survey in this country of the diverse arrangements existing for the public care of children. The Committee found big variations in the efficiency and outlook with which the work was being carried on by different local authorities as well as by voluntary organisations. In some places the arrangements were described as good and the outlook enlightened, but in some others the standards were regarded as being so poor as to call for determined steps to effect improvement. The Committee's recommendations range over a wide field from minor modifications of law as it affects a few children in particular circumstances to a recasting of the machinery of control and administration of both the central and local government authorities. In an interim report published some six months earlier, the Curtis Committee had recommended the recruitment of staff of better quality with improved status and the establishment of a national scheme of training in child care. The Children Act, 1948, is largely based on the conclusions and recommendations of the Curtis and Clyde Committees. For a full understanding of the underlying aims of many of the provisions of the Act a study of these illuminating reports is indispensable.

SUMMARY OF LEGISLATIVE CHANGES

The principal legislative changes introduced by the Children Act, 1948, are briefly summarised below. For the sake of simplicity when other Acts are referred to in this introduction, they are the Acts which apply to England and Wales. The Children and Young Persons (Scotland) Act, 1937, corresponds generally to the 1933 Act for England and Wales, but also includes the provisions for child life protection which are contained in the Public Health Acts for England and Wales. The Scottish counterpart of the Poor Law Act, 1930, is the Poor Law (Scotland) Act, 1934 :—

(i) The age up to which children are to be received into their care by the local authority is 17, instead of 16 under the Poor Law ; and the age up to which they may remain in their care without the local authority assuming parental rights, is 18 instead of 16 under the Poor Law (s. 1).

(ii) The local authority have no longer the option to decline to undertake the care of any child whom a court, under s. 76 of the Children and Young Persons Act, 1933, may commit to their care as a " fit person " except where a probation or supervision order has been, or is to be, made in respect of the child (s. 5).

(iii) The local authority may assist beyond the age of 18, boys and girls who have been in public care in the expenses of their accommodation and maintenance and education or training and may provide hostels in which they can live (ss. 20 and 19).

(iv) The local authority are to exercise their powers in respect of a child in their care so as to further his best interests and afford him opportunities for the proper development of his character and abilities, and to this end they may make such use of facilities and services available for children in the care of their own parents as appear to them reasonable. In the methods of providing for children in their care first consideration is to be given to the practicability of boarding them out with foster parents (ss. 12 and 13).

(v) The powers of the Home Secretary under the Children and Young Persons Act, 1933, in regard to voluntary homes are strengthened and the boarding out and emigration of children by voluntary organisations become subject to regulations. Grants may be made by the Home Secretary for improving the premises, equipment and staff of voluntary homes and by the local authority to voluntary organisations for the welfare of children (ss. 29, 31, 33 and 46).

(vi) The duties of local authorities under the Public Health Acts and under the Adoption of Children (Regulation) Act, 1939, to supervise, respectively, children maintained apart from their parents for reward and children placed through third parties with a view to adoption, are to apply to children up to school leaving age instead of up to 9 and may continue till they attain 18. Children in respect of whom guardians' allowances under the National Insurance Act, 1946, or family allowances under the Family Allowances Act, 1945, are paid to persons other than parents, legal guardians or relatives are to be supervised as children maintained for reward (ss. 35, 36 and 37).

(vii) The Home Secretary may defray or contribute towards the fees and expenses of persons undergoing approved training in child care; may defray or contribute to the cost of maintenance of persons undergoing such training; and also may make grants towards the expenses incurred by any body of persons providing courses of such training (s. 45).

(viii) The central control of the public care of healthy normal children deprived of an ordinary home life is concentrated under the Home Secretary; and the local authority (with possible exceptions) are required to discharge their functions in respect of all such children through one children's committee, and to appoint (without exception) a children's officer to co-ordinate and carry out the work (ss. 42, 39, 40 and 41).

(ix) Financial changes are made, the most substantial of which is that direct Treasury grant of not more than 50 per cent becomes payable on the expenses of the local authority in the care of children whose circumstances would have brought them previously under the Poor Law (s. 47).

THE ADMINISTRATION

The statutory provision for children's welfare is derived from several Acts passed at different times, and as a result is somewhat piecemeal. Some is of quite recent origin, e.g. the Adoption Acts. The rest, though of earlier origin, has been the subject of much revision and amendment within the last 50 or 60 years. This has corresponded with the period

during which councils of counties and county boroughs have developed as the most important bodies to supplement the central government. They have become in turn the local authorities for Education and Public Assistance, replacing the *ad hoc* School Boards and Boards of Guardians, and they have been assigned responsible functions under the Public Health Acts. The local administration of the public care of children has thus fallen naturally and almost automatically to these councils in one or other of their capacities. By this means it was possible for the local authority within their own powers to effect a certain amount of rationalisation in their arrangements for the discharge of similar functions to children under different Acts, but it appears that in the Country as a whole much less has been done in this direction than might have been expected. Some councils have entrusted their duties towards destitute children under the Poor Law to their education committee or maternity and child welfare committee. A few have gone further and entrusted one committee as far as practicable with the exercise of all their responsibilities to all children whether "deprived" or otherwise. In no area, however, has a council achieved complete unification of their administrative arrangements for the welfare of all children whose circumstances and needs were not dissimilar. This is due partly to differences and restrictions in the Acts themselves or in the statutory rules and orders made under those Acts, and partly to the division of central control between Government departments whose procedures or requirements or even outlooks have not always coincided. Those orphans and neglected children, who are brought before the courts under the Children and Young Persons Acts for their protection and not because they have committed offences, are the responsibility of the Home Secretary, because the Home Secretary has always been responsible for carrying out decisions and sentences of summary jurisdiction and criminal courts. When the practice began some 200 years ago of the courts handing over children to the care of philanthropic bodies instead of sentencing them, the Home Secretary was associated with those arrangements. This practice led to the development of reformatories and industrial schools, which were succeeded by the approved "Home Office" schools as we know them to-day. Other orphans and neglected children, including many in similar circumstances to those brought before the courts, were the responsibility of the Minister of Health because they had been dealt with under the Poor Law. The Minister of Health's responsibility for the administration of the Poor Law was inherited in 1919 from the former Local Government Board, which had absorbed the Poor Law Board some 60 years earlier. The supervision of children placed by their parents in the care of persons for reward was also the responsibility of the Minister of Health because the provision for that supervision was made in the Public Health Acts. But the supervision of other children placed by their parents with persons without reward, but with an implied intention of adoption, is the responsibility of the Home Secretary because the permanent adoption of children is a matter which can only be effected through the courts. The care and maintenance of handicapped children away from their parents in foster homes or hostels or boarding schools primarily for the purposes of their education and similar arrangements for the boarding education of normal children (which must however in their case be with the parents' or guardian's agreement), are under the control of the Minister of Education, solely because the provision for the boarding arrangements is made in the Education Acts. The care of mentally

ill, and mentally deficient children in institutions under the Lunacy and Mental Treatment and Mental Deficiency Acts is the responsibility of the Board of Control—for understandable reasons as part of a highly specialised service. Finally, war orphans maintained under the War Orphans Act, 1942, were made the direct responsibility of the Minister of Pensions in order to avoid, for reasons of sentiment, these children being dealt with under the Poor Law. If our hopes for the abolition of war are realised the number of these war orphans will steadily diminish and within a period of less than 10 years the separate arrangements for their public care will need review. Meanwhile the Minister employs his own staff to supervise the care of these children throughout the country.

The Central Authority

The Curtis Committee had recommended that the central responsibility for the care of "deprived" children should be concentrated in one Government Department. They offered no suggestion as to which of the existing Departments should absorb this work, but did call attention to the fact that the Home Office contained a Children's Department which had developed to a considerable extent the study of the substitute home. They were opposed to the formation of a separate department to be responsible for all aspects of the life of the deprived child. That would have emphasised what they wished to minimise—the segregation or marking off of these children from all other children. They thought deprived children, like other children, should come within the purview of the Ministry of Education for their education and of the Ministry of Health for their health. But they wanted the problem of making-up for the missing elements in these children's lives—a normal home and parental love—to receive the comprehensive and continuous study it deserved of a single Department. The choice was not a simple one for the Government, and since it may become a matter of historic interest it is worth while to quote what the Lord Chancellor (The Viscount Jowitt) said when introducing the Children Bill into the House of Lords:

"As between the various Departments there is much that might be said. I have always regretted the view which is somewhat commonly held that the Home Office are a Department dealing only with crime and criminals. That is a complete misapprehension. In fact the Home Office have very large protective functions in regard to children . . . they have provided for the welfare and training of children who were in need of care or protection as well as those who were offenders against the law."

The relinquishment by the Ministry of Health of responsibility for the care of fit children was expected, for it was mostly derived from the Poor Law, and both the Curtis and Clyde Committees had voiced a fairly general feeling that the administration of the new provisions for deprived children should be severed from the wonts and usages of the Poor Law system. The Ministry of Health were moreover preoccupied with the preparations for setting up the first comprehensive national health service. The Government's decision, announced in March, 1947, to transfer the Ministry of Health's child care functions to the Home Office and not to the Ministry of Education caused little surprise, for in their recommendations as to the central functions which should be concentrated, the Curtis Committee made no mention of the maintenance of children under the Education Act, 1944. It happened also that at the time when the Government made their decision the Ministry of Education's hands were full with the replanning of the State education system under the Education Act, 1944.

There was disappointment nevertheless in some circles that the functions in regard to child care of both the Home Office and the Ministry of Health were not to be transferred to the Ministry of Education. The main ground of this disappointment was the argument that so long as the care of some 150,000 deprived children was under any Department other than that responsible for the education—*i.e.* the training for life—of some millions of other children there was a risk of the deprived children remaining segregated and marked-off from the rest of the community. The Children Act, 1948, leaves untouched the functions of the Minister of Education, the Board of Control and the Minister of Pensions; and it does not affect the responsibilities of the Service Departments for orphans of Service men. But it transfers (s. 42) to the Home Secretary—who already is responsible for children dealt with under the Children and Young Persons Acts and the Adoption Acts—the functions of the Minister of Health in regard to the care or supervision of children under the Poor Law and the Public Health Acts. This will effect a very substantial measure of unified control and, excepting the Ministry of Pensions, will leave only two Government Departments dealing with the care and maintenance apart from their parents of any considerable numbers of educable children; *viz.* (i) the Home Office—with normal healthy children without parents or relatives able or fit to care for them or from whose care they have been removed by court orders, and (ii) the Ministry of Education—with children for whom boarding out with foster parents, or in hostels or schools is either necessary, or considered by their parents and the local authority to be desirable, on educational grounds. Provision is made for advisory councils on child care to advise the Home Secretary and the Secretary of State for Scotland.

The Local Authority

Both the Curtis and Clyde Committees attributed much of the ineffectual public care of children to overlapping and confusion of functions of different committees of the local authority and they urged that these functions should be discharged through a single committee—the Curtis Committee advocating an *ad hoc* children's committee reporting direct to the authority. The Act (ss. 39 and 40) provides that unless the Home Secretary is satisfied that owing to special circumstances the authority can better discharge their child care duties in some other way, every local authority shall establish a children's committee for discharging their functions in regard to the following matters, and no other matters unless the Home Secretary consents:—(i) appearance of children before juvenile courts, (ii) care of children committed to them as a "fit person" by the courts, (iii) provision and management of remand homes and approved schools, (iv) supervision of children maintained for reward, including guardian's and family allowance cases, (v) registration of adoption societies, (vi) supervision of "third party" adoption cases, and (vii) care of children under the provisions of this Act. In addition it may be assumed that any services of the authority under the Adoption of Children Act, 1926, such as acting as guardian *ad litem*, and any duties under any amending Adoption of Children Act will be entrusted to the children's committee. The approval of the Home Secretary to the making of some other committee arrangements cannot be obtained after the authority has in fact established a children's committee. Once they have established a children's committee they must wait for 3 years after the commencement

of this Act, *i.e.* until July, 1951, before seeking the Home Secretary's sanction to a change. The Home Secretary may, on the application of the authority, withdraw at any time his approval to their doing without a children's committee, and he may, without the authority's application, at any time direct them to establish a children's committee, if he is of opinion that experience has shown that their other arrangements are not satisfactory (s. 40). Provision is made for the appointment of joint children's committees by two or more local authorities. The children's committee may include a minority of persons with special qualifications who are not members of the authority, and sub-committees may be appointed containing persons who are not members of the authority or of the children's committee, provided that there is at least one member of the authority in every such sub-committee, or in the case of sub-committees of joint children's committees one member of each authority. There is a provision—to be found also in other recent legislation—allowing the authority to refer to any other committee matters relating to the functions of the children's committee which are part of a general service (*e.g.* supplies, building works, etc.), provided that before deciding to do so the authority shall consider a report from the children's committee.

The Children's Committee

Specific directions to local authorities as to their internal administrative arrangements for discharging new functions have often been given before in Acts of Parliament, but in this Act the directions seem unusually detailed and rigid, and it may take time for all authorities, with their varying circumstances, to adjust their organisation to this new pattern. The object of establishing a statutory children's committee is to make sure that the care of deprived children is treated by the local authority for at least the next three years with the urgency and single-mindedness it deserves, and as too important a matter to be attached or subordinated to any other of their existing services and functions. On practical considerations, under the present economic conditions, this separate committee may be found generally to be the best way of securing this object. For instance, an education committee having costly schemes, on which they had set their heart, held up by financial stringency, could hardly be expected to place the provision of, say, a reception home or a hostel before that of, say, a new nursery or secondary school. The children's committee, however, would have in the authority's budget their own allocation for capital expenditure, and could press the claim for the reception centre or hostel without having to weigh it against the merits of so many other projects within their own sphere. There will be, nevertheless, exceptional cases of the smallest and the biggest authorities where the advantages of a separate children's committee will not be so evident. Those authorities which have provided their own remand homes and approved schools will not take kindly to the transfer of these places away from the charge of the education committee. This will be so especially in regard to approved schools, which, it is now generally conceded, are schools for the special educational treatment under boarding conditions of children having special needs. These schools clearly have their place within the new state education system. Their separation from the committee responsible for all other schools will revive in the public

mind the notion that they are penal establishments. It would have been less surprising if the Children Act, 1948, had empowered the Home Secretary to follow the lead of Scotland in transferring the central control of these schools to the Minister of Education. There is, of course, the loophole in s. 40 of the Act, by which authorities having approved schools and other well developed child care services may be able to obtain the Home Secretary's approval to a scheme of administration not involving an *ad hoc* children's committee exactly on the pattern laid down in s. 39. Whatever committee is charged with the care of deprived children, an important factor is the personnel of the committee. Elected members of local authorities already have to meet heavy demands on their time in manning existing committees, and it must be remembered that they are often recruited nowadays more because of their adherence to one or other of the national political parties than for other reasons. The power to co-opt to the children's committee an unspecified minority of outside persons should be a boon to the authority by enabling them to enlist the services of men and women who are themselves happy parents, or in some other ways experienced in the care of children, but are without the time or inclination to enter the political arena.

The Children's Officer

The Curtis Committee went further than the Clyde Committee in regard to unification of the local authority's administration in definitely recommending the appointment of a children's officer of high standing, qualifications and experience to be responsible for the welfare of all deprived children in every single or combined area. Indeed they considered that the appointment of such officers was their solution of the problem referred to them. That being so, and seeing that their recommendation is implemented in the Act (s. 41), it is well to quote the Curtis Committee's own conception of such an officer :—

“ The Children's Officer should in our view be highly qualified academically, if possible a graduate who has also a social science diploma. She should not be under thirty at the time of appointment and should have had some experience of work with children. She should have marked administrative capacity and be able readily to grasp local government procedure and to work easily with local authority committees. Her essential qualifications, however, would be on the personal side. She should be genial and friendly in manner and be able to set both children and adults at their ease. She should have a strong interest in the welfare of children and enough faith and enthusiasm to be ready to try methods new and old of compensating by care and affection those who have had a bad start in life. She should have very high standards of physical and moral welfare, but should be flexible enough in temperament to avoid a sterile institutional correctness.”

Statutory authority was not necessary for the establishment of children's committees, nor for the appointment of children's officers, and in September, 1947, the Home Secretary issued a circular encouraging authorities to adopt these suggestions of the Curtis Committee in anticipation of the Act, if they so wished. Some 40 authorities had thus appointed children's officers before the passing of the Act. Under s. 41 every local authority, without exception, are now required to appoint a children's officer. The authority must send to the Home Office the particulars of persons from whom they propose to make their selection and the Home Secretary may prohibit the appointment of any candidate whom

he considers unfit for the post. The Home Secretary may, if he thinks fit, waive this procedure in the case of a first appointment if the authority are proposing to appoint a person who, as an officer of the authority, was on the date of the commencement of the Act performing the functions corresponding to those defined for a children's officer. The children's officer is not to be employed in any other capacity except with the Home Secretary's consent, and is to be given adequate staff for carrying out the duties. Where the Home Secretary is satisfied that the same officer can efficiently discharge the functions for two or more authorities he may approve the appointment of the same officer by each of the authorities. It will be obvious that the demands on a children's officer will vary according to the size and population of the area. The Curtis Committee envisaged an area with less than 500 deprived children being combined with another area for this work. It is well established by experience in boarding out and after care and child life protection that one officer working in the field cannot efficiently supervise the welfare of more than about 100 children widely dispersed in private households. The number of deprived children so dispersed is at present on an average less than the number maintained in "community homes"—a term recently coined to avoid the stigmatised word "institution." The average accommodation of community homes, *i.e.* nurseries, reception centres, hostels and children's homes, might be taken to be not more than 50. An area with 2,000 deprived children would therefore present the children's officer with the task of exercising supervision over 10 field officers and 20 community homes with their staffs of at least 250. Bearing in mind the time taken up in reporting to and attending on the committee and sub-committees and possibly the juvenile court, in maintaining the vital liaison with the chief education officer and medical officer, and in the inevitable indoor administrative work, it would seem that for any number of children above 2,000 the post of children's officer will tend to become primarily that of an administrator—not necessarily tied to an office desk, but not having enough time to do more than superficial work in the field, or to get to know personally more than a small minority of the children. How the position of children's officer of the biggest authorities will evolve is unpredictable. Each will shape itself according to the particular physical and material conditions, whilst preserving, it is hoped, as much as possible of the spirit with which its inventors sought to imbue it.

THE CHILDREN AFFECTED

The children whom the authority have a duty under Part I of the Act to receive into their care are those for whose welfare the intervention of the authority appears to them to be necessary, and who are apparently under the age of 17, and are orphans, abandoned or lost, or have parents unable or unfit temporarily or permanently to look after them (s. 1 (1)). Having taken a child into their care it becomes the authority's duty to keep him so long as the welfare of the child appears to them to require it up to the age of 18 (s. 1 (2)). The authority are not, however, to keep any child in their care if there is a suitable parent or guardian who desires to take over the care of the child, and the authority are to endeavour to secure that the care of the child is taken over by a parent or guardian, or some relative or friend in all cases where it appears to them consistent

with the welfare of the child to do so (s. 1 (3)). The relative or friend must be of the same religious persuasion as the child, or be willing to safeguard the child's upbringing in that religion. It will be noticed that the authority's duties as to receiving a child into care are not subject to the same considerations as to keeping the child. Receiving into care may be an urgent matter, keeping in care a deliberate one. The statutory duty to try to get the child looked after by his family or even by a friend—presumably a friend of the family—is new, although it is not at variance with the practice under the Poor Law of the more progressive authorities. There are other children whom the authority have a duty to receive either by order of a court, or, on the closing of a voluntary home, by order of the Home Secretary. These are referred to on pages 12 and 21. If the authority receive into their care a child who is "ordinarily resident" in the area of another authority, the other authority may, within three months of the place of residence being determined, take over the care of the child. After the expiration of the three months the second authority can only take over the care of the child by agreement with the authority who received it into care (s. 1 (4)). This provision will give some security to the child and prevent upheavals. The authority of the area where the child was ordinarily resident are liable for all expenses properly incurred in its care or incidental thereto (s. 1 (4)). In determining the ordinary place of residence, periods when a child was living in a school or institution or in any place to which he had been sent by a court or by the local authority are to be disregarded (s. 1 (5)). Any question as to the ordinary residence is to be settled by the Home Secretary (s. 1 (4)). This will bring to an end the wrangling and litigation between authorities on questions of "settlement" and "removal" which have been features of Poor Law administration.

Under the Children Act, 1948 (s. 59), a child is defined as a person under the age of 18. Under the Children and Young Persons Acts a child is defined as a person under the age of 14, and he then becomes a "young person" until he attains the age of 17 (now amended to 18 by the Children Act, 1948, s. 21). Under the Poor Law the Minister defined a child as a person under the age of 16 and this definition is preserved in the National Assistance Act, 1948. It is a matter of academic interest that under the Children and Young Persons Acts, persons who can be "convicted" of cruelty to persons under 16 in their charge may themselves be as young as 16 or 17.

The procedure of receiving into their care children varying in age from a few weeks to 16 years 11 months is a matter which will have to be worked out by the authority, and it may not be free from initial difficulties. Machinery will have to be devised to take the place of the long established organisation under the Poor Law of admitting persons of all ages to "poor relief." It will be a problem on which the children's officer should be able to count upon the closest co-operation and support of other departments of the authority. Possibly there will have to be places dispersed throughout the authority's area—bringing any part within easy reach—to which children needing the authority's care or protection can be brought, and where an officer is stationed who is empowered to accept the care of a child on behalf of the authority, and who has at his disposition the means to ensure that the child is taken without delay to an appropriate reception centre. There will be some inescapable paper formalities about family circumstances, medical and school records and

the initiation of case papers. It would seem desirable that the "accepting points," or whatever they may come to be called, should not be identified particularly with deprived children, otherwise they may be popularly called the "relieving officer's place" just as the school attendance officer was called the "School Board man" for many years after school boards had been abolished. An accepting point might be a place to which parents and non-deprived children could go for advice or attention on any question of child welfare. It may be presumed that at an early stage in the process of accepting care of a child the appropriate committee or sub-committee of the authority or someone duly authorised in their behalf (*e.g.* the children's officer), would have to decide formally as to receiving and keeping the child in the authority's care and assess any contributions to be paid by the parent.

ASSUMPTION OF PARENTAL RIGHTS

Local authorities in England and Wales, but not in Scotland, had power under the Poor Law to assume by resolution the rights and powers of parents in respect of certain children being maintained by them. This power of extinguishing merely by a resolution the right of a natural parent to the custody of his child may seem at first sight to many people as exceptionable. Its propriety was questioned by the Curtis Committee, who suggested that it should be a matter for an impartial court. In practice this power has on the whole been exercised wisely under the Poor Law, and only when necessary in the interests of the child's welfare, such as for protection against demonstrably unfit or incompetent parents, or, in the case of orphans and children of unknown parents, to acquire the legal right to give consents for special purposes such as surgical operation, emigration, adoption, apprenticeship, etc. Assumption of parental rights and powers also enabled the authority to extend after-care assistance to a boy or girl up to the age of 18, *i.e.* 2 years longer than would have been otherwise permissible. This power is renewed in the Children Act, 1948, and extended to Scotland. Under s. 2 the authority may by resolution assume the rights and powers of parents with respect to a child already in their care (*i.e.* actually being provided with accommodation by the authority) who is an orphan and has no guardian or whose parent has abandoned him, or to put it briefly, is permanently incapable of caring for him, or is unfit by personal character to do so (s. 2 (1)). When the authority resolve to assume these rights and powers without the natural parent's previous consent, they must at once notify by registered post any parent or guardian whose whereabouts are known, informing him of his right to object within one month. If the parent objects, the resolution of the authority lapses within 14 days unless within that time they complain to a juvenile court. The court may uphold the authority's resolution provided that it is satisfied that the child had been, and at the time of the authority's resolution was still abandoned, or that the objecting parent is, in effect, mentally or morally unfit to have the care of the child. Otherwise the authority's resolution is ordered by the court to lapse. Physical incapacity alone of the parent to look after the child would not be sufficient ground for a court to uphold the authority's assumption of parental rights. It will be seen that the validity of the authority's resolution will usually be tested within a matter of six weeks. This is of some advantage to the security of the child. If not challenged by the parent, or if challenged but

upheld by the court, the resolution remains in force until rescinded or until the child attains 18. The parent, or guardian, however, can complain direct to a court at any time to have the resolution determined. He could, of course, hardly expect to succeed unless the home circumstances had improved upon what they were when the authority made their resolution. If the circumstances had changed substantially for the better the authority themselves would probably be willing either to rescind their resolution or to allow the child to stay for a time on trial with the parent without giving up their rights. When considering a complaint from the parent the court also, instead of ordering that the authority's resolution should lapse, may order that the child be allowed to stay with the parent for a fixed period or until the court, or, if the court so orders, until the authority direct otherwise (s. 4). Assumption of parental rights by the authority does not relieve a parent from contributing to the cost of a child's maintenance (s. 3 (6)). The parent would not be liable to contribute, however, in respect of any period when the child is staying with him by permission of the court or the authority. Any person who knowingly assists or induces or persistently attempts to induce a child in respect of whom the authority have assumed parental rights to run away from the place where accommodation is or was being provided for him, or who harbours or conceals such a child who has run away or prevents him from returning to the place from which he ran away, is liable to a fine or imprisonment or both (s. 3 (8)). Where a child in respect of whom the authority had assumed rights and powers has ceased to be in the care of that authority, they may receive the child back in any circumstances in which it appears to them that their intervention is necessary in the child's interests (s. 3 (4)). The authority cannot assume by resolution the rights and powers of parents in respect of a child whilst an order is in force committing him to the care of some other "fit person" (s. 6 (4)) but the authority could, if necessary in the child's interest, receive that child into their care with the consent of the "fit person." The committal of a child by a court to an approved school extinguishes any parental rights of the local authority as such (s. 6 (3)) but if the child were committed to a school of which the local authority were the managers they would in that capacity acquire equivalent rights and powers. A child who is under the supervision of approved school managers after the expiration of his term of detention in the school or is on licence from an approved school may, in certain circumstances, and with the consent of the managers, be received into the care of the local authority (s. 6 (4)). This is an important provision and should be very helpful in solving the problem of the after-care of ex-pupils whose homes or workplaces are remote from the schools they attended.

FIT PERSONS

Under the Children and Young Persons Acts a court could commit a child or young person to the care of the local authority as a "fit person" only if the authority were willing to accept that care. S. 5 of the Children Act, 1948, amends those Acts so as to diminish this option of the local authority. The authority are now to be under an obligation to act as "fit person" whenever a court decides to commit a child or young person to their care, unless a probation order or supervision order is in force or the court proposes to make such an order. The court is to permit the authority to make representations as to the making of the order, unless in its

opinion that would cause undue delay, and before making the order the court is to consider the authority's representations. This change was recommended by the Curtis Committee, who in support of their recommendation said :

" where a court decides that the rights and duties of a parent should be transferred to another ' person ' and that the local authority is the right ' person ' to assume those rights and duties, they should be imposed on the authority without opportunity of refusal."

The question is not quite so simple as the report of the Committee would convey. The powers of a juvenile court to commit a child to the care of a " fit person " were intended to secure that he should be placed in an ordinary family home instead of being sent to an approved school. To ensure that the local authority carried out this intention, the Home Secretary made rules which were revised as recently as 1946, requiring them to board out as soon as possible with a suitable foster parent every child (or young person) so committed to their care, and where they had not done so within three months, to report forthwith to the Home Secretary the reasons therefor. It is true that the rules provided also for arrangements other than boarding out in special circumstances, but only with the prior consent of the Home Secretary. The persons whom juvenile courts can commit to the care of " fit persons " include those up to 17 years of age who have committed offences and others who are in need of " care or protection " because of circumstances (defined in s. 61 of the 1933 Act) which may well have created special problems in their training and education. Reluctance on the part of an authority to accept care under the 1933 or 1937 Acts should have been rare and when it has arisen it should have been due only to practical difficulties in arranging suitable care for the child within the restricted powers and facilities then available to the authority. With their much wider powers under Part II of the Children Act, 1948, reluctance on the part of the authority to accept a " fit person order " (as these committals are commonly called) should seldom if ever arise. Such representations as the authority might in future wish to submit to the court before an order is made would probably turn on technical rather than personal considerations. The authority might, for instance, think that the child was ordinarily resident in the area of another authority, or they might be considering whether the child could be dealt with under, say, the Mental Deficiency Acts. Even so, such points could be cleared up later, if necessary, by application to the court to vary or revoke the order—responsibility for the care of the child in the meantime being safeguarded. It is, possible however, that the authority might have representations to make as to conditions which the court might be inclined to impose or superimpose on the order. In committing a child to the care of the authority as a " fit person " the court might wish to make in addition a probation order (if the child is an offender) or a supervision order (if a " care or protection " case), thus placing him under the supervision of a probation officer (s. 6). Similarly the court might wish to make a " fit person " order in respect of a child who is already the subject of a probation or supervision order without relieving the probation officer of the duties to visit, befriend and advise the child. By a proviso introduced only in the last stages of the passage of the Bill such dual arrangements can only be made if the local authority agree. If the authority themselves take into their care or if they assume parental rights in respect of a child who is already the subject of a probation or

supervision order, that order is not affected. Under such provisions there would seem to be more than a risk of duplication and overlapping of duties of the local authority's officer and the probation officer and of division of authority and responsibility between the local authority themselves and the magistrates, or the probation committee through whom magistrates usually keep probation and supervision cases under review. It would be unfortunate if the authority's officer and the probation officer both visited independently the same child and gave, possibly, conflicting advice. It would be anomalous if a court's object in making a "fit person order" was not with a view to the authority exercising fully their parental rights and duties, in any of the ways laid down in Part II of this Act, but rather to rendering the authority liable for the cost of the child's accommodation in some particular place under the supervision of a probation officer. There might, however, be exceptional cases where such dual arrangements could be employed with benefit to the child so long as the parties concerned consulted one another open-mindedly and co-operated whole-heartedly.

THE PUBLIC CARE OF CHILDREN

Part II of the Act deals with the powers and duties of local authorities in relation to children in their care. These powers and duties apply equally to children received by the authority under this Act or committed to their care by courts under the Children and Young Persons Acts. Just as in the Education Act, 1944, a fundamental principle was laid down that the authority were to provide for the individual pupil "education suitable to his age, ability and aptitude," so under this Act the authority are to care for the individual deprived child "so as to afford him opportunity for the proper development of his character and abilities" (s. 12). In doing this the authority are to make reasonable use of facilities and services available for children in the care of their own parents. Moreover although specific directions are given to the authority (s. 13) as to what are to be the normal or usual methods of providing for the maintenance of children in their care, those specific directions are not to be construed so as to prevent the authority from making use of other facilities and services in compliance with the broad injunction of s. 12 (s. 13 (5)). For instance, the authority could send children in their care to suitable boarding schools conducted under the Education Act, subject to the authority of the Home Secretary "given generally or as respects particular premises and subject to such conditions as he may impose" (s. 13 (6)). It would seem possible even for the Home Secretary to authorise a local authority to admit a child in their care to an "approved" school provided by them under the Children and Young Persons Act, 1933. This is a possibility with far reaching effects. One effect would be that the pupils in that school would no longer be only those ordered by courts to be "detained" therein nominally for about 3 years.

It is consistently ensured in different sections of the Act that in whatever provision the authority make for a child in their care the child is to receive "religious upbringing appropriate to the persuasion to which he belongs"—a form of words chosen after debate in Parliament.

Among the modes of providing for deprived children no mention is made in this Act of private adoption under the Adoption of Children Act, 1926. This is because adoption of children is to be the subject of further separate legislation. The omission to mention it in the Children Act,

1948, does not mean that the value of private adoption as a way of providing permanently for the welfare of many deprived normal children is in any way officially discounted. In fact in Circular 160/48 the Home Office suggest that local authorities will have regard to the value of adoption in all suitable cases. With this understanding the Act requires that the authority are to give first consideration to boarding out with foster parents the children in their care (s. 13 (1)). Boarding out is not, of course, a suitable arrangement for children who are not likely to be in the authority's care for more than a short period, and not all children remaining in the authority's care for long periods are suitable for boarding out. Where boarding out is not practicable or desirable for the time being the authority may maintain the child in a home provided under this Act by themselves or by some other local authority or in a voluntary home, or, as mentioned earlier, in a reasonably suitable place available for children in the care of their own parents (ss. 13 (1) (a) and 12 (2)). Children under the age of 3 years may be accommodated in existing premises used solely as nurseries, and approved by the Home Secretary, which are on the same site as, or form part of, premises provided for adults under the National Assistance Act, 1948. The approval of such premises is to be for a definite period and is only to be given or continued if the Home Secretary is satisfied that suitable alternative accommodation is not available (s. 13 (2)). Children over the age of 3 years may only be accommodated in the same premises as adults, if it is necessary, and then for not more than 14 days, unless the Home Secretary consents—such consent requiring renewal every eight weeks (s. 13 (3)). The Curtis Committee found areas where for lack of other accommodation children were being kept in the same public assistance institutions as adults and strongly condemned the practice. Children over compulsory school age may be accommodated in hostels, whether provided by the authority or not, which are intended wholly or mainly for young people between 15 and 21 years of age (s. 13 (4)). The local authority are empowered to provide homes (which may be outside their area) for the accommodation of children in their area and may be required by the Home Secretary to do so (s. 15 (1)). Such homes are to include separate accommodation for the temporary reception of children with facilities for observation of their physical and mental condition (s. 15 (2)). Some of the accommodation for children provided by the authority is to be available as "places of safety" to which children in need of care or protection can be removed, and as far as practicable this accommodation is to be in the short term reception and observation homes (s. 51).

The Home Secretary may make regulations in regard to the boarding out of children by the local authority (s. 14 (1)), and also as to the conduct of the homes they provide (s. 15 (4)).

Boarding Out

The regulations as to boarding out, which are to be made under s. 14, may require local authorities to record information about foster parents having children in their care and those willing to take children; to approve every household before any child is placed there; and to supervise and inspect the foster homes and the children. The regulations will prescribe which local authority will be responsible for the approval and supervision and inspection—whether the authority in whose area the foster home is situated or the authority of the area where the child was ordinarily resi-

dent. Widespread development of boarding out under this Act may lead to some territorial organisation to obviate competition between local authorities in finding foster homes in the same area, and also to prevent officers from two or more authorities visiting children boarded out in the same area and possibly in the same street, or even in the same house. An arrangement whereby supervision was exercised by the authorities of the areas where the foster homes were situated, on behalf of the authorities of the areas from which the children came, was adopted by the Ministry of Health in respect of children who were originally war evacuees and remained with their billetors. The powers of the Home Secretary to make regulations as to boarding out by local authorities are extended to the boarding out of children by voluntary organisations, with a proviso that the duties of supervision and inspection of the foster homes and the children may be exercised either by a local authority, or if the regulations so provide, by a voluntary organisation. An important matter to be covered by the boarding out regulations will be in regard to the religious upbringing of the child. It may be provided

“ that where possible the person with whom any child is to be boarded out is either of the same religious persuasion as the child or gives an undertaking that the child will be brought up in that religious persuasion ” (s. 14 (2) (c)).

This is a matter on which there are and always will be irreconcilable views. This provision was keenly debated in Parliament, and it was the only matter on which a reservation was made by six members of the Curtis Committee on signing an otherwise unanimous report. The problem is likely to crop up only in regard to a comparatively few cases. Each case will need individual and special consideration. It might be an advantage where practicable to consult with an accredited representative of the particular faith to which the child belongs.

Local Authority's Homes

The regulations governing the homes to be provided by the local authority may impose requirements as to accommodation and equipment, medical arrangements, religious upbringing, buildings, consultations with the Home Secretary on the appointment of the persons in charge, limitation of the period of children staying in reception and observation homes, and may contain different provisions for different descriptions of homes. The Home Secretary is empowered to give directions to the authority that an unsatisfactory home shall be closed, but may revoke those directions at any time (s. 15). It may be expected that efforts will be made through the regulations to bring about, as circumstances permit, many changes in the existing children's homes provided by authorities under the Poor Law. Many of these homes were built when the scale of domiciliary, or outdoor, relief was stringent and when national insurance for health and unemployment did not exist. Large numbers of children had to be catered for, and it was the rule rather than the exception for Boards of Guardians to combine into “ schools districts ” to provide institutional homes called “ separate schools ” (whether or not they included schools) each with recognised accommodation for some hundreds of children—the aim being to provide for all destitute children of the district in as few institutions as practicable. When the older barrack-like separate schools gave place to park-like estates with grouped cottage homes, the number of children provided for in each group-home was still anything from 300 to 600, according to the requirements of the district, and the number of

children accommodated in each "cottage" ranged from 20 to 60, *i.e.* about as big as a "house" of a public school. As only destitute children could be admitted to these separate schools they became segregated communities. The Curtis Committee did not favour a community home for a greater number of children than could be absorbed into the life of the neighbourhood. They put this number at a maximum of about 100. They also did not approve of so many as 20 children living in each "cottage." Their view was "that the disadvantages of institutional life can be minimised by the development of the family group system." This means limiting the number of children in a cottage to about 10 and having both boys and girls of varying ages from 2 to adolescence, if not to 15, growing up together as one natural family. It is an alluring idea. The Committee themselves foresaw that there might be practical difficulties in preserving the continuity of such family groups; but authorities having large numbers of children in their care might find it possible to try this attractive plan for a proportion of their children whom they cannot board out. Obviously it will be costly in staff and premises. Homes, or centres, for the temporary accommodation of children when they are first received into the authority's care and for use as places of safety for neglected children have been provided by many authorities for some years past. They are indispensable for big authorities. In such places, the children's immediate needs can be attended to, and their physical condition and mental characteristics ascertained so as to judge the most suitable arrangements for their more prolonged care. But in addition to these reception or clearing homes, short-stay accommodation of another kind will usually be desirable, if not essential. Most authorities have had within recent years the problem of providing for children during purely temporary difficulties in the family home, such as illness or confinement. Throughout the country these cases constitute a very substantial proportion of the children taken into care. When these short-stay children have to be accommodated in homes organised for more prolonged care, it becomes unsettling to the other children to have a procession of temporary guests passing through. The requirements of the two classes do not coincide in educational and recreational arrangements and other matters of daily routine. If experience shows that these temporary cases continue to be numerous, the authority may find it advantageous to organise one or more homes specially for these children. Something on similar lines to school journey centres or short-stay residential open air schools for delicate children would seem to be indicated.

Hostels and After Care

The authority may with the Home Secretary's approval provide hostels for persons who are over compulsory school age and under 21, and are, or have been at any time since ceasing to be of school age, in the care of a local authority. These hostels are for the accommodation of these young people near the places where they may be employed, or are seeking employment, or are receiving education and training (s. 19). In order that they may not be segregated from others of their age, the local authority may admit to their hostels, on payment, other young people up to 21 years of age who may never have been in public care. Alternatively, for young people who have been at any time in public care the local authority, instead of using their own hostel, may contribute to the cost of their accommodation and maintenance in any hostel for persons

under 21, not provided by a local authority, which is convenient for their employment or education or training (s. 13 (4))

The duty which the authority have had hitherto to assist children in their care up to the age of 18 years was limited to those in respect of whom they had parental rights. This now extends to all children in their care (s. 1 (2)). The authority also have a new duty to advise and befriend up to the age of 18 any "child" in their area who was, on ceasing to be of school age or at any subsequent time, but is no longer, in the care of a local authority or of a voluntary organisation, unless the authority are satisfied either that the welfare of the child does not require it, or that the voluntary organisation can and will undertake the after care duty. When a young person receiving after care moves to another area either the local authority or the voluntary organisation are to notify the authority of the area to which he moves (s. 34).

The authority may contribute to the cost of the accommodation and maintenance of persons between the ages of 18 and 21 who at any time after ceasing to be of compulsory school age have been in the care of a local authority. The authority may also make grants towards the cost of suitable education and training of persons between the ages of 18 and 21 who were in the care of a local authority immediately before they became 18. If the course of education or training was not completed, or was interrupted, when the persons attained the age of 21 the grants may be extended until the course is completed (s. 20). It is left to the Home Secretary and the Minister of Education to make regulations to define what part of this kind of assistance to these young people, and also what part of the cost of sending deprived children to boarding schools (s. 12 (2)), shall be regarded as provision under the Education Acts and what part under this Act. Where the extent of assistance under the Education Act to enable a pupil to have the benefit of boarding education, or education beyond 18, depends upon the parent making such contribution as would not cause hardship, the regulations will determine whether a child in the care of the authority is to be treated as a child of parents of sufficient resources or a child of parents without resources (s. 21).

The successful launching into suitable employment of girls and boys brought up in the authority's care either in community homes or foster homes has often been frustrated because so many of them at the age of 16 or 18 have passed prematurely beyond the authority's responsibility. These liberal provisions for carrying through the after care work in every case to the age of 18, and where necessary to the age of 21, and in special cases beyond 21, will be an incalculable boon to these young people. It also will bring great satisfaction to the authority and encouragement to the authority's officers engaged in this critical final stage of public child care.

Obligations of Parents

Part III of the Act deals with contributions which are to be made towards the cost of maintenance of children in the care of the authority. The only persons now liable to make contributions are the father and mother so long as the child has not attained the age of 16, and the child himself if he has attained 16 and is in "remunerative full-time work"—a condition which disqualifies any person for an assistance grant under the National Assistance Act, 1948 (s. 24). This absolves grand-parents who were liable under the Poor Law and step-parents and any cohabitor with the mother

(not being the putative father) who were liable under the Children and Young Persons Acts. The method of enforcing contributions is to be as laid down in ss. 86-88 of the Children and Young Persons Act, 1933 (s. 23). Briefly this means by applying to a summary jurisdiction court for a contribution order against the person liable. In the case of an illegitimate child where there is an affiliation order in force the application would be for a variation of that affiliation order in favour of the authority instead of the mother. Where no affiliation order has been made the authority may apply to a summary jurisdiction court for a summons under the Bastardy Law Amendment Act, 1872, and the court may make an order under that Act for payment to the authority instead of to the mother. The application for orders in respect of illegitimate children must be made by the authority within 3 years of the time when the child was received or last received in public care, or, in effect, within 3 years of the authority becoming liable for the cost of the child's maintenance. Court orders for the payment of money under the Guardianship of Infants Act, 1886, may be varied in the same way as affiliation orders (s. 53). Generally speaking, payments to the authority under contribution and similar orders are limited to the periods whilst the authority actually have the child in their care or whilst they are liable for the cost of the child's maintenance, *e.g.* in an approved school (s. 26). Under the Children and Young Persons Act, 1933, the Home Secretary prescribed by order the maximum sums payable under contribution orders and certain affiliation orders in respect of children committed to the authority's care and children detained in approved schools. Until recently these amounts were 13s. and 23s. respectively. Maximum contributions will no longer be prescribed in this way (s. 25).

Parents of children under sixteen years of age in the authority's care are to keep the authority informed of their current addresses and they are liable to a fine, not exceeding £5, if they knowingly fail to do so (s. 10 (1)). Where the care of a child is taken over by one authority from another, the other authority are, if possible, to inform the parent (s. 10 (2)). The authority are empowered to arrange the burial or cremation of the bodies of children who die whilst in their care, but cremation is not permissible if it is not in accordance with the practice of the child's religious persuasion. If the child had not attained the age of 16 at the time of death the authority may recover the expenses of the funeral from the parent, in so far as those expenses have not been reimbursed to the authority out of the National Insurance Fund (s. 18). Whilst the Act meticulously requires the authority to inform parents by registered post when they resolve to assume parental rights, it imposes no statutory obligation on them to notify parents of the death of their child. This is, perhaps, a silent tribute to the good sense of our public administration. The authority may make payments to any parent or guardian, or other person connected with a child in their care in respect of travelling, subsistence or other expenses incurred by them in visiting the child or attending his funeral, if the circumstances warrant the payments and there would otherwise be undue hardship (s. 22).

EMIGRATION

The authority may arrange with the consent of the Home Secretary for the emigration of any child in their care. The Home Secretary must

be satisfied that it would be to the child's benefit, that suitable arrangements have been or will be made for his reception overseas, that the parents or guardian have been consulted, or it was not practicable to consult them, and that the child consents. Where the child is too young to form or express a proper opinion on the matter, the Home Secretary may consent to the child's emigration if he is going in company with a parent, guardian, or relative, or is going to join a parent, guardian, relative or friend (s. 17). It should be observed that the parent's *consent* is not a prerequisite.

Emigration of children by voluntary organisations is referred to on page 22.

VOLUNTARY ORGANISATIONS

Part IV of the Act deals with the care of children by voluntary organisations and particularly with the homes for children provided by such organisations. Voluntary homes are defined in s. 92 of the Children and Young Persons Act, 1933, as homes or other institutions for the boarding, care, and maintenance of poor (but normal) children or young persons, supported wholly or partly by voluntary contributions. This definition is now extended to include homes for children and persons up to the age of 18 years supported wholly or partly by endowments but which are not schools within the meaning of the Education Acts (ss. 27 and 28). From the 1st January, 1949, no voluntary home may be carried on unless it is registered by the Home Secretary and application for registration must be made by the person responsible for the home in such manner as the Home Secretary may prescribe. If the home was open for the reception of children at the time of the commencement of this Act the application for registration is to be granted. Otherwise, registration is at the discretion of the Home Secretary, but notice of refusal to register must be given in writing to the applicant. After the 1st January, 1949, the Home Secretary may give in writing not less than 28 days' notice of his proposal to remove a home from the register because of its not being conducted in accordance with the regulations to be made by him under this Act (s. 29), or is otherwise unsatisfactory. If a voluntary home is carried on after 1st January, 1949, without having been registered the person responsible will be liable to heavy fines. When notice is received of the Home Secretary's refusal to register the home, or of his proposal to remove the home from the register, the person responsible for carrying on the home may within 14 days of the receipt of the notice appeal against the refusal or proposal. In case of appeal, a home already on the register shall not be removed therefrom pending the determination of the appeal. Where a home is being carried on either without having been registered, or after notice of removal from the register has been given, the Home Secretary may require the local authority to remove forthwith all the children from the home notwithstanding that an appeal is pending and that the 14 days allowed for its submission has not expired. In this event, the local authority, whose officers are given the right of entry to the home for the purpose, are to receive all the children from the home into their care, although some may be over 17 years of age and others not eligible for other reasons to be received in the ordinary way under s. 1 of the Act (s. 29). The power to have the children removed in this urgent way is clearly intended to be exercised only when the circumstances are considered to be so unsatisfactory as to constitute a menace to the health or welfare of the

inmates. Appeals are to be in writing to the Home Secretary requiring him to refer to an appeal tribunal the refusal to register the home or the proposal to remove it from the register. The Home Secretary is required to comply with the tribunal's decision. The constitution of the tribunal is given in detail in the First Schedule of the Act. The Chairman is to be selected from a "legal panel" of persons appointed by the Lord Chancellor, and the other two members from a "welfare panel" of persons appointed by the Lord President of the Council. No officer of any Government Department may be appointed to either panel. The expenses of the tribunal may be met from public funds and the members may be paid fees for their services. Their procedure may be governed by rules made by the Lord Chancellor with the concurrence of the Lord President of the Council (s. 30).

The Home Secretary may make regulations as to the conduct of voluntary homes on much the same matters as of homes provided by the local authority, but, in addition, as to the provision of special kinds of clothing for the children, as to facilities for parents and guardians to communicate with and visit the children, and as to giving notice of any change of the person in charge. Under s. 93 of the Children and Young Persons Act, 1933, the person in charge of any voluntary home is required to send annually prescribed particulars of the home to the Home Office and is liable to a fine of £5 in default. This requirement is extended to secure that if these particulars are varied the information required shall be duly sent (s.32).

Regulations may be made by the Home Secretary to control the arrangements of voluntary organisations for the emigration of children and to insure that full information is given of their activities in this matter and of the arrangements for the reception of the children overseas. The boarding out of children by voluntary organisations has been referred to on p. 17 above, and the provisions as to the aftercare of children from voluntary homes on p. 19. It is the duty of the local authority to cause children in voluntary homes in their area to be visited and any person authorised by the local authority may enter any voluntary home in the area of the authority for that purpose. Any authorised person may also enter any voluntary home outside the authority's area for the purpose of visiting children for whose welfare the authority are responsible. Such persons may be required to show some duly authenticated document of their authority. Obstruction of their entry is made an offence punishable by fine (s. 54).

The Home Secretary may make grants to voluntary organisations, where he thinks the circumstances require, for improving the premises, equipment and staffing of voluntary homes and may recover a proportion of such grants from local authorities. A local authority may, with the consent of the Home Secretary, make contributions to any voluntary organisation the object or primary object of which is to promote the welfare of children (s. 46).

CHILD LIFE PROTECTION

Part V of the Act extends the duties of the local authority under the Public Health Acts and the Adoption of Children (Regulation) Act, 1939, to visit certain children either placed by their parents in the care of other persons for reward, or handed over to private persons without



reward but with a view to adoption under arrangements in which third parties, not being adoption societies, have participated. The supervision by the authority over these two groups of children has hitherto applied only to children under the age of 9. It now extends to all such children of compulsory school age (s. 35). If at the time he ceases to be of compulsory school age one of these children is still in the care of the person with whom he was placed by his parent the local authority's supervision is to continue until he attains the age of 18 (s. 36). Where a guardian's allowance is payable under the National Insurance Act, 1946, or a family allowance under the Family Allowances Act, 1945, to anyone other than the remaining parent or a guardian or relative, the child in respect of whom the allowance is paid is to be regarded as placed in the person's care for reward, and is accordingly brought within the supervision of the local authority in the same way as the two groups of children mentioned above (s. 37). In this connection it should be noted that "relative" means grand-parent, brother, sister, uncle or aunt. "Guardian" means legal guardian appointed either by deed or will or by order of a court.

The extension of the authority's supervision of these groups of children will involve some, but probably not much, additional work. Most children placed by their parents in the care of others for reward are of very tender years, and often illegitimate. The great majority of them are either taken back into their parents' care, or become the subject of some other arrangements, usually at the instance of the authority, before they reach the age of 9. Similarly with the "third party" adoption cases, when the authority are satisfied that there is no bona fide intention to adopt the child they can by persuasion usually bring about some more definite provision. Projected legislation in regard to the adoption of children may strengthen the authority's powers in regard to "third party" adoption arrangements. Direct Treasury grant is now payable for the first time to local authorities for their expenses under the Adoption of Children (Regulation) Act, 1939.

Provision is made in a separate Act (the Nurseries and Child-Minders Regulation Act, 1948, see p. 117 *et seq.*, *post*), for the local health authorities to register persons who mind children for the day or for short periods, and also to register and supervise the premises used. These children differ from those affected by the Children Act, 1948, in that they are not deemed to be "maintained" for reward.

GUARDIANSHIP OF INFANTS

The Curtis Committee considered that every orphan or deserted child coming within the range of public care should have a legal guardian to take major decisions in his life and to feel full responsibility for his welfare. They did not think that in every case the authority themselves would be the proper guardian, but that the authority should actively promote the appointment of suitable persons. Hitherto the appointment of legal guardians of particular children has been, in practice, limited to cases where there are material benefits to be secured to those children, *e.g.* by the administration of property, or the income from trusts. Summary jurisdiction courts may, under the Guardianship of Infants Acts, deal with questions of legal guardianship where difficulties or disputes arise between parents (*i.e.* the natural guardians) or guardians already appointed by will or deed. They have had no statutory power, however, to appoint a guardian where a child had not already a natural or testamen-

tary guardian. Such appointments were reserved for judges of the Chancery Division in the exercise of their inherent powers. An amendment is made by this Act (s. 48) to the Guardianship of Infants Act, 1925, to enable a court (which may be a summary jurisdiction court), if it thinks fit, to appoint any person who applies, to be the guardian of a child who has no parent or guardian and with respect to whom there is no person having parental rights. This new power will be valuable where persons—such as foster-parents and relatives or friends—have children in their care whom they are desirous of keeping, but do not feel prepared to take the irrevocable step of permanently adopting them. The authority have a duty in this Act (s. 1 (3)) to endeavour to secure that relatives or friends take over the care of children, and it may be implied that the appointment of those persons as legal guardians should be kept in view.

THE ADVISORY COUNCILS

An Advisory Council on Child Care is to be appointed by the Home Secretary to advise him on matters connected with the discharge of his functions in regard to approved schools, remand homes and voluntary homes under the Children and Young Persons Act, 1933, and the care of children generally under this Act. Its members are to be specially qualified to deal with matters affecting the welfare of children and are to include persons having experience in local government. The Council will advise the Home Secretary on such matters as he refers to them, and they may make representations to him of their own motion on any of the matters within their reference. The members may be paid travelling, subsistence and other expenses. The Chairman and Secretary will be appointed by the Home Secretary (s. 43). There is to be a separate Advisory Council for Scotland, of which committees may be appointed to include persons other than members of the Council, having special knowledge and experience of the subjects referred to the Committee (s. 44).

STAFF AND TRAINING

At an early stage in their inquiry the Curtis Committee came to the conclusion that one of the most serious weaknesses in the institutional care of children was the lack of staff of suitable quality and training. So important did they consider this matter that they submitted an interim report urging the setting-up of a national scheme of training carrying diplomas in child care, and sufficiently high pay to attract women of the best type for this responsible work. In this interim report the committee dealt with the improvement of the staff in immediate charge of the children—house-mothers and those in analogous positions. In their main report they advocated the institution of courses of training for boarding out visitors with facilities for the central department inspectors to take parts of these courses. A Central Training Council in Child Care was appointed in 1947, and standard syllabuses of training have been drawn up. Before the commencement of this Act, courses of training for both subordinate staff and for boarding out visitors had begun in different parts of the country. The Home Secretary is now empowered under the Act to defray, or contribute towards, any fees or expenses incurred in undergoing approved training either in preparation for employment in child care work or whilst actually so employed by the central or local authority or by a

voluntary organisation. The Home Secretary may also defray or contribute towards the cost of maintenance of persons undergoing such training, and may make grants towards the expenses of any body or persons providing suitable courses of training (s. 45).

FINANCE

Some of the financial considerations and effects of the Act have already been referred to, but it may be useful to recapitulate them and illustrate them in a hypothetical local authority area. Direct Exchequer grant is to be paid of not less than 50 per cent of their expenditure on the following services which hitherto have not earned specific grants :—

- (a) Maintenance of destitute children in community homes or boarded out.
- (b) Supervision of children under the child life protection sections of the Public Health Acts and under the Adoption of Children (Regulation) Act, 1939.

The expenditure under (b) is less than 1 per cent of (a). The overall cost of maintaining a child in a community home has been rising steadily in recent years and in some areas has now reached an average of not less than £150 a year. The overall cost to the rates of a boarded out child is slightly less than half this sum, but might be taken at £75 a year. Therefore, if an authority had, say, 500 "destitute" children of whom 25 per cent were boarded out, then on the basis of the above figures and on their present services there would be a reduction in net rate expenditure of some £33,000 a year or £66 per child a year. Against this saving increased expenditure will arise in the following ways :—

- (i) Greater numbers of children received into care between 16 and 17 years of age and remaining in care between 16 and 18 years and in after care of training beyond 18 years, and greater numbers coming into care because of the wider avenue opened by s. 1.
- (ii) Greater numbers of children to be supervised as being "maintained for reward" or to be similarly supervised as if so maintained.
- (iii) Improved standards of accommodation and equipment of community homes, and provision of more hostels and special accommodation for temporary care.
- (iv) More generous staffing of community homes and additional administrative and supervisory staff.
- (v) Some rise in the payments to parents and others for expenses in visiting children in care.
- (vi) Some drop in the amounts received in contributions from liable relatives.

The cumulative effect of these various items cannot be forecast, but it would appear unlikely that for some years it would counterbalance as much as one half of the reduction of rate expenditure resulting from the new Exchequer grants. In other words, it would seem that the local authority's net rate expenditure on the care of deprived children generally will not be so high in any of the next few years as it was in 1947.

Provision is made for the acquisition of land by compulsory purchase for the local authority's functions under the Act (s. 56).

THE TRANSITION

Transitional provisions are set out in the second Schedule to the Act. Their objects are (i) to regularise or preserve the continuity of arrangements, mainly under the Poor Law, for which there are corresponding

provisions in this Act, and (ii) to define initially the position under this Act of children or homes brought under statutory supervision or control for the first time. Transitional provisions are naturally of short-lived general interest, but administratively they are of some immediate consequence. Officers of local authorities and others who may have to operate them should refer to the second Schedule itself, but broadly summarised its effects are:—

Children receiving institutional (or indoor) relief are to be regarded as received in the care of the authority under this Act (Sched. II, 1 (1)), but children over 16 being relieved and also those under 16, if being relieved with a parent or other person in charge of them, may be dealt with under the National Assistance Act, 1948, if that appears more appropriate to the authority (Sched. II, 1 (1)). Authorities liable under the Poor Law for the cost of the maintenance of children in the care of other authorities continue to be so liable (Sched. II, 1 (2)). Resolutions under the Poor Law to assume parental rights remain operative and the parent is deemed to have been notified (Sched. II, 2). Children already committed by courts to the care of the "local education authority" as a fit person are deemed to be committed to the care of the "local authority" under this Act (Sched. II, 3). Boarding out rules made under the Children and Young Persons Acts have effect as if they were regulations made under this Act to apply to children received by the authority as well as those committed by courts to their care. Children boarded out under the Poor Law or Children and Young Persons Acts are deemed to be boarded out under this Act (Sched. II, 4). An existing contribution order will not operate so as to require any payment which would not be ordered under this Act (Sched. II, 5). A maintenance order under the Poor Law in respect of a child in an approved school becomes a contribution order as if made when the court committed the child to the school (Sched. II, 6 (1)). Where the local authority were required in their capacity as Poor Law authority to contribute to the cost of maintaining a destitute child in an approved school, they are now deemed to be the authority named in the approved school order as liable to make the flat-rate contributions prescribed by the Home Secretary (Sched. II, 6 (2)). An existing home which becomes a "voluntary home" by virtue of the provisions of this Act is deemed to be established at the commencement of the Act (Sched. II, 7). Children over the age of 9 who are brought within the supervision of the authority under the Public Health Acts or Adoption of Children (Regulations) Act, 1939, and other children to be supervised because family or guardian's allowances are paid in respect of them, are deemed (with possible exceptions in guardian's allowance cases) as being maintained for reward (or taken into possession) at the commencement of this Act. One month's grace is, in effect, allowed after the commencement of the Act for giving to the authority in respect of these children any of the notices which ordinarily are required to be given before a child is received or moved, etc. (Sched. II, 9 and 10).

CONCLUSION

The Children Act, 1948, is a very important new chapter in the law for the protection of children. It is, perhaps, not of the same importance as the Children Act, 1908, or its successors—the Children and Young Persons Acts of 1933, and (Scotland) 1937. Those Acts were consolidating and amending ones for the protection of children living with their parents as

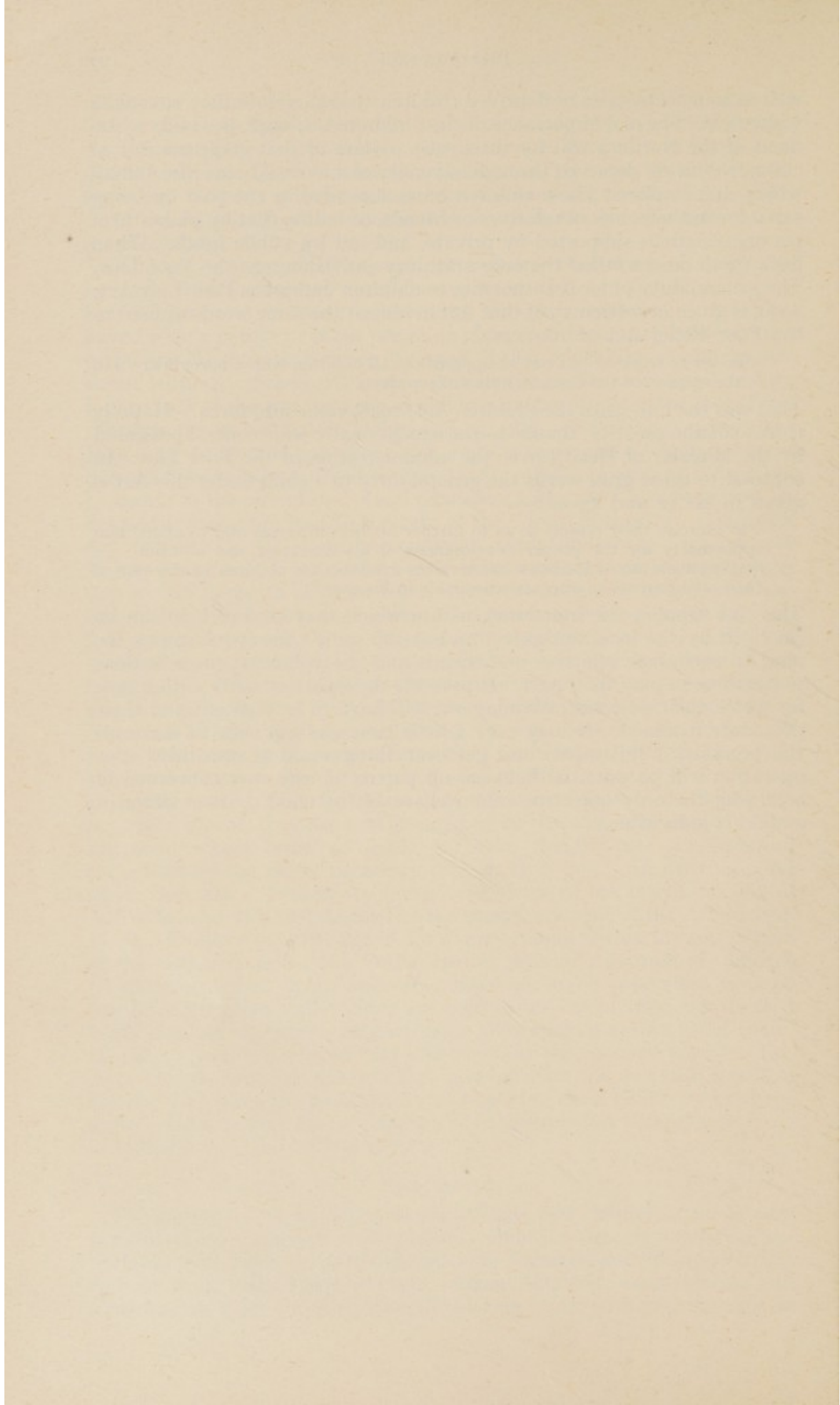
well as some categories of deprived children, and therefore they covered a wider field. The real importance of the Children Act, 1948, lies in its statement of the Nation's will for the future welfare of that great number of children who are deprived through adversity of a normal home life, and all which that implies. These children have depended in the past on being cared for in the homes of relatives or friends, or failing that by philanthropic organisations supported by private, and not by public funds. When both those means failed the only statutory provision was the Poor Law. The general duty of local authorities to children under the Poor Law Act, 1930, is given in section 15 of that Act in almost the same words as used in the Poor Relief Act of 1601, *viz.*:

"To set to work or put out as apprentices all children whose parents are not, in the opinion of the Council, able to keep them."

That was the Law until the Children Act, 1948, came into force! Happily it was not the practice, thanks to the exceptionally wide control possessed by the Minister of Health over the administration of the Poor Law. In contrast to those grim words the general duty to a child under this Act is given in ss. 12 and 13 as:—

"to exercise their powers so as to further his best interests and to afford him opportunity for the proper development of his character and abilities . . . making such use of facilities and services available for children in the care of their own parents as appears reasonable in his case."

This Act supplies the framework within which that kind of help can be provided by the local authority, and at the same time it recognises the need to encourage relatives and friends and the voluntary organisations to continue to play their part. It presents the local authority with a task for which their administrative lay-out will have to be changed and their procedure modified. It may take a little time and patience to make all the necessary adjustments and get everything working smoothly. Co-operation will be essential between all parties in any way concerned in achieving the only objective—the welfare of the child. The welfare of a child is indivisible.



THE CHILDREN ACT, 1948

11 & 12 Geo. 6, Ch. 43.

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An Act to make further provision for the care or welfare, up to the age of eighteen and, in certain cases, for further periods, of boys and girls when they are without parents or have been lost or abandoned by, or are living away from, their parents, or when their parents are unfit or unable to take care of them, and in certain other circumstances; to amend the Children and Young Persons Act, 1933, the Children and Young Persons (Scotland) Act, 1937, the Guardianship of Infants Act, 1925, and certain other enactments relating to children; and for purposes connected with the matters aforesaid. [30th June, 1948.]

PART I

DUTY OF LOCAL AUTHORITIES TO ASSUME CARE OF CHILDREN

Cross-references.—Other provisions relevant to this part of the Act are:—

After-care of children	— — — — —	Section	34
Care, discharge of duty	— — — — —	Sections	11—16
Child life protection	— — — — —	Sections	35—37
Children's Committee	— — — — —	Section	39
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Prosecutions by local education authority	— — — — —	Schedule III, amending Children and Young Persons Act, 1933, s. 28	
Voluntary organisations, age limits	— — — — —	Section	28

1. Duty of local authority to provide for orphans, deserted children, etc.—(1) Where it appears to a local authority with respect to a child in their area appearing to them to be under the age of seventeen—

- (a) that he has neither parent nor guardian or has been and remains abandoned by his parents or guardian or is lost; or
- (b) that his parents or guardian are, for the time being or permanently, prevented by reason of mental or bodily disease or infirmity or other incapacity or any other circumstances from providing for his proper accommodation, maintenance and upbringing; and
- (c) in either case, that the intervention of the local authority under this section is necessary in the interests of the welfare of the child,

it shall be the duty of the local authority to receive the child into their care under this section.

(2) Where a local authority have received a child into their care under this section, it shall, subject to the provisions of this Part of this Act, be their duty to keep the child in their care so long as the welfare of the child appears to them to require it and the child has not attained the age of eighteen.

(3) Nothing in this section shall authorise a local authority to keep a child in their care under this section if any parent or guardian desires to take over the care of the child, and the local authority shall, in all cases where it appears to them consistent with the welfare of the child so to do, endeavour to secure that the care of the child is taken over either—

(a) by a parent or guardian of his, or

(b) by a relative or friend of his, being, where possible, a person of the same religious persuasion as the child or who gives an undertaking that the child will be brought up in that religious persuasion.

(4) Where a local authority receive a child into their care under this section who is then ordinarily resident in the area of another local authority,—

(a) that other local authority may at any time not later than three months after the determination (whether by agreement between the authorities or in accordance with the following provisions of this subsection) of the ordinary residence of the child, or with the concurrence of the first-mentioned authority at any subsequent time, take over the care of the child; and

(b) the first-mentioned authority may recover from the other authority any expenses duly incurred by them under Part II of this Act in respect of him (including any expenses so incurred after he has ceased to be a child and, if the other authority take over the care of him, including also any travelling or other expenses incurred in connection with the taking-over).

Any question arising under this subsection as to the ordinary residence of a child shall be determined by the Secretary of State.

(5) In determining for the purposes of the last foregoing subsection the ordinary residence of any child, any period during which he resided in any place as an inmate of a school or other institution, or in accordance with the requirements of a supervision order or probation order or the conditions of a recognisance, or while boarded out under this Act, the Poor Law Act, 1930, the Children and Young Persons Act, 1933, the Poor Law (Scotland) Act, 1934, or the Children and Young Persons (Scotland) Act, 1937, by a local authority or education authority shall be disregarded.

NOTES TO SECTION 1

General Note.—*Duty to assume care of children.*—This section imposes on a local authority the duty to receive into its care, where it appears that this is necessary in the interests of the child, any child actually present in the authority's administrative area (whether he normally resides there or not) who appears to be under the age of seventeen and has no parents or guardians, or who has been abandoned or lost, or whose parents or guardians are temporarily or permanently prevented from providing for him properly.

No formal resolution is required before the child is received into the authority's care, the object of the present section being to enable the authority to act quickly whenever it appears that intervention is necessary for the welfare of any child. A child who, immediately before the commencement of the Act was being relieved under the poor law, by relief that was not outdoor relief, is subject to this Act as if the local authority had received him into their care subject to the proviso to para. 1 (1) of Sched. II, *post*. The provisions of s. 1 of this Act are in contrast to the elaborate machinery provided under s. 2, *post*, where the authority proposes to assume parental rights (sub-s. (1)).

Taking over care: ending of local authority's care.—Where the local authority do not assume parental rights they may not retain the child in their care if any parent or guardian desires to take over the care and, unless the child is out under supervision or on licence from an approved school (see s. 6 (4), *post*), they must in every case where it appears to be for the welfare of the child try to arrange for some parent or guardian, or some relative or friend, either of the child's own religious persuasion or who will undertake to bring him up in that persuasion, to take over the care (sub-s. (3)). In order to preserve essential contacts, with a view, amongst other things, to enabling the child to be handed over to some suitable person, the parent is required to keep the authorities informed of his address (s. 10, *post*), and the authority is empowered to pay the expenses of persons connected with the child who visit him while in the authority's care (see s. 22, *post*).

Where the care of the child is not handed over the local authority's duty to retain the child in their care continues until he reaches the age of eighteen unless previously

- (a) Some other local authority takes over the care (sub-s. (4) of the present section, and see below); or
- (b) An approved school order comes into force in relation to the child (s. 6 (3), *post*); or
- (c) the care of the child is transferred to the Minister of Pensions (s. 7, *post*); or
- (d) the child comes under control under the Mental Deficiency or Lunacy and Mental Treatment Acts (s. 8, *post*).

Residence in another area.—Where one local authority takes into its care a child who is normally resident in the area of another local authority, the care of the child must be transferred to the last mentioned authority on the request of that authority made within the three months after the question of the child's ordinary residence has been determined, or, with the consent of the first mentioned authority, at any time thereafter. All expenses properly incurred by the first mentioned authority in respect of the child are recoverable from the authority in whose area the child is normally resident (sub-s. (4) above). The authority to whose care the child is transferred must, if possible, inform the child's parent of the transfer (s. 10 (2), *post*).

It is contemplated that questions as to residence will be settled by the local authorities concerned, but in default of agreement they are to be determined by the Secretary of State (sub-s. (4)). In determining a child's ordinary residence certain special types of residence in institutions, or subject to the conditions of a court order, or while boarded out, are to be ignored (sub-s. (5)). This is in accord with proviso (a) to s. 70 of the Children and Young Persons Act, 1933 (26 Halsbury's Statutes 212), and will chiefly be of importance where children are received into the care of a local authority under s. 29 (6), *post*, on the closing down of a voluntary home.

Sub-ss. (4) and (5) above do not apply to a child out under supervision or on licence from an approved school who is received into the care of a local authority pursuant to s. 6 (4), *post*.

Probation orders, etc.—The reception of a child into the care of a local authority will not affect any supervision or probation order previously made with regard to him (s. 6 (1), *post*).

Children released from approved schools.—Children in relation to whom approved school orders have been made but who have been released from approved schools either under the supervision of the managers or under licence may, in certain circumstances, be received into care under the present section (see s. 6 (4), *post*).

Cross-references.—As to the treatment of children in the care of local authorities under the present section, see Part II of the Act, *post*, and as to the liability of their parents to make contributions towards the cost of their maintenance, see Part III,

post; *prima facie* a parent's liability to contribute under a contribution order continues until the child ceases to be in the local authority's care or attains sixteen, see ss. 23 (2), 24 (2), *post*.

Provision for the after-care of children who have been in the care of local authorities is made by s. 34, *post*.

Removal of voluntary home from register.—As to the power of the Secretary of State to require a local authority to remove children from a voluntary home and to receive them into care, see s. 29 (6), *post*.

Subsection (1).—*Child.*—By s. 59 (1), *post*, "child" is defined as meaning a person under the age of eighteen. The duty to receive a child into care imposed by the present subsection (except in the case of children received on the closing of a voluntary home (s. 29 (6), *post*)) is restricted to persons appearing to be under seventeen, but once a person has been so received he may be retained in the local authority's care until he is eighteen.

Under the age of seventeen.—No duty is laid on the local authority to obtain such evidence as to age as is available comparable to that imposed on the court by the Children and Young Persons Act, 1933, s. 99 (2) (26 Halsbury's Statutes 235). The authority may act on physical appearance, or, where this is such as to leave the actual age in doubt, on any other factors (such as the years when the child attended school; See *R. v. Cox* (1898), 1 Q. B. 179; 15 Digest, 857, 9408), which would lead a reasonable person to suppose that the child was under seventeen.

Abandoned.—This implies "leaving the child to its fate" (*Mitchell v. Wright* (1905), 7 F. (Ct. of Sess.) 568, *per* the Lord President, at p. 574; and see *Re O'Hara*, [1900] 2 I.R. 232, C.A.; 28 Digest 258, 1126 iii).

Welfare.—The child's welfare is an overriding consideration in all cases. As to the meaning of "welfare" in relation to a child, see *Re McGrath (Infants)*, [1893] 1 Ch. 143; 28 Digest 276, 1269, where Lindley, L. J., said that "the welfare of a child is not to be measured by money only or by physical comfort only. The word 'welfare' must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded." From this it would appear that a local authority would not be justified in acting under the present section merely on the grounds of the poverty of the child's home. There must be present some other factor prejudicial to his bodily, mental or moral well-being.

Care.—This word is not defined in the Act, but would appear to connote actual physical control or possession. Compare s. 17 of the Children and Young Persons Act, 1933 (26 Halsbury's Statutes 181), where it is distinguished from "custody" and "charge"; and see *Brooks v. Blount*, [1923] 1 K. B. 257; 28 Digest 217, 766.

Subsection (2).—*Attained the age of eighteen.*—The English rule is that a person attains the age of eighteen years at the beginning of the day on which he completes his eighteenth year, that is to say on the day before his eighteenth birthday. See *Re Shurey, Savory v. Shurey*, [1918] 1 Ch. 263; 28 Digest 140, 12.

Subsection (3).—By s. 3 (2), *post*, the operation of this subsection is excluded in relation to any person on whose account a resolution under s. 2, *post*, has been passed.

Subsection (4).—*Ordinarily resident.*—A person "resides" where, in common parlance, he lives. See *R. v. St. Leonard Shoreditch (Inhabitants)* (1865), L. R. 1 Q. B. 21; 37 Digest 251, 469. Volition is, in general, an essential of residence, but this is apparently not so in the case of an infant of tender years who is incapable of the necessary volition. See *Re X. Y.*, [1937] Ch. 337, C. A.; Digest Supp., where it was held that in relation to a pauper lunatic "residence" must mean residence in fact even though the pauper in question was incapable of any volition.

Expenses incurred after he has ceased to be a child.—*i.e.* after he has attained the age of eighteen, see s. 59 (1), *post*. The expenses which a local authority may incur under Part II of the Act in respect of persons over eighteen are the cost of hostel accommodation provided under s. 19, *post*, and of financial assistance towards the cost of maintenance, education and training under s. 20, *post*.

Definitions.—"Child" (s. 59 (1), *post*); "local authority" (s. 38, *post*); "parent," "guardian" (ss. 9 and 59 (1), *post*), and in relation to children subject to custody orders, s. 6 (2), *post*; "relative" (s. 59 (1), *post*).

Transitional provisions.—See Sched. II, para. 1, *post*.

2. Assumption by local authority of parental rights.—(1) Subject to the provisions of this Part of this Act, a local authority may resolve with respect to any child in their care under the foregoing section in whose case it appears to them—

- (a) that his parents are dead and that he has no guardian ; or
- (b) that a parent or guardian of his (hereinafter referred to as the person on whose account the resolution was passed) has abandoned him or suffers from some permanent disability rendering the said person incapable of caring for the child, or is of such habits or mode of life as to be unfit to have the care of the child,

that all the rights and powers which the deceased parents would have if they were still living, or, as the case may be, all the rights and powers of the person on whose account the resolution was passed, shall vest in the local authority.

(2) In the case of a resolution passed by virtue of paragraph (b) of the last foregoing subsection, unless the person on whose account the resolution was passed has consented in writing to the passing of the resolution, the local authority, if the whereabouts of the said person are known to them, shall forthwith after the passing of the resolution serve on him notice in writing of the passing thereof ; and if, not later than one month after such a notice is served on him, the person on whose account the resolution was passed serves a notice in writing on the local authority objecting to the resolution, the resolution shall, subject to the provisions of subsection (3) of this section, lapse on the expiration of fourteen days from the service of the notice of objection.

Every notice served by a local authority under this subsection shall inform the person on whom the notice is served of his right to object to the resolution and of the effect of any objection made by him.

(3) Where a notice has been served on a local authority under subsection (2) of this section, the authority may not later than fourteen days from the receipt by them of the notice complain to a juvenile court, or in Scotland the sheriff, having jurisdiction in the area of the authority, and in that event the resolution shall not lapse by reason of the service of the notice until the determination of the complaint, and the court or sheriff may, on the hearing of the complaint, order that the resolution shall not lapse by reason of the service of the notice :

Provided that the court or sheriff shall not so order unless satisfied that the child had been, and at the time when the resolution was passed remained, abandoned by the person who made the objection or that that person is unfit to have the care of the child by reason of unsoundness of mind or mental deficiency or by reason of his habits or mode of life.

(4) Any notice under this section may be served by post, so however that a notice served by a local authority under subsection (2) of this section shall not be duly served by post unless it is sent in a registered letter.

NOTES TO SECTION 2

Procedure for assuming parental rights.—This section confers power on a local authority to vest in themselves, by passing a resolution in accordance with sub-s. (1), all the rights and powers of the parents or of the guardians of the child. No new resolution is necessary if immediately before the passing of this Act a

resolution under the Poor Law Act, 1930, s. 52; 12 Halsbury's Statutes 994 (now repealed by the National Assistance Act, 1948, which, like the present Act, came into force on July 5, 1948) was in force in respect of the child (see Sched. II, para 2, *post*). Unless the matter is urgent the local authority will first consider a report of their children's committee, if one is appointed (s. 39, *post*). The conditions for the passing of the resolution are (i) that the child be in the care of the local authority under s. 1, *ante*, (ii) that it appear to the local authority that *either* the circumstances stated in para. (a), *or* those stated in para. (b) of sub-s. (1) above exist, and (iii) that no order is in force committing the child to the care of a fit person, see s. 6 (3) (b), *post*. It is to be noted that the reference in para. (b) of sub-s. (1) above to "a parent or guardian" is, it seems, by virtue of s. 9, *post*, and the Interpretation Act, 1889, s. 1 (18 Halsbury's Statutes 992), a reference to all parents or guardians. Before a resolution is passed it should be considered whether the written consent of any parent or guardian can be obtained in order to obviate the objection procedure outlined below (see sub-s. (2) above).

While the determination whether the circumstances specified in para. (b) of sub-s. (1) above exist is a matter within the discretion of the local authority, yet if the question is taken before the court pursuant to sub-s. (3) the test is whether the court, not the local authority, is satisfied that the circumstances existed at the time of the passing of the resolution (see the proviso to that subsection). The resolution is a resolution that the rights and powers "shall vest." Accordingly they do vest, it seems, on the date when the resolution is passed, and no other date for vesting should be specified in the resolution.

Unless the child's parents are dead and he has no guardian, or unless the written consent of the parent or guardian concerned has been obtained to the passing of the resolution, or unless the whereabouts of the parent or guardian are not known to the local authority, the local authority must serve notice in writing of the passing of the resolution, and stating the recipient's right of objection, on the parent or guardian who may object within a month after the service (sub-s. (2)). Any objection must be in writing and served on the local authority, who then have fourteen days in which to apply to a juvenile court or, in Scotland, to the sheriff. If no such application is made the resolution lapses on the expiration of the fourteen days, otherwise it continues in force until the court hears the complaint, and thereafter if the court determines that it shall not lapse. The court has power to terminate resolutions, see s. 4 (3), *post*.

Service of notices may be by post (sub-s. (4) above) "by properly addressing, prepaying, and posting a letter containing the document" (Interpretation Act, 1889, s. 26; 18 Halsbury's Statutes 1002; *cf.* *R. v. Westminster Unions Assessment Committee, Ex parte Woodward & Sons*, [1917] 1 K. B. 832; 22 Digest 370, 3784). Service by post by a local authority must be by registered letter (sub-s. (4) above). The effective time of service is the time at which the letter would be received in the ordinary course of post, unless the contrary is proved (Interpretation Act 1889, s. 26; 18 Halsbury's Statutes 1002).

The effect of the resolution is considered in the notes to s. 3, *post*, and its continuance in force, revision, and termination is discussed in the notes to s. 4, *post*.

Subsection (1).—*Subject to the provisions, etc.*—See particularly s. 6 (2), (3) (children subject to existing orders of court); s. 7 (2) (children in care of Minister of Pensions); and s. 8 (children subject to Mental Deficiency, etc., Acts).

Local Authority.—*i.e.* Councils of Counties or County Boroughs, etc. (see s. 38, *post*).

Parents or guardian.—This seems to refer to all parents or guardians (see s. 9, *post*); as to children in respect of whom custody orders are in force, see s. 6 (2), *post*.

Abandonment.—See notes to s. 1, *ante*.

Habits or mode of life.—These are very comprehensive words sufficient to include, amongst others, such divers matters as vagrancy, habitual inebriety, immoral, vicious or criminal conduct. On the other hand, the court has held that a distinction must be drawn between the words "act" and "habit," "the one pointing to a single thing done, the other to a usage resulting from repeated action." See *Ely (Bishop) v. Close*, [1913] P. 184; 19 Digest 346, 1575.

Subsection (2).—*Whereabouts of the said person.*—See s. 10, *post*, which imposes on the parents of a child in the care of a local authority a duty to keep the authority informed as to his address.

Definitions.—“ Child,” “ complain,” “ guardian ” “ parent ” (s. 59, *post*) ; “ Juvenile Court ” (Children and Young Persons Act, 1933, s. 45 ; 25 Halsbury's Statutes 199) ; “ writing ” (Interpretation Act, 1889, s. 20 ; 18 Halsbury's Statutes 1001).

3. Effect of assumption by local authority of parental rights.—

(1) While a resolution passed by virtue of paragraph (a) of subsection (1) of section two of this Act is in force with respect to a child, all rights and powers which the deceased parents would have if they were still living shall, in respect of the child, be vested in the local authority in accordance with the resolution.

(2) While a resolution passed by virtue of paragraph (b) of the said subsection (1) is in force with respect to a child, all rights and powers of the person on whose account the resolution was passed shall, in respect of the child, be vested in the local authority in accordance with the resolution, and subsection (3) of section one of this Act shall not in respect of the child apply in relation to the person on whose account the resolution was passed.

(3) A resolution under section two of this Act shall not prevent the local authority from allowing, either for a fixed period or until the local authority otherwise determine, the care of the child to be taken over by, and the child to be under the control of, a parent, guardian, relative or friend in any case where it appears to the authority to be for the benefit of the child.

(4) Where a resolution under section two of this Act is in force in respect of a child and the child has ceased to be in the care of the local authority by whom the resolution was passed, then (without prejudice to the provisions of section one of this Act if those provisions apply) the local authority by whom the resolution was passed shall have power to receive the child back into their care in any circumstances in which it appears to them that their intervention under this subsection is necessary in the interests of the welfare of the child.

(5) Where a local authority receive a child into their care under the last foregoing subsection, the provisions of this Act, except subsections (4) and (5) of section one thereof, shall apply as if the child had been received into their care under the said section one.

(6) A resolution under the said section two shall not relieve any person from any liability to maintain, or contribute to the maintenance of, the child.

(7) A resolution under the said section two shall not authorise a local authority to cause a child to be brought up in any religious creed other than that in which he would have been brought up but for the resolution.

(8) Any person who knowingly—

(a) assists or induces or persistently attempts to induce a child to whom this subsection applies to run away, or

(b) harbours or conceals a child to whom this subsection applies who has run away, or prevents him from returning to the place from which he has run away,

shall on summary conviction be liable to a fine not exceeding twenty pounds or to imprisonment for a term not exceeding two months, or to both such fine and such imprisonment.

This subsection applies to any child in the care of a local authority under section one of this Act in whose case a resolution is in force under section two thereof, being a child for whom accommodation (whether in a home or otherwise) is being provided by the local authority in pursuance of Part II of this Act, and references in this subsection to running away shall be construed as references to running away from a place where accommodation is or was being so provided.

NOTES TO SECTION 3

The effects of assumption of parental rights under s. 2, *ante*, with regard to a child who has been received into their care under s. 1, *ante*, are stated in the present section. Where there is no parent or guardian living, the resolution operates to vest in the local authority all rights and powers the parents would have had if living; but if the resolution is passed on account of the incapacity or misconduct of a parent or guardian it is only the rights and powers of that parent or guardian which vest in the authority (sub-s. (2)).

The assumption of parental rights does not prevent the authority from allowing the child to return, either for a trial period or indefinitely, to his parent or guardian, or some other relative or friend (sub-s. (3)), but the authority may at any time require the child to be returned to their care if it appears to them to be desirable in the child's interests (sub-s. (4)).

The parental rights of a father include those of custody of the child, control over the child's actions and correction, right to the child's services, and control of the child's religious education; of these the last is substantially preserved by sub-s. (7). It seems that the word "powers", *supra*, will extend to the giving of consent to marriage of an infant, see Guardianship of Infants Act, 1925, s. 9; 9 Halsbury's Statutes 824.

Upon the death of the child's father the mother has a right to custody and guardianship of the child (Guardianship of Infants Act, 1925, s. 4; 9 Halsbury's Statutes 821). See generally 17 Halsbury's Laws (2nd Edn.), pp. 658, *et seq.*

The transfer of parental rights does not relieve the parent from liability to contribute towards maintenance; as to liability for maintenance, see note to sub-s. (7) below, and s. 24, *post*.

Offence.—Assisting or inducing or trying to induce the child to return to his parent or guardian without the authority's consent, or otherwise to escape from the authority's control or hiding him after he has escaped is made a punishable offence (sub-s. (8)); as to prosecutions, see s. 55, *post*.

Subsection (3).—*Control.*—This expression is not defined in the present Act, but in s. 17 of the Children and Young Persons Act, 1933 (26 Halsbury's Statutes 180), it is treated as being synonymous with "possession." As to the power of a juvenile court (in Scotland the sheriff) to direct a local authority to permit a child to be in the care and under the control of a parent or guardian, either for a trial period or indefinitely, see the proviso to s. 4 (3), *post*.

Relative or friend.—In a number of cases it has been held that the expressions "relations" and "friends" are synonymous. See *Gowen v. Mainwaring* (1750), 2 Ves. Sen. 87; 37 Digest 526, 1166; *Re Caplin's Will* (1865), 2 Drew. & Sm. 527, 37 Digest 528, 1193. It seems, however, exceedingly unlikely that such a narrow construction would be put on the word "friend" where it appears in the present section, and that it ought, rather, to be given its ordinary colloquial meaning of a person attached to the child by bonds of affection only.

Subsection (4).—*Reception back into care.*—The power conferred by this subsection (which is converted into a duty where the conditions specified in s. 1, *ante*, exist) is exercisable in respect of any child over whom the local authority has assumed parental rights however he has passed out of the authority's actual care, whether pursuant to sub-s. (3) above, or the proviso to s. 4 (3), *post*, or otherwise. The only condition to be complied with before the power is exercised is that it should appear to be necessary to the welfare of the child.

Subsection (6).—*Liability to maintain, etc.*—Liability to maintain children was unknown at common law and was first created by the old poor law. Now, under the National Assistance Act, 1948, s. 42, the only persons liable to maintain

a child are the parents, and their liability ceases when the child attains the age of sixteen. Liability to contribute to the maintenance of children under the Children and Young Persons Act, 1933, s. 86 (see Appendix A, *post*), is also now confined to parents. See s. 24, *post*, and notes thereto.

Subsection (7).—*Religious Creed.*—This phrase is that used in the corresponding provision (sub-s. (5)) of s. 52 of the Poor Law Act, 1930 (12 Halsbury's Statutes 995) (now repealed by the National Assistance Act, 1948). It would seem that no substantial distinction in meaning is to be drawn between it and the expression "religious persuasion" used in s. 70 of the Children and Young Persons Act, 1933 (26 Halsbury's Statutes 212) and in s. 14 (2) (c), *post*.

Generally the religion in which a child "would have been brought up but for the resolution" is that of the father, who in the absence of good reason to the contrary, has at common law the absolute right to determine in what religion his child should be brought up (*Re Agar-Ellis, Agar-Ellis v. Lascelles* (1878), 10 Ch. D. 49; 28 Digest 275, 1256; *Re Scanlan (Infants)* (1888), 40 Ch. D. 200; 28 Digest 275, 1262). This right is unaffected by ante-nuptial or other agreement (*Re Agar-Ellis, Agar-Ellis v. Lascelles, supra*), but it may be lost by immoral conduct (*Shelley v. Westbrook* (1817), Jac. 266; 28 Digest 264, 1174), or may be waived or abdicated, as where the father has acquiesced for a long period in the child being brought up in a religion other than his own (*Lyons v. Blenkin* (1821), Jac. 245; 28 Digest 259, 1134; *Hill v. Hill* (1862), 31 L. J. Ch. 505; 28 Digest, 277, 1285) or where he has altogether neglected the religious education of the child (*Davis v. Davis* (1862), 26 J. P. 260; 28 Digest 277, 1284). Save where the father's right has been lost during his lifetime it continues after his death, and, where he has left no express directions on the subject, the court will, in appropriate cases, direct the child to be brought up in his father's religion (*Re Newbery* (1866), 1 Ch. App. 263; 28 Digest 276, 1266; *Re North* (1846), 8 L. T. (O. S.) 313; 28 Digest 277, 1273; *Re Austin, Austin v. Austin* (1865), 4 De G. J. & Sm. 716; 28 Digest 277, 1274).

The effect of s. 1 of the Guardianship of Infants Act, 1925 (9 Halsbury's Statutes 820) appears to be to give the mother equal rights with the father as to the child's religion. In the case of dispute the court has to decide between them, the child's welfare being the first and paramount consideration.

Subsection (8).—*Harbours or conceals.*—It is thought that in order to "harbour" a person it is necessary to give him actual physical shelter. "Conceal" is a wider word and might include failing to reveal knowledge of the child's whereabouts without giving him physical shelter.

Definitions.—"Person on whose account the resolution was passed" (s. 2 (1) (b), *ante*); "local authority" (s. 38, *post*); "child," "guardian," "parents," "relative" (s. 59 (1), *post*).

4. Duration and rescission of resolutions under section two.—

(1) Subject to the provisions of this Part of this Act, a resolution under section two of this Act shall continue in force until the child with respect to whom it was passed attains the age of eighteen.

(2) A resolution under the said section two may be rescinded by resolution of the local authority if it appears to them that the rescinding of the resolution will be for the benefit of the child.

(3) On complaint being made—

(a) in the case of a resolution passed by virtue of paragraph (a) of subsection (1) of the said section two, by a person claiming to be a parent or guardian of the child;

(b) in the case of a resolution passed by virtue of paragraph (b) thereof, by the person on whose account the resolution was passed,

a juvenile court, or in Scotland the sheriff, having jurisdiction where the complainant resides, if satisfied that there was no ground for the making of the resolution or that the resolution should in the interests of the child

be determined, may by order determine the resolution, and the resolution shall thereupon cease to have effect :

Provided that, if the court or sheriff think fit, they or he may, in lieu of determining the resolution, order that, either for a fixed period or until they or he, or, if the order so provides, the local authority, otherwise direct, the local authority shall allow the care of the child to be taken over by, and the child to be under the control of the complainant.

NOTES TO SECTION 4

General Note.—The present section relates to the continuance in force of resolutions under s. 2 (1), *ante*, for the assumption of parental rights, but will not be applicable in respect of any resolution that lapses under the objection procedure provided in s. 2 (2) and (3), *ante*. The resolution will remain in force until the child reaches the age of eighteen (sub-s. (1)) unless previously—

- (a) the resolution is rescinded by the local authority (sub-s. (2)) ; or
- (b) the resolution is determined by order of the juvenile court (in Scotland the sheriff) (sub-s. (3)) ; or
- (c) the child becomes subject to an approved school order (s. 6 (3), *post*).

Subsection (1).—*Subject to the provisions, etc.*—See s. 2 (2) and (3), *ante*, sub-ss. (2) and (3) of the present section and s. 6 (3), *post*.

Subsection (3).—*Application to the Court.*—On the hearing of an application to determine the resolution, which can only be made by a person who is or claims to be a parent or guardian of the child, three courses are open to the court or sheriff—

- (a) the resolution may be determined if it appears that it ought never to have been made or was not in the interests of the child ; or
- (b) the application may be refused ; or
- (c) the court may order that, either for a fixed period or indefinitely, the child shall be allowed by the authority to be in the care and under the control of the applicant (sub-s. (3), *supra*). In such case the authority have power under s. 3 (4), *ante*, to receive the child back into their care if this appears to be in the child's interests.

Resides.—See *R. v. St. Leonard, Shoreditch (Inhabitants)* (1865), L. R. 1 Q. B. 21 ; 37 Digest 251, 469, where this was held to mean "lives". A person will be held to reside in a particular place even though he is physically absent provided that he has a house or lodging to which he has a right to return and an intention to return thereto (*R. v. Glossop Union* (1866), L. R. 1 Q. B. 227 ; 37 Digest, 310, 1097).

Definitions.—"Local authority" (s. 38, *post*) ; "person on whose account the resolution was passed" (s. 2 (1) (b), *ante*) ; "guardian," "parent" (s. 59 (1), *post*, and in relation to children subject to custody orders s. 6 (2), *post*) ; "child", "complain" (s. 59 (1), *post*) ; "juvenile court" (Children and Young Persons Act, 1933, s. 45 ; 26 Halsbury's Statutes 199).

5. Duty of local authority to act as fit person under the Children and Young Persons Acts.—(1) In any case where, under the Children and Young Persons Act, 1933, a court has power to commit a person brought before the court to the care of a fit person, the assent of a local authority shall not be required for the making by the court of an order committing him to the care of the authority unless a probation order or supervision order is in force or the court proposes to make such an order at the same time as the order committing the child to the care of the authority, and accordingly the following subsections shall be substituted for subsection (1) of section seventy-six of that Act :—

"(1) The appropriate local authority shall, for the purposes of the provisions of this Act relating to the making of orders committing a child or young person to the care of a fit person, be deemed to

be a fit person willing to undertake the care of him, and accordingly orders may be made committing children and young persons to their care, and they shall undertake the care of children and young persons so committed :

Provided that where a probation order or supervision order is in force as respects a child or young person, or the court proposes to make such an order at the same time as an order for committal to the care of the local authority, the last-mentioned order shall not be made unless the local authority consent to the making thereof.

(IA) Before making an order under the last foregoing subsection in any case where the consent of the local authority is not required, the court shall, unless so to do would in the opinion of the court cause undue delay, permit the authority to make representations to the court as to the making of the order and shall, before making the order, consider any representations so made.

(IB) In this section the expression "the appropriate local authority" means the local authority in whose area the child or young person was resident, or, if his residence is not known or he was resident outside England, the local authority or one of the local authorities within whose area the offence was committed or the circumstances arose (as the case may be) rendering him liable to be committed to the care of a fit person :

Provided that in determining for the purposes of this subsection the place of residence of a child or young person, any period during which he resided in any place as an inmate of a school or other institution, or in accordance with the requirements of a supervision order or probation order or the conditions of a recognisance, or while boarded out under this Act, the Poor Law Act, 1930, the Poor Law (Scotland) Act, 1934, the Children and Young Persons (Scotland) Act, 1937, or Part II of the Children Act, 1948, by a local authority or education authority shall be disregarded."

(2) In the application of this section to Scotland, for references to the Children and Young Persons Act, 1933, and section seventy-six thereof, there shall be substituted references to the Children and Young Persons (Scotland) Act, 1937, and section eighty thereof, for the reference to the Children and Young Persons (Scotland) Act, 1937, there shall be substituted a reference to the Children and Young Persons Act, 1933, and for the word "England" there shall be substituted the word "Scotland."

NOTES TO SECTION 5

General Note.—By ss. 57, 62 (1) (b), 64 and 66 of the Children and Young Persons Act, 1933 (26 Halsbury's Statutes 205, 208, 209, 210) (*cf.* Children and Young Persons Act, 1938, s. 1; 31 Halsbury's Statutes 366), a juvenile court can commit a child or young person, under the age of seventeen, to the care of any "fit person . . . who is willing to undertake the care of him", and by virtue of s. 76 (1) of the Act of 1933 a local authority (that is, a local education authority, see s. 96 (1) of that Act) was deemed to be a fit person. Under these provisions the child or young person could only be committed to the care of the fit person with his consent; once made, the order remained in force, *prima facie*, until the child or young person attained eighteen (*ibid.*, s. 75 (3)). Under sub-s. (1) of the present section, a local authority (see s. 38, *post*) is bound to accept appointment as a fit person, except where a probation order or supervision order is already in force in relation to the child, or the court proposes to make such an order at the same time as the "fit-person"

order, in which case, in order to prevent any conflict between the probation officer and the local authority, the consent of the local authority to the making of the "fit-person" order is still required.

Subsection (1).—*Power to commit a person brought before the Court to a fit person.* An order committing a child or young person to the care of a fit person may be made in any of the following cases—

- (a) by any court before which a child or young person is found guilty of an offence which in the case of an adult would be punishable by imprisonment (1933 Act, s. 57; 26 Halsbury's Statutes 206);
- (b) by a juvenile court which is satisfied that any person brought before it by a local authority, constable or authorised person is a child or young person in need of care or protection (1933 Act, s. 62; 26 Halsbury's Statutes 208, and see *ibid.*, s. 63 (1) (a); *op. cit.* 209, and as to interim orders *ibid.*, s. 67; *op. cit.*, 210);
- (c) by a juvenile court to which the parent or guardian of a child or young person proves that he is unable to control the child or young person (1933 Act, s. 64; 26 Halsbury's Statutes 209; 1938 Act, s. 1; 31 Halsbury's Statutes 365);
- (d) by a juvenile court before whom a child or young person under the age of seventeen who is subject to a supervision order is brought by the person under whose supervision he has been placed (1933 Act, s. 66; 26 Halsbury's Statutes 210); and
- (e) by a juvenile court before which a child is brought at the direction of a court before which a person is prosecuted in respect of the failure of the child to attend regularly at the school at which he is a registered pupil, or before which a person is convicted of failing to comply with the requirements of a school attendance order (Education Act, 1944, s. 40 (3); 37 Halsbury's Statutes 169; and s. 40 (3 A), inserted by Education (Miscellaneous Provisions) Act, 1948, s. 11 and Sched. I.).

Appropriate local authority.—See the new sub-s. (1 B) inserted in s. 76 of the 1933 Act by the present section. S. 76 is included in Part III of the 1933 Act and accordingly the definition in s. 38 of the present Act applies; the definition in s. 96 of the 1933 Act (26 Halsbury's Statutes 232), having been amended by Sched. III to the present Act so as to apply for the purposes of Part II of the 1933 Act only.

Orders.—As to the making, duration, and effect of orders for committal to fit persons, see s. 75 of the Children and Young Persons Act, 1933; 26 Halsbury's Statutes 215.

Resident.—See note to s. 1, *ante*.

Supervision Order, Probation Order.—See notes to s. 6, *post*.

Recognisance.—The conditions of a recognisance ordered to be entered into under the Probation of Offenders Act, 1907 (11 Halsbury's Statutes 365) (prospectively repealed by the Criminal Justice Act, 1948, which repeal has, however, not yet come into operation), may include a condition as to residence. See *ibid.*, s. 2 (2) as substituted by the Criminal Justice Administration Act, 1914, s. 8 (11 Halsbury's Statutes 375), and amended by the Children and Young Persons Act, 1933, s. 60 and Sched. III (26 Halsbury's Statutes 207, 243).

Definitions.—"Local authority" (s. 38, *post*); "child," "young person" (Children and Young Persons Act, 1933, s. 107; 26 Halsbury's Statutes 238).

Transitional provisions.—See Sched. II, para. 3, *post*, which applies to Scotland only.

6. Application of preceding provisions to children already subject, or becoming subject, to orders of court.—(1) The reception of a child into their care by a local authority under section one of this Act, and the passing of a resolution with respect to him under section two of this Act, shall not affect any supervision order or probation order previously made with respect to him by any court.

(2) Where an order of any court is in force giving the custody of a child to any person, the foregoing provisions of this Part of this Act shall have effect in relation to the child as if for references to the parents or guardian of the child or to a parent or guardian of his there were substituted references to that person.

(3) The following provisions shall have effect with respect to approved school orders and orders under the Children and Young Persons Act, 1933, or the Children and Young Persons (Scotland) Act, 1937, committing children to the care of fit persons, that is to say:—

- (a) where an approved school order comes into force with respect to a child in the care of a local authority under section one of this Act he shall thereupon cease to be in the care of the authority under that section and any resolution under section two of this Act in force with respect to him shall thereupon cease to have effect;
- (b) no resolution under the said section two shall be passed with respect to a child while an order is in force committing him to the care of a fit person under the said Act of 1933 or 1937;
- (c) save as aforesaid the provisions of subsection (2) of this section shall apply as if the order were an order giving the custody of the child to the managers of the approved school or the person to whose care he was committed by the order, as the case may be.

(4) Where under section seventy-four of the said Act of 1933 or section seventy-eight of the said Act of 1937, a child is under the supervision of the managers of an approved school or under paragraph 6 of the Fourth Schedule to the said Act of 1933, or paragraph 6 of the Second Schedule to the said Act of 1937, the managers of an approved school by licence permit a child to live away from the school, and in either case it appears to the managers that the child has no home or that his home is unsatisfactory, then with the consent of the managers, in a case falling within the said section seventy-four or seventy-eight, or if the licence so provides, in a case falling within the said paragraph 6, a local authority may (without prejudice to the provisions of section one of this Act if those provisions apply) receive the child into their care; and where they do so—

- (a) the provisions of this Act, except subsections (4) and (5) of section one thereof and so much of subsection (3) of that section as requires a local authority to endeavour to secure that the care of a child is taken over by a parent, guardian, relative or friend, shall apply as if the child had been received into their care under the said section one; but
- (b) the child shall not for the purposes of the said Act of 1933, or the said Act of 1937, be deemed to have ceased to be under the care of the managers of the school.

NOTES TO SECTION 6

Subsection (1).—*Supervision Order.*—This is an order placing a person under the age of seventeen "under the supervision of a probation officer or some other person appointed for the purpose by the Court" (see Children and Young Persons Act, 1933, ss. 62 (1) (d), 61; 26 Halsbury's Statutes 208, 207; Children and Young Persons (Scotland) Act, 1937, s. 66 (2) (d)). It differs from a probation order in that, except when made in substitution for a revoked "fit person" order, as to which see below, there will not have been criminal proceedings in which the court

will have considered the offence to be proved (*cf.* Probation of Offenders Act, 1907 (11 Halsbury's Statutes 365), and Criminal Justice Act, 1948, s. 7). The circumstances in which a supervision order may be made are—

- (a) in the case of a person under seventeen years who is found to be in need of care or protection (Children and Young Persons Act, 1933, s. 62 ; 26 Halsbury's Statutes 208).
- (b) in the case of a person under seventeen brought before a juvenile court as being beyond parental control (*ibid.*, s. 64 ; 26 Halsbury's Statutes 209).
- (c) in substitution for an order committing a person under the age of seventeen to the care of a fit person where such order is revoked by a juvenile court (Children and Young Persons Act, 1938, s. 3 ; 31 Halsbury's Statutes 366).
- (d) in the case of a child of compulsory school age where any person is prosecuted in respect of the child's failure to attend school regularly (Education Act, 1944, s. 40 (3) ; 37 Halsbury's Statutes 169), or convicted of failure to comply with the requirements of a school attendance order made in respect of the child (*ibid.*, s. 40 (3) (A), inserted by Education (Miscellaneous Provisions) Act, 1948, s. 11, Sched. II), and the child is brought by direction before a juvenile court.

While such an order is in force the probation officer or other person under whose supervision the child or young person has been placed, is under a duty to visit, advise and befriend him, and, where necessary, to try to find him employment (Children and Young Persons Act, 1933, s. 66 ; 26 Halsbury's Statutes 210). The order is not affected if subsequently the child is received into the care of a local authority or the local authority assumes parental rights over him, and thus the probation officer or other person under whose supervision he was placed will remain under a duty to keep in touch with him.

Probation Order.—This is an order consequent on conviction of an offender and made instead of sentencing him, requiring him to be under the supervision of a probation officer for a period to be specified in the order of not less than one year nor more than three years (Criminal Justice Act, 1948, s. 3 ; and see as to the position before the coming into operation of that Act Probation of Offenders Act, 1907, ss. 1, 2 ; 11 Halsbury's Statutes 365). It thus differs from a supervision order, *supra*, in that it can only be made in relation to an offender. A probation order can be made in addition to a fit person order (Children and Young Persons Act, 1933, s. 57 ; 26 Halsbury's Statutes 206). The existence and effect of the order are unaffected by the child being subsequently received into the care of a local authority or the local authority assuming parental rights over him, and the probation officer will still have a duty to keep in touch with him.

Subsection (2).—*Order of any court giving the custody of the child to any person.*— See sub-s. (3) (c), *supra*, for the application of sub-s. (2) to cases where " approved school " or " fit person " orders have been made. Orders for custody may be made—

- (a) Under the inherent jurisdiction of the former Court of Chancery, representing the King as *parens patriae*, which is now vested in the Chancery Division of the High Court (Supreme Court of Judicature (Consolidation) Act, 1925, ss. 18 (1), 56 (1) ; 4, 13 Halsbury's Statutes 152, 219). As to the foundation of this jurisdiction see *Re D. (an Infant)*, [1943] Ch. 305 ; [1943] 2 All E. R. 411 ; 2nd Digest Supp.
- (b) Under s. 5 of the Guardianship of Infants Act, 1886 (9 Halsbury's Statutes 787), as amended by s. 3 of the Guardianship of Infants Act, 1925, 9 Halsbury's Statutes 820. Under these Acts an order for custody may be made either by the High Court, a County Court or a court of summary jurisdiction, except that a court of summary jurisdiction is not competent to make an order in the case of an infant over the age of sixteen unless he is physically or mentally incapable of self support. Although these Acts are usually invoked in the case of disputes between the parents the discretion thereby given to the court is wide enough to enable it to give the custody to a third party. A case in which this was done by a court of summary jurisdiction is noted at 89 J. P. Journal 641. See also *D'Alton v. D'Alton* (1878), 4 P. D. 87 ; 28 Digest 289, 1435, where custody was given to the mistress of a school.

- (c) By the High Court in any proceedings for divorce or nullity of marriage or judicial separation (Supreme Court of Judicature (Consolidation) Act, 1925, s. 193; 9 Halsbury's Statutes 401).
- (d) By a court of summary jurisdiction on an application by either spouse under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925 (9 Halsbury's Statutes 405, 413, 414, 965), as extended by s. 11 of the Matrimonial Causes Act, 1937; 30 Halsbury's Statutes 342. See, further, the current edition of Stone's Justice's Manual, Part V., under the title Husband and Wife.
- (e) Under s. 6 of the Adoption of Children Act, 1926 (9 Halsbury's Statutes 829), which enables the court to which an application for an adoption order is made to make an interim order giving the applicant the custody of the child for not more than two years by way of a probationary period.

Subsection (3).—Approved School orders.—Approved school orders may be made in the case of juvenile offenders (Children and Young Persons Act, 1933, s. 37; 26 Halsbury's Statutes 206), children and young persons in need of care and protection (*ibid.*, s. 62; 26 Halsbury's Statutes 208), refractory children and young persons (*ibid.*, ss. 64, 66; 26 Halsbury's Statutes 209, 210), and children and young persons under seventeen who have been committed to the care of local authorities as "fit persons" (*ibid.*, s. 84 (8); 26 Halsbury's Statutes 223). A child brought before a juvenile court on the direction of a court before which a person has been prosecuted in respect of the child's failure to attend school regularly or convicted of failure to comply with a school attendance order may be dealt with in the same way as a child before a juvenile court as being in need of care and protection (Education Act, 1944, s. 40 (3); 37 Halsbury's Statutes 169, and (3A) inserted by the Education (Miscellaneous Provisions) Act, 1948, Sched. I) and, accordingly, an approved school order may be made in relation to him.

Fit person orders.—See notes to s. 5, *ante*. Where such an order is in force no resolution under s. 2, *ante*, is to be passed.

Managers of the Approved School.—See s. 107 of the Children and Young Persons Act, 1933 (26 Halsbury's Statutes 238). As to the powers and duties of such managers, see *ibid.*, Sched. IV, para. 12 (26 Halsbury's Statutes 248). See, further, the notes to s. 47, *post*.

Subsection (4).—Children released from approved schools.—After the expiration of his period of detention in an approved school a person in relation to whom an approved school order is made, remains under the supervision of the managers and liable to recall to the school (a) if he is under fifteen when his period of detention expires until he reaches the age of eighteen, or (b) if he is over fifteen when his period of detention expires for three years thereafter or until he reaches the age of twenty-one, whichever is the shorter period (Children and Young Persons Act, 1933, s. 74; 26 Halsbury's Statutes 215). A person in relation to whom an approved school order may be made, may also be released on licence during his period of detention (but not during the first year thereof) on condition that he lives with his parent or with some trustworthy and respectable person who is willing to receive him and who must be named in the licence. Sub-s. (4) empowers a local authority, with the consent of the managers of an approved school, to receive into their care any child who is under the supervision of the managers or under licence from the school, who has no home or whose home conditions are unsatisfactory. Para. (b) preserves the responsibility of the managers for the child so long as he is under supervision or on licence.

Scotland.—See Children and Young Persons (Scotland) Act, 1937, ss. 66 (2) (a), 68, 69 (power to make approved school orders); s. 66 (2) (b) (power to make fit persons orders); s. 73 (supervision after expiration of period of detention); Sched. II, para. 6 (release on licence).

Definitions.—"Local authority" (s. 38, *post*); "child," "guardian," "parent" (s. 59 (1), *post*); "probation order" (Probation of Offenders Act, 1907; 11 Halsbury's Statutes 365, and Criminal Justice Act, 1948, s. 3); "approved school order" (s. 59 (1), *post*, and Children and Young Persons Act, 1933, s. 107; 26 Halsbury's Statutes 238; and Children and Young Persons (Scotland) Act, 1937, s. 110 (1)).

7. Children in care of Minister of Pensions.—(1) Where a child in the care of a local authority under section one of this Act is a child for whose welfare the Minister of Pensions is responsible, that Minister may at any time require that the care of the child shall be transferred to him, and thereupon the child shall cease to be in the care of the local authority.

(2) Where immediately before the care of a child is transferred to the said Minister in pursuance of the last foregoing subsection a resolution under section two of this Act is in force with respect to the child, the rights and powers conferred on the local authority by the resolution—

(a) shall not thereafter be exercisable against the said Minister or so as to interfere with any arrangements for the welfare of the child made by the said Minister; but

(b) save as provided in the last foregoing paragraph, shall continue to be exercisable by the local authority so long as the resolution is in force.

(3) References in this section to a child for whose welfare the Minister of Pensions is responsible shall be construed as references to a child such that if he were suffering from neglect or want of proper care it would be the duty of that Minister to make provision for him under section nine of the War Pensions (Administrative Provisions) Act, 1918.

NOTES TO SECTION 7

War Orphans.—The effect of the present section is to give the Minister of Pensions, in regard to any child for whom he is responsible under the War Pensions (Administrative Provisions) Act, 1918, s. 9 (17 Halsbury's Statutes 540), as extended by the War Orphans Act, 1942 (35 Halsbury's Statutes 215), rights which override the duty conferred on the local authority by s. 1 of the present Act, and, so far as there may be conflict between them, the power to assume parental rights conferred on the local authority by s. 2 of the present Act.

The War Pensions (Administrative Provisions) Act, 1918 (17 Halsbury's Statutes 539), as originally enacted, imposed on the Minister of Pensions the duty of making provision for the care of neglected children of officers or men in the armed forces who died as a result of the 1914-1918 war or who are on active service. By s. 2 of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939 (32 Halsbury's Statutes 1069), the powers of the Minister were confined to children already under care and children to or in respect of whom a pension was paid under powers transferred under s. 1 of that Act. S. 2 of the 1939 Act was repealed by s. 2 of the War Orphans Act, 1942 (35 Halsbury's Statutes 215), its provisions being replaced by s. 1 of the 1942 Act. The last mentioned section extends the class of children for whom it is the duty of the Minister to make provision under s. 9 of the War Pensions (Administrative Provisions) Act, 1918 (17 Halsbury's Statutes 540) to include any neglected child in the United Kingdom or the Isle of Man to or in respect of whom there is being paid on account of the death of a parent since September 3, 1939, a pension under any Royal Warrant, Order in Council or Order relative to members of His Majesty's Naval, Military or Air Forces, or to persons employed in the Nursing Service, or other Auxiliary Service of any of such forces or under any scheme made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939 (32 Halsbury's Statutes 1068), or the Personal Injuries (Emergency Provisions) Act, 1939 (32 Halsbury's Statutes 1061).

Definition.—"Child" (s. 59 (1), *post*); "local authority" (s. 38, *post*).

8. Children becoming subject to Mental Deficiency or Lunacy and Mental Treatment Acts.—If a child who is in the care of a local authority under section one of this Act comes under the control of any person or authority under the provisions of the Mental Deficiency Acts, 1913 to 1938, or the Lunacy and Mental Treatment Acts, 1890 to 1930,

or in Scotland the Mental Deficiency (Scotland) Acts, 1913 and 1940, or the Lunacy (Scotland) Acts, 1857 to 1919, he shall thereupon cease to be in the care of the local authority under this Act; but where, immediately before he comes under the control of a person or authority as aforesaid, a resolution under section two of this Act is in force with respect to him, the rights and powers conferred on the local authority by the resolution shall, so long as the resolution is in force, continue to be exercisable by the local authority, so however that the said rights and powers shall not be exercisable against the person or authority having control of the child or so as to interfere with anything done by the said person or authority with respect to the child.

NOTES TO SECTION 8

Control of Mental Patients.—By the Mental Deficiency Act, 1913, s. 21 (11 Halsbury's Statutes 173), the Board of Control was charged with the general superintendence and control of defectives; the Mental Treatment Act, 1930 (23 Halsbury's Statutes 154), made provision both for the reception of voluntary mental patients and temporary treatment, without reception order or certification, in institutions or places approved by the Board of Control; it further conferred power on local authorities to receive and lodge voluntary patients in institutions under their control and imposed on them the duty to take steps to maintain suitable accommodation for temporary patients (*ibid.*, s. 6; 23 Halsbury's Statutes 161). The superintendence of the exercise of powers and duties of local health authorities is transferred to the Minister of Health (National Health Service Act, 1946, s. 49; 39 Halsbury's Statutes 556); and local health authorities are required to submit proposals to him for carrying out their duties under the Lunacy and Mental Treatment Acts, 1890 to 1930, and the Mental Deficiency Acts, 1913 to 1938 (National Health Service Act, 1946, s. 51; 39 Halsbury's Statutes 558).

Powers conferring control over mental patients include:

- (a) Power to make detention orders, *i.e.* that a defective be sent to an institution or placed under guardianship (Mental Deficiency Act, 1913, s. 4; 9 Halsbury's Statutes 163; Mental Deficiency Act, 1938, s. 1; 31 Halsbury's Statutes 421).
- (b) Power to a parent or guardian of a defective under the age of twenty-one to place him in an institution or under guardianship (Mental Deficiency Act, 1913, s. 3; 11 Halsbury's Statutes 162).
- (c) Power to make orders for the custody of lunatics (Lunacy Act, 1890, s. 108; 11 Halsbury's Statutes 56).
- (d) Power to make reception orders (Lunacy Act, 1890, s. 4; Halsbury's Statutes 18; *cf.* s. 23).

Consequences of coming under control.—On coming under control by virtue of the Lunacy or Mental Deficiency Acts the child ceases to be in the care of the local authority under this Act, but, if the authority have assumed parental rights (*cf.* s. 2, *ante*) those continue so far as they do not conflict with powers of the person or authority into whose control the child has come.

Mental Deficiency Acts, 1913 to 1938.—These are the Mental Deficiency Act, 1913, the Mental Deficiency (Amendment) Act, 1925, the Mental Deficiency Act, 1927 and the Mental Deficiency Act, 1938 (11 Halsbury's Statutes 160, 199, 200; 31 Halsbury's Statutes 421). As to the means whereby a person may become subject to these Acts, see the 1913 Act, ss. 3, 4 and 8 as amended (11 Halsbury's Statutes 162, 163, 166).

Lunacy and Mental Treatment Acts, 1890 to 1930.—These are the Lunacy Acts, 1890, 1891, 1908 and 1922 (11 Halsbury's Statutes 17, 144, 151, 198) and the Mental Treatment Act, 1930 (23 Halsbury's Statutes 154).

Mental Deficiency (Scotland) Acts, 1913 and 1940.—These correspond in essentials to the English Acts of 1913 to 1938, *supra*.

Lunacy (Scotland) Acts, 1857 to 1919.—These are Parts 2 and 5 of the Mental Deficiency and Lunacy (Scotland) Act, 1913, the Lunacy (Scotland) Acts, 1857 to 1887, the Lunacy Board (Scotland) Act, 1864, the Prisons (Scotland) Act, 1877,

ss. 61-63, the Lunacy Board (Scotland) Salaries and Clerks Act, 1900, and the Mental Deficiency and Lunacy (Amendment) Act, 1919, so far as it amends the first enactments.

Definitions.—“ Local authority ” (s. 38, *post*) ; “ Child ” (s. 59 (1), *post*).

9. Meaning of “ parents or guardian ”.—Save as expressly provided in section six of this Act, any reference in this Part of this Act to the parents or guardian of a child shall be construed as a reference to all the persons who are parents of the child or who are guardians of the child.

NOTE TO SECTION 9

Definitions.—“ Child,” “ guardian,” “ parent ” (s. 59 (1), *post*).

10. Duty of parents to maintain contact with local authorities having their children in care.—(1) The parent of a child who has not attained the age of sixteen and is in the care of a local authority under section one of this Act shall secure that the appropriate local authority are informed of the parent's address for the time being.

(2) Where under subsection (4) of section one of this Act a local authority take over the care of a child from another local authority, that other authority shall where possible inform the parent of the child that the care of the child has been so taken over.

(3) For the purposes of subsection (1) of this section, the appropriate local authority shall be the authority in whose care the child is for the time being :

Provided that where under subsection (4) of section one of this Act a local authority have taken over the care of a child from another authority, then unless and until a parent is informed that the care of a child has been so taken over the appropriate local authority shall in relation to that parent continue to be the authority from whom the care of the child was taken over.

(4) Any parent who knowingly fails to comply with subsection (1) of this section shall be liable on summary conviction to a fine not exceeding five pounds :

Provided that it shall be a defence in any proceedings under this subsection to prove that the defendant was residing at the same address as the other parent of the child, and had reasonable cause to believe that the other parent had informed the appropriate authority that both parents were residing at that address.

NOTES TO SECTION 10

Contact between parents and local authorities.—This section imposes on the parents of a child under sixteen in the care of a local authority under s. 1, *ante*, the duty of keeping the authority informed of his whereabouts (sub-s. (1)). The reason this duty ceases when the child attains the age of sixteen appears to be that the parents then cease to be liable for his maintenance (National Assistance Act, 1948, s. 41, and see s. 24 (2), *post*). Even after the child attains sixteen the general policy of the Act is to maintain contact between the child and his parents with a view to his being returned to them (see ss. 1 (3) and 2 (3), *ante*), and to this end a local authority is empowered to pay the expenses of parents visiting children while they are in the authority's care (s. 22, *post*).

Sub-s. (2) requires a local authority to whom the care of a child has been transferred by another authority pursuant to s. 1 (4), *ante*, to inform the child's parent of the transfer if it is possible to get into touch with him.

Definition.—“ Local authority ” (s. 38, *post*) ; “ child,” “ parent ” (s. 59 (1), *post*) ; “ summary conviction ” (Summary Jurisdiction Act, 1879, s. 51 ; 11 Halsbury's Statutes 350).

PART II

TREATMENT OF CHILDREN IN CARE OF LOCAL AUTHORITIES

Cross-references.—Other provisions relevant to this Part of the Act are :

After-care of children - - - - -	Section	34
Boarding out, transitional provision - - - - -	Schedule II, para.	4
Children, reception into care - - - - -	Section	1
Contributions towards maintenance - - - - -	Section	23
Fit person, appointment of local authority - - - - -	Section	5
Grants to local authorities - - - - -	Section	47
Grants to voluntary organisations- - - - -	Section	46
Inspection of premises - - - - -	Section	54
Land, appropriation to a Home - - - - -	Schedule II, para.	8
Land, compulsory purchase - - - - -	Section	56

11. Scope of Part II.—This Part of this Act relates to the powers and duties of local authorities in relation to children received by them into their care under section one of this Act and children who by an order of any court under the Children and Young Persons Act, 1933, or the Children and Young Persons (Scotland) Act, 1937, have been committed (whether as children or as young persons as defined in the said Act of 1933 or 1937) to their care as a fit person, and references in this Part of this Act to a child in the care of a local authority are references to a child for the time being in the care of the authority under the said section one or for the time being committed as aforesaid to the care of the authority as a fit person.

NOTES TO SECTION 11

Child for the time being in the care, etc.—A child, though received into the care of a local authority, may have ceased to be still in their care (*cf.* s. 1, and *e.g.* sub-s. (3) thereof, *ante*) ; references in this Part of this Act to a child " in the care " of a local authority refer to the relation of the local authority to the child at the time in question, and include a local authority who then are the fit person to whose care the child is committed. The duties of the local authority under this Part of this Act are the same in relation both to children received by them into care or committed to them as a fit person. Under the Children and Young Persons Act, 1933, s. 75 (4) (26 Halsbury's Statutes 216), a fit person is *in loco parentis* while the order committing the child to his care is in force.

Children or Young Persons.—For definitions, see Children and Young Persons Act, 1933, s. 107 (1) (26 Halsbury's Statutes 239) ; Children and Young Persons (Scotland) Act, 1937, s. 110 (1). Under the English Act a " child " is a person under fourteen, and young person or person over that age but under seventeen. Children and young persons may be committed to the care of a " fit person " by order of the Court, see Children and Young Persons Act, 1933, ss. 57, 62, 64, 66 (26 Halsbury's Statutes 205, 208, 209, 210), and *cf.* s. 5, *ante*. The order *prima facie* remains in force until the child attains eighteen, see Children and Young Persons Act, 1933, s. 75 (26 Halsbury's Statutes 215), but cannot be made after the child has attained seventeen. The fact that a person remains a " child " for the purposes of the present Act until eighteen (s. 59, *post*) does not enable a " fit person order " to be made in respect of him after he has attained seventeen.

Definitions.—" Child " (s. 59 (1), *post*) ; " local authority " (s. 38, *post*).

Transitional Provisions.—As from the commencement of the Act orders under certain Scottish enactments committing the care of children to local education authorities as fit persons are deemed to have effect as orders committing the children to care of local authorities, see Sched. II, para. 3, *post*.

12. General duty of local authority.—(1) Where a child is in the care of a local authority, it shall be the duty of that authority to exercise their powers with respect to him so as to further his best interests, and

to afford him opportunity for the proper development of his character and abilities.

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

NOTES TO SECTION 12

General Note.—This section imposes on the local authority a continuing duty to “further the best interests” of the child, whether received into their care or committed to them by a fit person order, and to afford him “opportunity for the proper development of his character and abilities.” The discharge of this duty involves constant attention, and will devolve upon the children’s committee, if any (s. 39, *post*), and the children’s officer (s. 41, *post*). The “facilities and services” available to children in the care of their own parents (sub.-s. (2), *supra*) includes, presumably, schools, residential and otherwise, and the ancillary services provided therein, nursery schools, youth clubs and youth centres, hospitals, child guidance clinics, infant welfare clinics, etc.

Any overlapping which might otherwise result between the functions of the local authority and the functions of the local education authority as such is to be avoided by regulations under s. 21, *post*.

Expenses.—As to contributions towards the expenses of local authorities under this section, see ss. 47, 39 (1) (d), *post*.

Definitions.—“Child in the care of a local authority” (s. 11, *ante*); “local authority” (s. 38, *post*); “child,” “parent” (s. 59 (1), *post*).

13. Mode of provision of accommodation and maintenance.—

(1) Subject to the provisions of this section, a local authority shall discharge their duty to provide accommodation and maintenance for a child in their care—

- (a) by boarding him out on such terms as to payment by the authority and otherwise as the authority may, subject to the provisions of this Act and regulations thereunder, determine; or
- (b) where it is not practicable or desirable for the time being to make arrangements for boarding-out, by maintaining the child in a home provided under this Part of this Act or by placing him in a voluntary home the managers of which are willing to receive him.

(2) Where a child in the care of a local authority is under three years of age, a local authority may provide accommodation and maintenance for him in premises in which accommodation is being provided under the National Assistance Act, 1948, being premises approved by the Secretary of State for the purposes of this subsection which are and have since before the commencement of this Act been in use solely as a nursery.

The approval by the Secretary of State of any premises for the purposes of this subsection shall have effect for such period as he may from time to time determine, but—

- (a) the Secretary of State may at any time withdraw his approval notwithstanding that the period for which it was given has not expired,
- (b) the Secretary of State shall not give or continue his approval for the purposes of this subsection unless he is satisfied that suitable alternative accommodation is not for the time being available.

(3) Where a child in the care of a local authority has attained the age of three, the local authority, if it is necessary so to do, may provide accommodation and maintenance for the child in any premises in which accommodation is being provided under the said Act of 1948 :

Provided that a child shall not be accommodated and maintained as mentioned in this subsection for any period exceeding fourteen days except with the consent of the Secretary of State ; and—

- (a) the Secretary of State shall not give his consent for the purposes of this subsection for a period exceeding eight weeks, but may renew any such consent for a further such period or periods ;
- (b) The Secretary of State may at any time withdraw his consent given for the purposes of this subsection notwithstanding that the period for which it was given or renewed has not expired.

(4) A child in the care of a local authority who is over compulsory school age may be accommodated and maintained in any hostel (whether provided by a local authority or not) which is wholly or mainly intended for persons who are over compulsory school age but have not attained the age of twenty-one.

(5) Nothing in this section shall be construed as preventing a local authority from making use, in the case of any child, of any such facilities and services as are referred to in subsection (2) of the last foregoing section, and for that purpose arranging for his accommodation and maintenance in any suitable manner not specified in the foregoing provisions of this section.

(6) Notwithstanding anything in the foregoing provisions of this section, a local authority may, where it appears to them necessary so to do, accommodate and maintain a child in their care in premises under the control of a local authority other than premises such as are mentioned in the foregoing provisions of this section :

Provided that a local authority shall only exercise their powers under this subsection with the authorisation of the Secretary of State given either generally or as respects particular premises, and subject to such conditions as may be imposed by him.

(7) Where under this section a local authority provide for a child by maintaining him in a home or hostel not provided by the authority, the terms, whether as to payment by the authority or other matters, upon which the child is so maintained shall be such as, subject to the provisions of this Act, may be agreed between the authority and the persons providing the home or hostel.

NOTES TO SECTION 13

Provision of accommodation and maintenance.—The general duty of a local authority is to board out children, as was recommended by both the Curtis Committee (Cmd. 6922) and the Clyde Committee (Cmd. 6911), and it is only if boarding-out is impracticable or undesirable that a local authority may maintain the child in a home provided by them, or by arrangement with another local authority (see s. 15), or in a voluntary home providing the requisite religious facilities (s. 16 (2), *post*), if its managers consent, and subject to the local authority's power of removal (s. 16 (1), *post*). The general duty to board out is, however, subject to power for the local authority to act otherwise, namely :—

- (a) if the child is under three, they may keep him in an existing nursery provided under the National Assistance Act, 1948, which is for the time being approved for the purpose by the Secretary of State, one of the conditions of approval being the absence of suitable alternative accommodation (see sub-s. (2), *supra*), or
- (b) if the child is three years old or older they may keep him for any necessary period not exceeding, without consent of the Secretary of State, fourteen days in any accommodation provided under the National Assistance Act, 1948 (see sub-s. (3), *supra*), or
- (c) if the child is over compulsory school age, they may accommodate him in a hostel intended for infants over that age (see sub-s. (4), *supra*), or
- (d) whatever the age of the child, they may take advantage of facilities or services available to children in the care of their parents or, if necessary and authorised by the Secretary of State, may accommodate the child on any premises under the local authority's control (see sub-ss. (5), (6), *supra*).

The discharge of the local authority's duties will devolve on the children's officer (s. 41, *post*) and children's committee (s. 39, *post*), if any.

The consent of the Secretary of State to a child over three being accommodated in premises provided under the National Assistance Act, 1948, for more than fourteen days cannot be given in respect of periods longer than eight weeks at a time (sub-s. (3), proviso, *supra*).

Expenses.—Terms of payment for boarding out may be such as are determined by the local authority, subject to regulations (sub-s. (1), *supra*); terms as to payment for maintenance in a private home or hostel may be such as are agreed (sub-s. (7), *supra*): grants to the local authority may be made in accordance with s. 47, *post*.

Repeals and cross-references.—Consequent upon these provisions sub-s. (3) of s. 84 of the Children and Young Persons Act, 1933 (26 Halsbury's Statutes 222), which conferred power on a local authority to board out children committed to their care as a fit person, is repealed from the commencement of this Act (s. 60 and Sched. IV, Part I, *post*; cf. the repeal, *ibid.*, of the Children and Young Persons (Scotland) Act, 1937, s. 88 (3)). As to the penalty for inducing or assisting a child or young person committed to the care of a local authority as a fit person, to run away, see the Children and Young Persons Act, 1933, s. 85 (3) (26 Halsbury's Statutes 223) as amended by s. 60 and Sched. III, *post*. A child or young person who has been boarded out under this Part of this Act by a local authority to whose care he has been committed as a fit person, may be apprehended without warrant if he runs away; see the Children and Young Persons Act, 1933, s. 85 (2) (26 Halsbury's Statutes 223), as amended by s. 60 and Sched. III, *post*.

Subsection (1).—*Accommodation and Maintenance.*—This is not defined in the Act. It seems therefore that it should be given its ordinary colloquial meaning of "an adequate supply of house-room, food and clothing." Cf. *Re G. (Infants)*, [1899] 1 Ch. 719; 28 Digest 268, 1203.

Boarding out regulations.—See s. 14 and Sched. II, para. 4, *post*.

Home provided under this Part of this Act.—For the duty of the local authority to provide homes, see s. 15, *post*.

Subsection (2).—*Premises provided under the National Assistance Act, 1948.*—S. 21 of that Act imposes on every local authority the duty of providing residential accommodation for persons who by reason of age, infirmity or other circumstances are in need of care and attention which is not otherwise available for them and temporary accommodation for persons in urgent need. Under the transitional provisions contained in para. 8 of Sched. VI to the Act the local authority may continue to use the old workhouses for the purpose of providing accommodation.

Subsection (4).—*Hostel.*—As to the power of the local authority to provide hostel accommodation for persons over compulsory school age, see s. 19, *post*.

Definitions.—"Child in the care of a local authority" (s. 11, *ante*); "local authority" (s. 38, *post*); "child," "compulsory school age," "voluntary home" (s. 59 (1), *post*).

14. Regulations as to boarding-out.—(1) The Secretary of State may by regulations make provision for the welfare of children boarded out by local authorities under paragraph (a) of subsection (1) of the last foregoing section.

(2) Without prejudice to the generality of the last foregoing subsection, regulations under this section may provide—

- (a) for the recording by local authorities of information relating to persons with whom children are boarded out as aforesaid and persons who are willing to have children so boarded out with them ;
- (b) for securing that children shall not be boarded out in any household unless that household is for the time being approved by such local authority as may be prescribed by the regulations;
- (c) for securing that where possible the person with whom any child is to be boarded out is either of the same religious persuasion as the child or gives an undertaking that the child will be brought up in that religious persuasion ;
- (d) for securing that children boarded out as aforesaid, and the premises in which they are boarded out, will be supervised and inspected by a local authority and that the children will be removed from those premises if their welfare appears to require it.

NOTES TO SECTION 14

Subsection (1).—*Regulations.*—Rules in force immediately before the commencement of this Act, under the Children and Young Persons Act, 1933, s. 84 (2) (26 Halsbury's Statutes 222), which related to children committed to fit persons, or the Children and Young Persons (Scotland) Act, 1937, s. 88 (2), with respect to boarding out have effect as regulations made under this Part of this Act and apply to children in the care of a local authority under s. 1, *ante* (see Sched. II, para. 4, *post*). Such rules are the Children and Young Persons (Boarding Out) Rules, 1946, S. R. & O. 1946 No. 2083, see Appendix C, *post*.

For the method of exercise of the regulation-making power see s. 58, *post*.

Welfare.—See note to s. 1, *ante*.

Subsection (2) (b).—*Such local authority as may be prescribed by the regulations.*—This need not necessarily be the local authority in whose care the child is and by whom the boarding out was effected.

Subsection (2) (c).—*Religious persuasion.*—Generally the child's religion will be that of his parent. See note to s. 3, *ante*. Cf. the Children and Young Persons Act, 1933, s. 75 (1); 26 Halsbury's Statutes 215. If the child is of sufficient age he may be consulted as to his religious persuasion, and the court may direct him to be brought up in some religion other than that of his father (*Re W., W. v. M.*, [1907] 2 Ch. 557; 28 Digest 279, 1305). But it is otherwise where the infant desires to be brought up in some faith which is neither Christian nor Jewish (*Skinner v. Orde* (1871), L. R. 4 P. C. 60; 28 Digest 280, 1311, where the court refused to accede to the desire of an infant to be brought up as a Mohammedan). The age at which an infant will be allowed to choose his own religion is a matter of some doubt. The Poor Law Act, 1930, s. 73 (1) (12 Halsbury's Statutes 1004), recognised that infants might have definite religious views as young as twelve years of age. This is to some extent in conflict with the common law rule that until a child attains twenty-one the father has the right to control the child's person, education and conduct (*Re Agar-Ellis, Agar-Ellis v. Lascelles* (1883), 24 Ch. D. 317; 28 Digest 256, 1118).

In regard to the child's religion, however, as in all other matters concerning him the dominant factor to be considered by the local authority in performing their

duties under the present Act, as by the court in the exercise of its paternal jurisdiction, is the welfare of the child. It can seldom be for the welfare of a child to disturb established religious beliefs, even if they have been acquired at a comparatively early age, and it is thought, therefore, that there are many cases in which the authority ought to ensure that a child in its care will continue to be brought up in the faith which he has acquired before coming into their care even though this faith is not that of his father. See *Re Kellers* (1856), 5 I. Ch. R. 328; 28 Digest 279, 1293 iii; *Re Browne* (1858), 8 I. Ch. R. 172; 28 Digest 279, 1293 iv.

It has been announced that a Home Office circular will be issued urging upon local authorities the importance of securing the help and co-operation of the Churches in finding suitable foster homes. It is believed that this will not only result in more good foster homes becoming available, but will also enable children to be placed, to an increasing extent, with foster parents of the same religious persuasion. It will, therefore, be suggested to local authorities that they should where practicable consult with the appropriate authority of the child's religion before boarding him out with a person of a different persuasion. See *per* Lord JOWITT, L.C., 155 H. of L. Official Reports 12.

Subsection (2) (d).—*Inspection.*—See s. 54, *post*.

Definition.—“Local authority” (s. 38, *post*); “child” (s. 59 (1), *post*).

15. Duty of local authorities to provide homes.—(1) A local authority may, and shall in so far as the Secretary of State so requires, provide, equip and maintain, either within or without their area, homes for the accommodation of children in their care.

(2) The accommodation provided under the last foregoing subsection by a local authority shall include separate accommodation for the temporary reception of children, with, in particular, the necessary facilities for observation of their physical and mental condition.

(3) A local authority may discharge their functions under the foregoing provisions of this section by making arrangements with another local authority for the provision in homes provided by that other local authority of accommodation for children in the care of the first-mentioned local authority; and arrangements under this subsection may contain provisions as to payment by the first-mentioned local authority and other terms upon which the accommodation is to be provided.

(4) The Secretary of State may make regulations as to the exercise by local authorities of their functions under this section and the conduct of homes provided thereunder and for securing the welfare of the children in the homes, and regulations under this subsection may in particular—

- (a) impose requirements as to the accommodation and equipment to be provided in homes and as to the medical arrangements to be made for protecting the health of the children in the homes;
- (b) impose requirements as to the facilities which are to be given for the children to receive a religious upbringing appropriate to the persuasion to which they belong;
- (c) require the approval of the Secretary of State to the construction, acquisition or appropriation of buildings with a view to the use thereof for the purposes of homes, or to the doing of anything (whether by way of addition, diminution or alteration) which materially affects the buildings or grounds or other facilities or amenities available for children in the homes;

(d) provide for consultation with the Secretary of State as to applicants for appointment to the charge of a home and empower the Secretary of State to prohibit the appointment of any particular applicant therefor except in the cases (if any) in which the regulations dispense with such consultation by reason that the person to be appointed possesses such qualifications as may be prescribed by the regulations ;

(e) contain provisions for limiting the period during which children may remain in accommodation provided for the temporary reception of children,

and may contain different provisions for different description of cases and as respects different descriptions of homes.

(5) Where it appears to the Secretary of State that any premises used for the purposes of a home provided under this section are unsuitable therefor, or that the conduct of any such home is not in accordance with regulations made by him under the last foregoing subsection or is otherwise unsatisfactory, he may by notice in writing served on the local authority direct that as from such date as may be specified in the notice the premises shall not be used for the said purposes.

(6) A direction given under the last foregoing subsection may at any time be revoked by the Secretary of State.

NOTES TO SECTION 15

Provision of homes by local authorities.—The homes provided for children in the care of local authorities are, in general, for children who are not boarded out (s. 13, *ante*). The accommodation is to be of two kinds, namely, reasonably permanent and comparatively temporary, but the two kinds of accommodation need not necessarily be provided in separate homes. The temporary accommodation seems primarily intended for health observation (see sub-s. (2), *supra*), since temporary accommodation for the purposes of s. 13 (3), *ante*, is not provided under this Act, but the temporary accommodation, as also the permanent accommodation, may be used under sub-s. (1) (b) of that section if boarding out is impracticable or undesirable. Homes so provided are also available for use as "places of safety" (s. 51, *post*). They need not be within the authority's area and may be provided by arrangement with other local authorities (sub-ss. (1), (3), *supra*). It seems that this may even be done where the Secretary of State has given a direction under sub-s. (1), *supra*, to the first mentioned authority requiring it to provide homes.

Local authorities' homes are to be conducted in accordance with regulations to be made by the Secretary of State (sub-s. (4)), which may, amongst other things, give the Secretary of State a degree of control over the appointment of persons to be in charge of homes (*ibid.*, para. (d)).

Local authorities' homes may be inspected (see s. 54 (2), *post*), and the Secretary of State may order the closing of any home provided, which appears to him to be unsatisfactory (sub-s. (5)), but, where it is possible to remedy the conditions which led to the closing of a home, its reopening may be permitted (sub-s. (6)).

Subsection (4).—*Welfare.*—See note to s. 1, *ante*.

Regulations.—See notes to s. 14, *ante*.

Medical arrangements.—It seems probable that the regulations will provide for medical attendance and examination, and, if necessary, sick bays for sick children, but it is unlikely that they will require local authorities to provide elaborate medical apparatus. Cf. as to removal of children from a place of safety or remand home for medical treatment, Children and Young Persons Act, 1938, s. 6 (2); 31 Halsbury's Statutes 368.

A religious upbringing appropriate to the persuasion to which they belong.—This phrase is not only more impressive but somewhat more comprehensive than the words "religious instruction." It would appear to connote something more than the mere teaching of religious doctrine, and to involve constant association with

some adult who is a practising member of the child's religious denomination who will see that he attends the appropriate place of worship, and encourage him generally in religious observance and, above all, endeavour to foster and strengthen his faith. This will be most easily achieved where children can be placed in such homes under foster mothers of their own denomination.

Subsection (5).—*Appears to the Secretary of State.*—The effect of these words is to make the Secretary of State the judge on the question whether or not a particular home is satisfactory. What is material is the opinion of the Secretary of State and not the fact of satisfactoriness or unsatisfactoriness (*Robinson v. Sunderland Corporation*, [1899] 1 Q. B. 751; 38 Digest 154, 41). Provided that the Secretary of State comes to a decision in good faith the court has no power to investigate the grounds or reasonableness of his decision or otherwise to interfere (*Point of Ayr Collieries, Ltd. v. Lloyd-George*, [1943] 2 All E. R. 546; 2nd Digest Supp.; *Carltona, Ltd. v. Works Commissioners*, [1943] 2 All E. R. 560; 2nd Digest Supp.). While constitutionally the decision will be the Minister's the multifarious character of his functions will generally necessitate his delegating his powers of ordering the closing of specific homes to responsible officials (*Carltona, Ltd. v. Works Commissioners, supra*).

Definitions.—"Children in the care of a local authority" (s. 11, *ante*); "local authority" (s. 38, *post*); "functions" (s. 59 (1), *post*).

16.—Accommodation of children in voluntary homes.—(1) Notwithstanding any agreement made in connection with the placing of a child in a voluntary home under this Part of this Act by a local authority, the authority may at any time, and shall if required so to do by the Secretary of State or the managers of the home, remove the child from the home.

(2) No child in the care of a local authority shall be placed in a voluntary home which does not afford facilities for him to receive a religious upbringing appropriate to the persuasion to which he belongs.

NOTES TO SECTION 16

Local authorities' children in voluntary homes.—S. 13 (1) (b), *ante*, authorises a local authority to place children in its care who cannot, for the time being, be boarded out either in a home provided by itself or some other local authority or, with the consent of the managers of a voluntary home, in that home.

Duty to remove child.—The local authority have power of their own initiative to remove a child from a voluntary home, but are under a duty to do so if required by the Secretary of State or by the home itself.

Religious persuasion.—See note to s. 15 (4), *ante*. Regulations may be made imposing requirements as to facilities for religious upbringing, see s. 31 (1) (d), *post*.

Definitions.—"Local authority" (s. 38, *post*); "child," "voluntary home" (s. 59 (1), *post*).

17. Power of local authorities to arrange for emigration of children.—(1) A local authority may, with the consent of the Secretary of State, procure or assist in procuring the emigration of any child in their care.

(2) The Secretary of State shall not give his consent under this section unless he is satisfied that emigration would benefit the child, and that suitable arrangements have been or will be made for the child's reception and welfare in the country to which he is going, that the parents or guardian of the child have been consulted or that it is not practicable to consult them, and that the child consents:

Provided that where a child is too young to form or express a proper opinion on the matter, the Secretary of State may consent to his emigration notwithstanding that the child is unable to consent thereto in any case where the child is to emigrate in company with a parent, guardian or relative of his, or is to emigrate for the purpose of joining a parent, guardian, relative or friend.

(3) In the last foregoing subsection the expression "parents or guardian" shall be construed in accordance with the provisions of section nine of this Act.

NOTES TO SECTION 17

Child emigration.—This section which replaces, so far as persons under eighteen are concerned, s. 68 of the Poor Law Act, 1930 (12 Halsbury's Statutes 1992), which is repealed by the National Assistance Act, 1948, authorises local authorities to arrange, subject to suitable safeguards, for the emigration of children in their care. The power given by the 1930 Act was little exercised in relation to persons under eighteen, and child emigration chiefly took place under arrangements made by voluntary organisations. It is contemplated that these organisations, of which the Fairbridge Society is the best known, will continue their work but power to control their activities by means of regulations is now conferred on the Secretary of State by s. 33 (1), *post*.

Power to enable arrangements for the emigration of a child committed to the care of a fit person was conferred by the Children and Young Persons Act, 1933, s. 84 (5) (26 Halsbury's Statutes 222), but, in respect of local authorities who are appointed fit persons, the power is removed; see s. 60 (2) and Sched. III, para. 2, *post*. Cf. the Children and Young Persons (Scotland) Act, 1937, s. 88 (5) and s. 60 and Sched. III, *post*.

Definitions.—"Child in the care of a local authority" (s. 11, *ante*); "guardian," "parent" (s. 59 (1), *post*; cf. sub-s. (3), *supra*); "relative" (s. 59 (1), *post*).

18. Burial or cremation of deceased children.—(1) A local authority may cause to be buried or cremated the body of any deceased child who immediately before his death was in the care of the authority:

Provided that the authority shall not cause the body to be cremated where cremation is not in accordance with the practice of the child's religious persuasion.

(2) Where a local authority exercise the powers referred to in subsection (1) of this section, they may if at the time of his death the child had not attained the age of sixteen years recover from any parent of the child any expenses incurred by them under the said subsection (1) and not reimbursed under subsection (5) of section twenty-two of the National Insurance Act, 1946 (which enables payments to be made to local authorities out of the National Insurance Fund in respect of the cost of burial or cremation of certain persons).

(3) Any sums recoverable by a local authority under subsection (2) of this section shall, without prejudice to any other method for the recovery thereof, be recoverable summarily as a civil debt.

(4) Nothing in this section shall affect any enactment regulating or authorising the burial, cremation or anatomical examination of the body of a deceased person.

NOTES TO SECTION 18

Burial or cremation of children dying in the care of local authorities.—This section makes provision for the burial or, where it is in accordance with the tenets of the child's religious denomination, the cremation of children who die while in the care of local authorities and for the recovery of funeral expenses in the

case of children under sixteen. Local authorities are authorised by s. 22, *post*, to pay in cases of hardship the expenses of persons attending the funerals of such children.

Subsection (2).—*Attained the age of sixteen years.*—See note to s. 1, *ante*.

Under the National Assistance Act, 1948, ss. 42, 64 (1), the obligation of a parent to maintain his children continues until the child is sixteen years of age; in the case of a woman it extends to her illegitimate children and in the case of a man to children of whom he is adjudged to be the putative father. Liability of a parent under a contribution order is similarly limited to the period before the child attains sixteen (s. 24 (2), *post*).

Parent.—In relation to an illegitimate child this expression is defined by s. 59 (1), *post*, as meaning the mother only, and accordingly the putative father has, under this section, no liability with regard to the child's funeral expenses. This is in accordance with s. 4 of the Bastardy Laws Amendment Act, 1872 (2 Halsbury's Statutes 16), which provides that a bastardy order may only impose a liability for funeral expenses on the putative father if the child has died before the date of the order.

Section 22 (5) of the National Insurance Act, 1946.—See 38 Halsbury's Statutes 443.

Subsection (3).—*Recoverable summarily as a civil debt.*—By s. 35 of the Summary Jurisdiction Act, 1879 (11 Halsbury's Statutes 342), any sum declared by that Act or by any subsequent Act to be a civil debt which is recoverable summarily or in respect of the recovery of which jurisdiction is given by such Act to a court of summary jurisdiction, shall be deemed to be a sum for payment of which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts. A warrant is, however, not to be issued for the apprehension of any person failing to appear to answer any such complaint, nor is the order to be enforced by imprisonment, except after proof of means on judgment summons in the same way as is provided in the case of ordinary debts under s. 5 of the Debtors Act, 1869; 1 Halsbury's Statutes 575.

Subsection (4).—*Enactments regulating or authorising burial, cremation or anatomical examination.*—See 2 Halsbury's Statutes 190, *et seq.* (burial and cremation), and 11 Halsbury's Statutes 658, 694 (anatomical examination of bodies).

Definitions.—"Child in the care of a local authority" (s. 11, *ante*); "local authority" (s. 38, *post*).

19. Provision of hostels for persons under twenty-one.—(1) A local authority may, with the approval of the Secretary of State, provide hostels for persons—

(a) who are over compulsory school age but have not attained the age of twenty-one; and

(b) who are, or have at any time after ceasing to be of compulsory school age been, in the care of a local authority,

for their accommodation near the place where they may be employed, or seeking employment, or in receipt of education or training.

(2) A local authority may accommodate in hostels provided under this section persons who fulfil the conditions specified in paragraph (a), but not the conditions specified in paragraph (b), of subsection (1) of this section, as well as persons who fulfil the conditions specified in both those paragraphs; and a local authority, in determining how much hostel accommodation to provide under subsection (1) of this section, shall have regard to the desirability of facilitating the association of persons who fulfil the conditions specified in both those paragraphs with persons who do not.

NOTES TO SECTION 19

Provision of hostels.—This section enables local authorities, with the consent of the Secretary of State, to provide hostels for persons over compulsory school age

but under twenty-one. It should be noted that, although the approval of the Secretary of State must be obtained before a hostel is established the Secretary of State has no power to insist on a hostel being provided by any local authority. Hostels provided under the section are to be primarily for the accommodation of persons who are or have been in the care of a local authority (sub-s. (1), and see s. 13 (4), *ante*) but in order that they may not be completely isolated as a separate class of the community local authorities may also accommodate in their hostels other young people in the same age-range (sub-s. (2)). In particular there may be admitted to the hostels persons under twenty-one who are attending training courses provided or subsidised by the Minister of Labour under the Employment and Training Act, 1948.

In the case of a child under eighteen who is in the care of a local authority the local authority's duty under s. 13, *ante*, to provide accommodation and maintenance will prevent any charge being made for residence in a hostel, though contributions towards maintenance may be recovered from the persons mentioned in s. 24, *post*, who include the child himself if he is over sixteen and engaged in full-time work. After the child attains the age of eighteen the local authority's duty ceases, but the authority have power under s. 20 (1), *post*, to give financial assistance towards the cost of his maintenance in a hostel.

After-care.—As to the duty of local authorities to advise and befriend children over compulsory school age but under eighteen who are no longer in their care, see s. 34, *post*.

Subsection (1).—*Attained the age of twenty-one years.*—See the notes to s. 1, *ante*.

Definitions.—“ In the care of a local authority ” (s. 11, *ante*) ; “ local authority ” (s. 38, *post*) ; “ compulsory school age ” (s. 59 (1) *post*).

20. Financial assistance towards expenses of maintenance, education or training of persons over eighteen.—(1) A local authority may make contributions to the cost of the accommodation and maintenance of any such person as is mentioned in subsection (1) of the last foregoing section, being a person who has attained the age of eighteen, in any place near the place where he may be employed, or seeking employment, or in receipt of education or training.

(2) A local authority may make grants to persons who have attained the age of eighteen, but have not attained the age of twenty-one and who immediately before they attained the age of eighteen were in the care of a local authority, to enable them to meet expenses connected with their receiving suitable education or training.

(3) Where a person—

(a) is engaged in a course of education or training at the time when he attains the age of twenty-one ; or

(b) having previously been engaged in a course of education or training which has been interrupted by any circumstances, resumes the course as soon as practicable,

then if a local authority are at the said time, or were at the time when the course was interrupted, as the case may be, making any contributions or grants in respect of him under any of the foregoing provisions of this section, their powers under those provisions shall continue with respect to him until the completion of the course.

NOTES TO SECTION 20

Financial assistance for persons over eighteen.—This section which was described by the Lord Chancellor as being intended to enable a local authority to behave to children who have been in its care as a normally good parent would behave to his own children (see 153 H. of L. Official Reports 921) confers two distinct powers on a local authority :

- (a) Power to contribute towards the maintenance of persons between the ages of eighteen and twenty-one who at any time since they were above compulsory school age were in the authority's care (sub-s. (1)), and
- (b) Power to make grants towards the expenses of education or training of persons between the ages of eighteen and twenty-one who were in the authority's care immediately before they attained the age of eighteen (sub-s. (2)).

Where persons who have been in the care of a local authority have ceased to be in such care before they attained the age of eighteen there is no power under this section to make grants towards their educational or training expenses. They may, however, obtain assistance towards the cost of further education from the local education authority under the Education Act, 1944, s. 81 (37 Halsbury's Statutes 196), and towards the cost of training courses from the Minister of Labour under the Employment and Training Act, 1948, s. 3.

Where the local authority is assisting under the present section a person who is engaged on an educational or training course when he attains twenty-one they can continue to assist him until the end of the course (sub-s. (3)).

Subsection (1).—Accommodation.—This may be provided in hostels established pursuant to s. 19, *ante*.

Attained the age of eighteen years.—See note to s. 1, *ante*.

Subsection (2).—Expenses connected with education.—The allocation of concurrent functions between the local authority and local education authority is to be the subject of regulations under s. 21, *post*.

Subsection (3).—Interrupted by any circumstances.—The most frequent cause of interruption of a course of education or training will be calling up for full-time training under the National Service Act, 1947, or, after January 1949, under the National Service Act, 1948.

Definitions.—"In the care of a local authority" (s. 11, *ante*); "local authority" (s. 38, *post*); "compulsory school age" (s. 59 (1), *post*).

21. Allocation of functions as between local authority and local education authority.—The Secretary of State and the Minister of Education, or in Scotland the Secretary of State, may make regulations for providing, where a local authority under this Part of this Act and a local education authority as such have concurrent functions, by which authority the functions are to be exercised, and for determining as respects any functions of a local education authority specified in the regulations whether a child in the care of a local authority is to be treated as a child of parents of sufficient resources or a child of parents without resources.

NOTES TO SECTION 21

Avoidance of overlapping of functions.—This section contemplates the making of regulations, which will be made by statutory instrument and subject to the negative method of parliamentary control (see s. 58, *post*), for the allocation of concurrent functions between the local authority for the purposes of this Act and the local education authority. The local education authority for every county is the County Council, and for every county borough is the County Borough Council (Education Act, 1944, s. 6; 37 Halsbury's Statutes 130), except where the Minister of Education constitutes a joint board as the local education authority for the area of two or more councils (*ibid.*, Sched. I, Part I; *op. cit.* 223). The only joint board which has in fact been constituted is that for the Soke and City of Peterborough which was set up by S. R. & O. 1946 No. 1509. By s. 38, *post*, the local authorities for the purposes of the present Act are County Councils and County Borough Councils. Except, therefore, in the case of Peterborough, the local authority for the purpose of the present Act is the same body as the local education authority. Its functions under the present Act are (unless the Secretary of State otherwise directs pursuant to s. 39, *post*), to be discharged by a children's committee set up under s. 39, *post*, while its functions as a local education authority are discharged by an education committee established pursuant to Sched. I, Part II of the Education Act, 1944 (37 Halsbury's Statutes 224). A joint children's committee for two or more local authorities may be set up under s. 40 (4), *post*, and a joint educa-

23. Contributions in respect of children in care of local authority.

—(1) Subject to the provisions of this Part of this Act, sections eighty-six to eighty-eight of the Children and Young Persons Act, 1933, and sections ninety to ninety-two of the Children and Young Persons (Scotland) Act, 1937 (which provide for the making of contributions in respect of children committed to the care of a fit person or sent to approved schools and for the payment to local authorities of sums due under affiliation orders or decrees for aliment) shall apply to children received into the care of a local authority under section one of this Act as they apply to children committed to the care of a local authority as a fit person.

(2) Subject to the provisions of this Part of this Act, to the provisions of the said Acts of 1933 and 1937 as to appeals and to the provisions of the said Act of 1937 as to revocation or variation, a contribution order in respect of a child in the care of a local authority under section one of this Act shall remain in force so long as he remains in the care of a local authority under the said section one.

(3) In the application of the said section eighty-eight to children in the care of a local authority under section one of this Act, subsection (4) of the said section eighty-eight (which relates to the duration of affiliation orders) shall have effect as if for paragraphs (a) and (b) thereof there were substituted—

“ after the child or young person has ceased to be in the care of a local authority under section one of the Children Act, 1948.”

NOTES TO SECTION 23

Maintenance contributions.—This section ensures that no greater financial burden is placed on a local authority if of their own motion they receive a child into their care pursuant to s. 1, *ante*, than if the same child were committed to their care by the court under a “fit person order,” as to which see s. 5, *ante*, and notes thereto.

S. 87 of the 1933 Act (see Appendix A, *post*), provides that where a “fit person” order has been made, the court making the order may at the same time, and any court of summary jurisdiction having jurisdiction where the person to be charged resides may subsequently, at any time, make an order, called a contribution order, on any person liable for contributions in respect of the child requiring him to contribute such weekly sum as the court, having regard to his means, thinks fit. The order remains in force as long as the “fit person” order is in force and the child is under sixteen, and is enforceable as an affiliation order, that is, by distress and imprisonment, as in the case of fines; see also the Money Payments (Justices’ Procedure) Act, 1935, ss. 8 and 9 (28 Halsbury’s Statutes 129). It should be noted that the fact that a local authority have the right to enforce payments of contributions by applying for and obtaining a contribution order, does not preclude them from making an agreement with the person liable to contribute, which will render an application for such an order unnecessary.

Maintenance orders.—Orders in force immediately before the commencement of the Act under the Poor Law Act, 1930, s. 19 (12 Halsbury’s Statutes 979), are deemed, in certain circumstances, to be contribution orders for the purposes of the Children and Young Persons Act, 1933 and this Act, see Sched. II, para. 6 (1), *post*.

Subsection (1).—Sections eighty-six to eighty-eight of the Children and Young Persons Act, 1933.—See, for the amended text of these sections, Appendix A, *post*. The only persons now liable to make contributions are the father and mother until the child attains the age of sixteen, and the child himself after he attains that age if he is in remunerative full-time work; see s. 24, *post*.

S. 86 of the 1933 Act, as amended, imposes a duty on the persons specified in s. 24, *post*, to contribute, apart from any court order.

S. 88 of the 1933 Act (see Appendix A, *post*) provides that affiliation orders may be made so as to provide for payments therewith being made to the persons for the

time being entitled to contributions in respect of the child under s. 86 of the Act, that is, in the case of children in the care of local authorities, those authorities.

Sections ninety to ninety-two of the Children and Young Persons (Scotland) Act, 1937.—See Appendix A, *post*. These sections correspond to ss. 86 to 88 of the 1933 Act, as to which see the preceding note. A decree for aliment in Scotland corresponds to an affiliation order in England.

Subsection (2).—*Appeals.*—The Children and Young Persons Act, 1933, s. 102 (1) (26 Halsbury's Statutes 236), confers a right of appeal to quarter sessions in, amongst others, the following cases and by the following persons—

“(c) in the case of an order requiring a person to contribute in respect of [himself or any other person], by the person required to contribute ;”

The paragraph quoted above is printed as amended by s. 60 and Sched. III, *post*, which inserted the words printed between square brackets. Para. (d) of sub-s. (1) of s. 102 of the 1933 Act confers a right of appeal, in the case of an order requiring all or any part of the payments accruing due under an affiliation order to be paid to some other person, on the person who would but for the order be entitled to the payments.

Subsection (3).—*Sub-section (4) of the said section eighty-eight.*—See Appendix A, *post*. As originally enacted this subsection provided that an order varying an affiliation order should not remain in force (except for the purpose of the recovery of arrears) in the case of a child or young person committed to the care of a fit person after he had ceased to be so committed (para. (a)) ; and in the case of a child or young person sent to an approved school after his release therefrom (para. (b)). The substitution effected by sub-s. (3) of the present section in the case of a child received into the care of a local authority under s. 1, *ante*, is, consequential on sub-s. (1) of the present section.

Transitional provisions.—For transitional provisions as to contribution orders see paras. 5 and 6 of Sched. II, *post*.

Definitions.—“Local authority” (s. 38, *post*) ; “child,” “contribution order” (s. 59 (1), *post*).

24. Persons liable to make contributions.—(1) The persons liable under section eighty-six of the said Act of 1933 or section ninety of the said Act of 1937 to make contributions shall be the persons specified in that behalf in the following provisions of this section, and no others.

(2) The father and the mother of a child shall be liable to make contributions in respect of the child, but only so long as the child has not attained the age of sixteen ; and no payments shall be required to be made under a contribution order made on the father or mother of a child in respect of any period after the child has attained that age.

(3) A person who has attained the age of sixteen and is engaged in remunerative full-time work shall be liable to make contributions in respect of himself.

NOTES TO SECTION 24

Liability for maintenance contributions.—The effect of sub-ss. (1) and (2) of this section is that the only persons liable to make contributions in respect of a child committed to the care of a fit person sent to an approved school or received into the care of a local authority, are the father and mother, and their liability ceases when the child attains the age of sixteen. This follows the principle adopted in the National Assistance Act, 1948 ; see ss. 42, 64 (1) thereof.

Sub-s. (3) above makes the child himself liable for contributions after he has attained sixteen, but only if he is engaged in full-time remunerative employment.

There is no longer any limit to the aggregate of the weekly contributions in respect of any child. See s. 25, *post*.

Subsection (1).—*Section eighty-six of the said Act of 1933 or section ninety of the said Act of 1937.*—See the notes to s. 23, *ante*, and for the text of the sections, see Appendix A, *post*. Under this section as originally enacted, the persons liable to make contributions were the father, step-father, mother, step-mother and any

person cohabiting with the mother at the date when the order referred to in the section was made.

Definition.—"Child" (s. 59 (1), *post*); "said Act of 1933," "said Act of 1937" (s. 23 (1), *ante*).

25. Repeal of limit to amount of contributions.—The proviso to subsection (1) of section eighty-seven of the said Act of 1933 and the proviso to subsection (1) of section ninety-one of the said Act of 1937 (under which the aggregate of the weekly amounts payable under contribution orders and certain affiliation orders in respect of any one child may not exceed such sum as may be prescribed by the Secretary of State) shall cease to have effect.

NOTES TO SECTION 25

See Appendix A, *post*, for amended sections. The effect of the amendment is to remove the prescribed limit on the amount of a weekly contribution which was fixed by the Children and Young Persons (Parental Contributions) Regulations, S. R. & O. 1933 No. 956, in the case of a child or young person committed to the care of a fit person at 13/-.

As to the limit imposed on contribution orders existing at the commencement of this Act, see Sched. II, para. 5, *post*.

26. Affiliation orders.—(1) In England or Wales, where—

- (a) an illegitimate child is in the care of a local authority under section one of this Act, or
- (b) an order is in force for the committal of an illegitimate child to the care of a local authority as a fit person, or
- (c) a local authority are maintaining an illegitimate child in an approved school of which they are the managers or are liable in respect of an illegitimate child to make contributions to the managers of any other approved school under whose care the child is,

and no affiliation order has been made in respect of the child, the local authority whose area includes the place where the mother of the child resides may make application to a court of summary jurisdiction having jurisdiction in that place for a summons to be served under section three of the Bastardy Laws Amendment Act, 1872:

Provided that no application shall be made under this subsection—

- (i) in a case falling within paragraph (a) of this subsection, after the expiration of three years from the time when the child was received or last received into the care of the local authority or of another local authority from whom the care of the child was taken over by the first-mentioned authority;
- (ii) in a case falling within paragraph (b) or (c) of this subsection, after the expiration of three years from the coming into force of the order mentioned in the said paragraph (b) or, as the case may be, the time when the local authority began to maintain the child or became liable in respect of him, as mentioned in the said paragraph (c).

(2) In any proceedings on an application under the last foregoing subsection the court shall hear such evidence as the local authority may produce, in addition to the evidence required to be heard by section four of the said Act of 1872, and shall in all other respects, but subject to the

provisions of the next following subsection, proceed as on an application made by the mother under the said section three.

(3) An order made under section four of the said Act of 1872 on an application under subsection (1) of this section shall provide that the payments to be made under the order shall, in lieu of being made to the mother or a person appointed to have the custody of the child, be made to the person who is from time to time entitled under section eighty-six of the said Act of 1933 to receive contributions in respect of the child.

(4) Where in accordance with subsection (4) of section eighty-eight of the Children and Young Persons Act, 1933 (which limits the duration of affiliation orders) an affiliation order has ceased to be in force, and but for that subsection the order would still be in force, then if the condition specified in paragraph (a), (b) or (c) of subsection (1) of this section is fulfilled, the local authority whose area includes the place where the putative father of the child resides may make application to a court of summary jurisdiction having jurisdiction in that place—

(a) for the affiliation order to be revived, and

(b) for payments thereunder to be made to the person who is from time to time entitled under section eighty-six of the said Act of 1933 to receive contributions in respect of the child,

and the court may make an order accordingly.

(5) Part IV of the said Act of 1933 shall apply in relation to an order made on an application under subsection (1) of this section or to an affiliation order revived under the last foregoing subsection as if it were an affiliation order in respect of which an order had been made under subsection (1) of section eighty-eight of that Act.

(6) Paragraph (a) of subsection (2) of the said section eighty-eight of the said Act of 1933 (which paragraph provides for the enforcement and variation of affiliation orders where an order under that section is in force) shall have effect notwithstanding anything in paragraphs 5 and 6 of the Second Schedule to the Emergency Laws (Miscellaneous Provisions) Act, 1947 (which contain general provisions for the variation and revocation of affiliation orders).

(7) The Secretary of State may issue such new or altered forms of proceedings as he may deem necessary or expedient for giving effect to the foregoing provisions of this section.

(8) In Scotland, where the condition specified in paragraph (a), (b) or (c) of subsection (1) of this section is fulfilled and no decree for aliment has been granted in respect of the child—

(a) the local authority shall have the like right as the mother to raise an action of affiliation and aliment concluding for payment of aliment for the child ;

(b) where in an action of affiliation and aliment raised under the last foregoing paragraph, the court grants decree against any person for aliment of the child, Part V of the said Act of 1937 shall apply to payments under the decree as if they were payments in respect of which an order had been made under subsection (1) of section ninety-two of that Act ;

- (c) the local authority or other person in whose favour any such order as aforesaid is made shall have the like right to enforce the decree (so far as relating to the said sums) by diligence, including the right to take proceedings under the Civil Imprisonment (Scotland) Act, 1882, as if the decree were a decree in favour of the authority or person.

In this subsection, references to the local authority include, where the context so requires, references to the education authority, and the reference to paragraph (c) of subsection (1) of this section shall be construed accordingly.

NOTES TO SECTION 26

Applications by local authorities for affiliation orders.—The Children and Young Persons Act, 1933, s. 88 (see Appendix A, *post*), enables a local authority to obtain an order that payments under an affiliation order in respect of an illegitimate child committed to their care as a fit person, or sent to an approved school, be made to them; and the section as applied by s. 23, *ante*, enables the authority to obtain a like variation of an affiliation order in respect of an illegitimate child received into their care under s. 1, *ante*. The present section goes a step further, and enables a local authority to apply for an affiliation order in respect of any such child where no such order has been made on the mother's application (sub-s. (1)). The procedure on an application by a local authority will be the same as that on an application by the mother except that the court is required to hear any additional evidence that the local authority wishes to produce (sub-s. (2)); and an affiliation order made thereon will follow the lines of an order made on the application of the mother save that payments thereunder will be ordered to be made to the local authority (sub-s. (3)). Provision is made for the revival at the instance of the local authority of an affiliation order which has lapsed under s. 88 (4) of the 1933 Act (see Appendix A, *post*) by reason of the child having ceased to be subject to a fit person order, or having been released from an approved school or having ceased to be in the care of a local authority under s. 1, *ante*, if he is subsequently committed to the care of a local authority under a fit person order, or is received into the care of a local authority under s. 1, *ante*, or is sent to an approved school (sub-s. (4)). This power to obtain a revival of a lapsed affiliation order, which, it seems, applies both where the affiliation order was made on the application of the mother and varied at the instance of the local authority, and where it was originally made on the application of the local authority (see sub-s. (5)), will chiefly be of use where a local authority have allowed a child in their care to return to a relative or guardian and subsequently find it necessary in the interests of the child to receive him back into their care pursuant to s. 3 (4), *ante*. As to the procedure for the revival of orders generally, see the Criminal Justice (Administration) Act, 1914, s. 30 (3); 11 Halsbury's Statutes 383.

The present section also contains consequential provisions as to procedure (sub-ss. (5)–(7)); see the notes thereto, *infra*, and a provision enabling a local authority in Scotland to obtain a decree of aliment in circumstances similar to those in which a local authority in England or Wales would be able to obtain an affiliation order (sub-s. (8)).

The present section is complementary to s. 44 of the National Assistance Act, 1948, which gives a similar power of applying for affiliation orders to the National Assistance Board and to local authorities for the purposes of that Act. Between them, the present section and s. 44 of the National Assistance Act, 1948, replace s. 5 of the Bastardy Laws Amendment Act, 1873; 2 Halsbury's Statutes 19 (repealed by the National Assistance Act, 1948), which empowered the old poor law authorities to obtain affiliation orders in respect of bastard children chargeable to the union or parish.

Subsection (1).—*Fit person orders.*—See s. 5, *ante*, and notes thereto.

Approved School.—As to the circumstances in which an approved school order may be made, see notes to s. 6, *ante*. A local authority may itself act as manager of an approved school. See the Children and Young Persons Act, 1933, s. 80 (26 Halsbury's Statutes 218), and the definition of "managers" in *ibid.*, s. 107; 26 Halsbury's Statutes 239. Subject to certain exceptions, an approved school order must name the local authority within whose area the child was resident when he became

liable to be sent to an approved school (*ibid.*, s. 70 ; 21 Halsbury's Statutes 212), and where a child is sent to an approved school of which the local authority named in the order are not the managers that authority is liable to make such contributions as may be prescribed to the managers of that school (*ibid.*, s. 90 ; 26 Halsbury's Statutes 227). The present rate of contribution is £2 12s. 6d. per week. See the Children and Young Persons (Contributions by Local Authorities) Regulations, 1948, S. I. 1948 No. 36.

Court of summary jurisdiction.—This means "any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether in England, Wales or Scotland, and whether acting under the Summary Jurisdiction Acts, or by virtue of his commission, or under the common law." (Interpretation Act, 1889, s. 13 (12) ; 18 Halsbury's Statutes 997, and see *Huish v. Liverpool JJ.*, [1914] 1 K. B. 109 ; 16 Digest 99, 13).

The court of summary jurisdiction having jurisdiction where the mother resides is the court which has jurisdiction to make a contribution order against the mother under the Children and Young Persons Act, 1933, s. 87 (1) (see Appendix A, *post*). See also the Bastardy Laws Amendment Act, 1872, s. 4 ; 2 Halsbury's Statutes 14.

Section three of the Bastardy Laws Amendment Act, 1872.—See 2 Halsbury's Statutes 14. An application for a summons under this section is the means by which bastardy proceedings are initiated by the mother of an illegitimate child.

Time for application.—It is only the application that must be made within the three year period. If it is so made the summons may be issued after the period has expired (*Potts v. Cumbridge* (1858), 8 E. & B. 847 ; 3 Digest 391, 291).

Subsection (2).—*Section four of the said Act of 1872.*—See 26 Halsbury's Statutes 15. Under this section the justices must hear the evidence of the mother and such other evidence as she may produce and must also hear any evidence tendered by or on behalf of the alleged father.

Proceed as on an application made by the mother.—That is to say, if the mother's evidence is corroborated in a material particular, the court may adjudge the man to be the putative father and may make an affiliation order for payment of a weekly sum not exceeding twenty shillings per week. Provision for the collection and recovery of moneys due under affiliation orders is made by the Affiliation Orders Act, 1914 ; 2 Halsbury's Statutes 21. For restrictions on the issue of a commitment, see the Money Payments (Justices' Procedure) Act, 1936, s. 8 ; 28 Halsbury's Statutes 129. Generally as to bastardy procedure see the current edition of Stone's Justices' Manual, Part V, title "Bastardy."

An appeal lies to Quarter Sessions, to the High Court by case stated, and on application for *certiorari*.

Subsection (3).—*An order made under section four of the said Act of 1872.*—Under the Bastardy Laws Amendment Act, 1872, s. 4 (2 Halsbury's Statutes 15), the only persons to whom the court can direct weekly payments to be made are the mother or "any person who may be appointed to have custody" of the child. The form of order on an application by the mother, where the child has been born alive, is Form No. 11 of the Bastardy (Forms) Order, 1915, S. R. & O. 1915 No. 208. A new form of order will be required where the application is made by a local authority under the present section, and will presumably be issued pursuant to the power in that behalf contained in sub-s. (7), *supra*.

Section eighty-six of the said Act of 1933.—See Appendix A, *post*. Contributions under this section are payable :—

- (a) in the case of a child committed to the care of a fit person who is not a local authority, to that person (sub-s. (2)) and ;
- (b) in the case of a child committed to the care of a local authority as a fit person, or received into the care of a local authority under s. 1, *ante* (see ss. 23 (1), 24, *ante*), or sent to an approved school, to the council of the county or county borough within which the person liable for such contributions is residing ; and contributions paid to a county or county borough council are to be paid over, subject to a prescribed deduction to cover the costs of collection, to the Secretary of State, by whom they are taken into account in calculating the amount of grant payable to the local authority actually incurring expenditure in respect of the child ; see s. 47 (1) (b), *post*.

Subsection (4).—*Subsection (4) of section eighty-eight of the Children and Young Persons Act, 1933.*—See Appendix A, *post*. This section, as amended by s. 23 (3), *ante*, provides that an affiliation order varied at the instance of a local authority shall not remain in force after the fit person order has ceased to be in force or the child has been released from the approved school or has ceased to be in the care of the local authority, as the case may be.

Person entitled to receive contributions.—See the notes to s. 23, *ante*.

Subsection (5).—*Part IV of the said Act of 1933.*—*i.e.* ss. 77–91; 26 Halsbury's Statutes 216, *et seq.* The relevant provisions of this Part of the 1933 Act which by sub-s. (4) of the present section are applied to affiliation orders originally made or revived on the application of the local authority as if they were affiliation orders varied at the instance of the local authority are ss. 88 and 89 (see Appendix A, *post*).

Subsection (6).—*Paragraph (a) of subsection (2) of the said section eighty-eight.*—See Appendix A, *post*. This paragraph provides that where an order varying an affiliation order at the instance of a local authority under s. 86 (1) is in force, powers of enforcing and varying the affiliation order shall only be exercisable by justices and courts of summary jurisdiction having jurisdiction in the place where the putative father is for the time being residing. The paragraph is applied by sub-s. (5) of the present section to an affiliation order made or revived on the application of a local authority as well as to an affiliation order varied on its application.

Paragraphs 5 and 6 of the Second Schedule to the Emergency Laws (Miscellaneous Provisions) Act, 1947.—These paragraphs reproduce regs. 17B and 17C of the Defence (Administration of Justice) Regulations, 1940, S. R. & O. 1940 No. 1028, which are made permanent by s. 2 of the 1947 Act; see Appendix A, *post*.

Subsection (8).—*Scotland.*—Sub-s. (8) of the present section adapts the preceding provisions thereof to Scottish law. In Scotland the process corresponding to an affiliation order process is an action of affiliation and aliment, and the Bastardy Laws Amendment Act, 1872, does not apply. Under para. (a) of the subsection the local authority has the same right as the mother to raise an action of affiliation and aliment, and under the Children and Young Persons (Scotland) Act, 1937, s. 92 (see Appendix A, *post*), may apply to the court for payments due under a decree of aliment to be payable direct to them. By applying Part V of the 1937 Act to any sums received by a local authority, provision is made for the sums to be paid over to the Secretary of State in the same way as any other contributions from persons liable to contribute towards the maintenance of children in the care of local authorities.

Definitions.—“Local authority” (s. 38, *post*); “child” (s. 59 (1), *post*).

PART IV

VOLUNTARY HOMES AND VOLUNTARY ORGANISATIONS

Cross-references.—Other provisions relevant to this Part of the Act are:—

Accommodating children in voluntary homes	-	-	-	-	-	-	-	-	Section 13
Appeal tribunals	-	-	-	-	-	-	-	-	Schedule I
Grants to voluntary organisations	-	-	-	-	-	-	-	-	Section 46
Inspection	-	-	-	-	-	-	-	-	Section 54
Prosecutions	-	-	-	-	-	-	-	-	Section 55
Removal of children	-	-	-	-	-	-	-	-	Section 16
Safety, place of	-	-	-	-	-	-	-	-	Section 51

27. Provisions as to voluntary homes to extend to homes supported wholly or partly by endowments.—Section ninety-two of the Children and Young Persons Act, 1933, and section ninety-six of the Children and Young Persons (Scotland) Act, 1937 (which define the expression “voluntary home”) shall have effect as if to the reference therein to a home or other institution supported wholly or partly by voluntary contributions there were added a reference to a home or other

institution supported wholly or partly by endowments, not being a school within the meaning of the Education Act, 1944, or the Education (Scotland) Act, 1946.

NOTES TO SECTION 27

Endowed homes.—S. 92 of the Children and Young Persons Act, 1933 (26 Halsbury's Statutes 230), defines voluntary home as meaning "any home or other institution for the boarding, care and maintenance of poor children or young persons, being a home or other institution supported wholly or partly by voluntary contributions" other than any institution, house, or home certified by the Board of Control (now Ministry of Health, see National Health Service Act, 1946, Sched. X; 39 Halsbury's Statutes 587) which only receives mental defectives. S. 96 of the Children and Young Persons (Scotland) Act, 1937, contains a similar definition. The present section extends these definitions to include homes or other institutions supported wholly or partly by endowments.

A school within the meaning of the Education Act, 1944 or the Education (Scotland) Act, 1946.—S. 114 (1) of the Education Act, 1944 (37 Halsbury's Statutes 216), defines "school" as meaning "an institution for providing primary or secondary education, or both primary and secondary education, being a school maintained by a local authority, or a school in respect of which grants are made by the Minister to the proprietor of the school."

The Education (Scotland) Act, 1946, contains a similar definition.

Transitional provisions.—See para. 7 of Sched. II, *post*.

28. Extension of age limits in provisions relating to voluntary homes.—A person shall not be deemed for the purposes of Part V of the Children and Young Persons Act, 1933, or Part VI of the Children and Young Persons (Scotland) Act, 1937, to cease to be a young person until he attains the age of eighteen, and accordingly references to young persons in the said Part V or the said Part VI, or any other enactment in so far as it relates to the said Part V or the said Part VI, shall be construed as including references to all persons over the age of fourteen who have not attained the age of eighteen.

NOTES TO SECTION 28

Extension of definition of "young person."—Part V of the Children and Young Persons Act, 1933, being ss. 92–96 (26 Halsbury's Statutes 230 *et seq.*), contains provisions for the protection of children or young persons in voluntary homes. By *ibid.*, s. 107 (26 Halsbury's Statutes 238), "child" is defined as a person under the age of fourteen years, and "young person" as a person who has attained the age of fourteen years but is under the age of seventeen years. Persons who had attained the age of seventeen years were, therefore, outside the protection of Part V as originally enacted. The present section extends the definition of "young persons" for the purpose of Part V of the 1933 Act to include persons up to the age of eighteen.

Part VI of the Children and Young Persons (Scotland) Act, 1937, corresponds to Part V of the 1933 Act, and "child" and "young person" are defined in s. 110 thereof in terms similar to those of s. 107 of the 1933 Act.

29. Registration of voluntary homes.—(1) After the end of the year nineteen hundred and forty-eight no voluntary home shall be carried on unless it is for the time being registered in a register to be kept for the purposes of this section by the Secretary of State.

(2) Application for registration under this section shall be made by the persons carrying on or intending to carry on the home to which the application relates, and shall be made in such manner, and accompanied by such particulars, as the Secretary of State may by regulations prescribe.

(3) On an application duly made under the last foregoing subsection—

(a) if the home to which the application relates was at the commencement of this Act open for the reception of children, the application shall be granted ;

(b) in any other case, the Secretary of State may either grant or refuse the application, as he thinks fit, but where he refuses the application he shall give the applicant notice in writing of the refusal.

(4) Where at any time after the end of the year nineteen hundred and forty-eight it appears to the Secretary of State that the conduct of any voluntary home is not in accordance with regulations made or directions given under section thirty-one of this Act or is otherwise unsatisfactory, he may, after giving to the persons carrying on the home not less than twenty-eight days' notice in writing of his proposal so to do, remove the home from the register.

(5) Any person who carries on a voluntary home in contravention of the provisions of subsection (1) of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding fifty pounds and to a further fine not exceeding two pounds in respect of each day during which the offence continues after conviction.

(6) Where—

(a) a voluntary home is carried on in contravention of the provisions of subsection (1) of this section ; or

(b) notice of a proposal to remove a voluntary home from the register is given under subsection (4) thereof,

the Secretary of State may, notwithstanding that the time for any appeal under the next following section has not expired or that such an appeal is pending, notify the local authority in whose area the home is situated, and require them forthwith to remove from the home and receive into their care under section one of this Act all or any of the children for whom accommodation is being provided in the home ; and the local authority shall comply with the requirement whether or not the circumstances of the children are such that they fall within paragraphs (a) to (c) of subsection (1) of the said section one and notwithstanding that any of the children may appear to the local authority to be over the age of seventeen.

For the purpose of carrying out the duty of the local authority under this subsection, any person authorised in that behalf by the local authority may enter any premises in which the home in question is being carried on.

(7) Where the Secretary of State registers a home under this section or removes a home from the register, he shall notify the local authority in whose area the home is situated.

(8) Any notice under this section required to be given by the Secretary of State to the persons carrying on, or intending to carry on, a voluntary home may be given to those persons by being delivered personally to any one of them, or being sent by post in a registered letter to them or any one of them.

For the purposes of section twenty-six of the Interpretation Act, 1889 (which defines " service by post ") a letter enclosing a notice under this section to the persons carrying on a voluntary home or any one of them shall be deemed to be properly addressed if it is addressed to them or him at the home.

(9) Section ninety-five of the Children and Young Persons Act, 1933, and section ninety-nine of the Children and Young Persons (Scotland) Act, 1937, are hereby repealed as from the first day of January, nineteen hundred and forty-nine.

NOTES TO SECTION 29

Control of voluntary homes.—This section which as from January 1, 1949, will replace s. 95 of the Children and Young Persons Act, 1933 (26 Halsbury's Statutes 231), and s. 99 of the Children and Young Persons (Scotland) Act, 1937 (both of which are repealed as from that date by sub-s. (9) of this section and s. 60 (3) and Sched. IV, Part II, *post*), imposes a new and much stricter system of control over voluntary homes for children.

As from January 1, 1949, it will be unlawful to carry on a voluntary home unless it is for the time being registered in the register of voluntary homes which is to be kept by the Secretary of State (sub-s. (1)), and any person carrying on an unregistered home will be liable on summary conviction to a fine of up to £50 and a further fine of up to £2 for each day during which the offence continues after conviction (sub-s. (5)). If application for registration is duly made in the manner to be prescribed by regulations (sub-s. (2)) the Secretary of State *must* register any home which was open on July 5, 1948, and *may* at his discretion register any home which it is proposed to open thereafter (sub-s. (3)). As from January 1, 1949, the Secretary of State may, on giving not less than twenty-eight days' notice of his intention so to do, remove a voluntary home from the register if it appears to him not to be conducted satisfactorily (sub-s. (4)). As from the same date, and notwithstanding any rights of appeal (as to which see s. 30, *post*), the Secretary of State may cause children to be removed to the care of the local authority in whose area the home is situated (a) from any unregistered home, and (b) from any home in respect whereof notice of intention to remove from the register has been given. Removal of the children in these circumstances and their reception into care, will be the duty of the local authority immediately on the receipt of a notification from the Secretary of State requiring them to act (sub-s. (6)). Notice is to be given to the local authority in whose area a home is situated of (a) registration, and (b) intention to remove from the register (sub-s. (7)). A notice required to be served under the section on persons carrying on or intending to open a voluntary home may be served personally or by registered letter (sub-s. (8)).

As to the right of appeal against a refusal to register a voluntary home or against removal from the register see s. 30, *post*.

Subsection (2).—*Regulations.*—See s. 58, *post*.

Subsection (3).—*Notice in writing.*—As to service see sub-s. (8) above, and the note thereto, below. For definition of "writing" see the Interpretation Act, 1889, s. 20; 18 Halsbury's Statutes 1001.

Subsection (4).—*Regulations under s. 31.*—These are regulations as to the conduct of voluntary homes.

Subsection (6).—*Appear to be over the age of seventeen.*—It is only children who appear to be under the age of seventeen who may be received into the care of a local authority under s. 1 (1), *ante*, although once a child has been received into care the local authority's duty to him may continue until he is eighteen. See s. 1 (2), *ante*, and note thereto.

May enter any premises.—The power of entry conferred by this subsection is a power to enter for a particular purpose only, that is to say for the purpose of removing children from the home. Power to enter for the purpose of visiting children in the home is conferred by s. 54 (3), *post*. It is desirable that all persons entering voluntary homes as agents of a local authority should carry with them a written authorisation, and particularly is this so when they enter for the purpose of removing children.

Subsection (8).—*Service by post.*—S. 26 of the Interpretation Act, 1889 (18 Halsbury's Statutes 1002), provides that service by post shall be deemed to be effected "by properly addressing, prepaying and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Definitions.—"Local authority" (s. 38, *ante*); "child," "voluntary home" (s. 59 (1), *post*).

Transitional provisions.—See Sched. II, para. 7, *post*.

Consequential amendments.—See the amendments of s. 95 of the Children and Young Persons Act, 1933 (26 Halsbury's Statutes 231), effected by Sched. III, *post*, but note that this section is repealed as from January 1, 1949, by sub-s. (9) above, and s. 60 (3) and Sched. IV, Part II, *post*.

30. Appeals.—(1) Where under the last foregoing section application for the registration of a voluntary home is refused, or it is proposed to remove a voluntary home from the register, the persons intending to carry on or carrying on the home, as the case may be, may within fourteen days from the giving of the notice under subsection (3) or subsection (4) of that section appeal against the refusal or proposal; and where the appeal is brought against a proposal to remove a home from the register, the home shall not be removed therefrom before the determination of the appeal.

(2) An appeal under this section shall be brought by notice in writing addressed to the Secretary of State requiring him to refer the refusal or proposal to an appeal tribunal constituted in accordance with the provisions of Part I of the First Schedule to this Act.

(3) On an appeal under this section the appeal tribunal may confirm the refusal or proposal of the Secretary of State or may direct that the home shall be registered or, as the case may be, shall not be removed from the register, and the Secretary of State shall comply with the direction.

(4) The Lord Chancellor may with the concurrence of the Lord President of the Council make rules as to the practice and procedure to be followed with respect to the constitution of appeal tribunals for the purposes of this section, as to the manner of making appeals to such tribunals, and as to proceedings before such tribunals and matters incidental to or consequential on such proceedings; and without prejudice to the generality of the foregoing provisions of this subsection such rules may make provision as to the particulars to be supplied by or to the Secretary of State of matters relevant to the determination of the appeal, and as to representation before such tribunals, whether by counsel or solicitor or otherwise.

(5) The Secretary of State may out of moneys provided by Parliament—

(a) pay to members of tribunals constituted for the purposes of this section such fees and allowances as he may with the consent of the Treasury determine,

(b) defray the expenses of such tribunals up to such amount as he may with the like consent determine.

(6) The provisions of the Arbitration Acts, 1889 to 1934, shall not apply to any proceedings before a tribunal constituted for the purposes of this section except so far as any provisions thereof may be applied thereto with or without modifications by rules made under this section.

(7) In the application of this section to Scotland, for the reference to Part I of the First Schedule to this Act there shall be substituted a reference to Part II of that Schedule, and for the references to the Lord Chancellor and the Lord President of the Council there shall respectively be substituted references to the Lord President of the Court of Session and to the Secretary of State; and rules made under subsection (4) of

this section may make provision for a reference to the Court of Session, by way of stated case, of any question of law arising in such proceedings.

NOTES TO SECTION 30

Appeals as to the registration of voluntary homes.—This section confers a right of appeal to an *ad hoc* appeal tribunal, constituted in accordance with Sched. I, *post*, on a person carrying on or proposing to carry on a voluntary home against a proposal to remove the home from the register kept pursuant to s. 29 (1), *ante*, or refusal to register the home, as the case may be. The appeal will be, in form, a notice served on the Secretary of State within fourteen days from the notification of the proposal to remove from the register or refusal of registration (sub-s. (2), *supra*), requiring him to refer the issue to the tribunal. When the appeal is against a proposal to remove from the register, the home will not be removed before the determination of the appeal (sub-s. (2)). The tribunal may either confirm the Secretary of State's proposal or refusal or may order that the home be not removed from the register or that it be registered, as the case may be (sub-s. (3)). The section, as it applies to England and Wales, empowers the Lord Chancellor to make, with the concurrence of the Lord President, rules as to the proceedings of the tribunals constituted thereunder (sub-s. (4)) and, as it applies to Scotland, empowers the Lord President of the Court of Sessions with the concurrence of the Secretary of State to make similar rules (sub-s. (7)). Provision is made for the payment of fees and allowances to members of tribunals (sub-s. (5)) and the application of the Arbitration Acts to any proceedings before a tribunal is excluded except in so far as those Acts may be applied by the rules referred to above (sub-s. (6)).

Subsection (2).—*Notice of appeal.*—Presumably the form of notice will be prescribed by the rules to be made under sub-s. (4).

Appeal tribunal.—Part I of Sched. IV, *post*, provides for the appointment of two panels, a legal panel appointed by the Lord Chancellor of persons available to act when required as chairmen of any appeal tribunal and a welfare panel appointed by the Lord President of the Council of persons available to act as members of any such tribunal. Where an appeal is required to be determined a tribunal consisting of a chairman and two other members will be specially appointed from the two panels in accordance with the rules to be made under sub-s. (4) of the present section. These provisions as to the constitution of appeal tribunals are modelled on those contained in the Education Act, 1944, ss. 72, 75 and Sched. VI; 37 Halsbury's Statutes 191, 192, 231.

Subsection (6).—*Arbitration Acts, 1889 to 1934.*—See, 1 Halsbury's Statutes 453; 27 *ibid.* 27.

Subsection (7).—*Scotland.*—Just as Part I of Sched. I, *post*, is modelled on Sched. VI to the Education Act, 1944, providing for the constitution of independent schools tribunals, so Part II of Sched. I, *post*, is modelled on Sched. V. to the Education (Scotland) Act, 1946.

31. Regulations as to conduct of voluntary homes.—(1) The Secretary of State may make regulations as to the conduct of voluntary homes and for securing the welfare of the children therein, and regulations under this section may in particular—

- (a) impose requirements as to the accommodation and equipment to be provided in homes, authorise the Secretary of State to give directions prohibiting the provision for the children in any home of clothing of any description specified in the directions, and impose requirements as to the medical arrangements to be made for protecting the health of the children in the homes;
- (b) require the furnishing to the Secretary of State of information as to the facilities provided for the parents and guardians of children in the homes to visit and communicate with the children, and authorise the Secretary of State to give directions as to the provision of such facilities;

- (c) authorise the Secretary of State to give directions limiting the number of children who may at any one time be accommodated in any particular home ;
 - (d) provide for consultation with the Secretary of State as to applicants for appointment to the charge of a home and empower the Secretary of State to prohibit the appointment of any particular applicant therefor except in the cases (if any) in which the regulations dispense with such consultation by reason that the person to be appointed possesses such qualifications as may be prescribed by the regulations ;
 - (e) require notice to be given to the Secretary of State of any change of the person in charge of a home ; and
 - (f) impose requirements as to the facilities which are to be given for children to receive a religious upbringing appropriate to the persuasion to which they belong,
- and may contain different provisions for different descriptions of cases and as respects different descriptions of homes.

(2) Where any regulation under this section provides that this subsection shall have effect in relation thereto, any person who contravenes or fails to comply with the regulation or any requirement or direction thereunder shall be liable on summary conviction to a fine not exceeding fifty pounds.

NOTES TO SECTION 31

Conduct of voluntary homes.—By this section the Secretary of State is given power to make regulations for the general protection of children in voluntary homes, whether such children have been placed there by local authorities pursuant to s. 13 (1) (b), *ante*, or not, and, in particular for securing that the accommodation and equipment provided is adequate, that the children are not dressed in an undesirable fashion, and that satisfactory arrangements are made for inspecting the children's health, for the prevention of overcrowding, for safeguarding the right of parents and guardians to communicate with children in homes, for requiring notice to be given whenever there is a change in the person in charge of a home and for ensuring that the children are given a religious upbringing appropriate to the denomination to which they belong (sub-s. (1)). As to making the regulations see s. 58, *post*.

Prosecution : penalties.—As to prosecutions, see s. 55, *post*. Where any regulation made under sub-s. (1) of this section provides that sub-s. (2) shall have effect in relation thereto, breach of the regulation will be punishable on summary conviction by a fine of up to £50. A more serious sanction is provided by the power conferred on the Secretary of State by s. 29 (4), *ante*, to remove from the register any voluntary home which appears to him not to be conducted in accordance with regulations under the present section.

Subsection (1).—*Person in charge of a home.*—This, it is thought, must mean the master, matron, superintendent, etc., not the proprietor of the home.

Religious upbringing.—See s. 16 (2), *ante*, which provides that no child in the care of a local authority shall be placed in a voluntary home which does not afford facilities for him to receive a religious upbringing appropriate to his persuasion.

Definitions.—"Child," "voluntary home" (s. 59 (1), *post*).

32. Provisions where particulars to be sent of voluntary homes are varied.—(1) Where the Secretary of State by regulations made under section ninety-three of the Children and Young Persons Act, 1933, or section ninety-seven of the Children and Young Persons (Scotland)

Act, 1937, varies the particulars which are to be sent by persons in charge of voluntary homes—

- (a) the person in charge of such a home shall send the prescribed particulars to the Secretary of State within three months from the date of the making of the regulations ;
- (b) where any such home was established before, but not more than three months before, the making of the regulations, compliance with the last foregoing paragraph shall be sufficient compliance with the requirement of the said section ninety-three or ninety-seven to send the prescribed particulars within three months from the establishment of the home ;
- (c) in the year in which the particulars are varied, compliance with paragraph (a) of this subsection by the person in charge of any voluntary home shall be sufficient compliance with the requirement of the said section ninety-three or ninety-seven to send the prescribed particulars before the prescribed date in that year.

(2) Any default in complying with the requirements of paragraph (a) of the last foregoing subsection shall be deemed to be such a default as is mentioned in subsection (2) of the said section ninety-three or in subsection (3) of the said section ninety-seven, as the case may be.

NOTES TO SECTION 32

Particulars as to voluntary homes.—S. 93 of the Children and Young Persons Act, 1933 (26 Halsbury's Statutes 230), provides that particulars prescribed by regulations with regard to every voluntary home must be sent to the Home Secretary by the person in charge of the home within three months after the commencement of the Act or the establishment of the home, as the case may be, and in subsequent years before such date as may be prescribed (sub-s. (1)). Default in sending in the particulars before the prescribed date is punishable on summary conviction by a fine not exceeding £5 and a further fine not exceeding £1 for each day in which the default continues after conviction (sub-s. (2)). The regulations under this section at present in force are the Children and Young Persons (Voluntary Homes) Regulations, 1945, S. R. & O. 1945 No. 1196, printed in Clarke Hall and Morrison on Children, 3rd edn., at p. 167, which provide that in 1946 and subsequent years, the date on or before which the particulars shall be sent to the Home Secretary shall be July 1st. S. 97 of the Children and Young Persons (Scotland) Act, 1937, contains provisions, adapted to the law of Scotland, similar to those of s. 93 of the 1933 Act.

The present section contemplates the making of new regulations varying those now prescribed by S. R. & O. 1945 No. 1196, *supra*, and the corresponding Scottish regulations, and provides that the particulars to be prescribed by such new regulations shall be sent in within three months after the regulations are made (para. (a)). Compliance with this obligation is, in the case of a home established within three months before the making of the new regulations, to override the obligation to send in particulars within three months after a new home is established (para. (b)), and in any other case, to override the obligation to send in particulars before the prescribed date in the year in which the new regulations are made (para. (c)). Default in compliance with the obligation created by para. (a) is to be punishable on summary conviction as though it were a default in complying with the obligation to send in particulars before the prescribed date in any year (sub-s. (2)).

Paragraph (a).—*Person in charge.*—Who is the person in charge is a question of fact to be determined by the magistrates in the case of default. Presumably, it means the master, matron, superintendent, etc.

Paragraph (b).—*Newly established homes.*—Existing homes which are first brought within the definition of voluntary homes by ss. 27 or 28, *ante*, are deemed to have been established at the commencement of the present Act. See Sched. II, para. 7, *post*.

Definitions.—“ Prescribed ” (Children and Young Persons Act, 1933, s. 107 (1); 26 Halsbury's Statutes 238); “ voluntary home ” (s. 59 (1), *post*, and see the notes to s. 27, *ante*).

33. Powers of Secretary of State as to voluntary organisations.—

(1) The Secretary of State may by regulations control the making and carrying out by voluntary organisations of arrangements for the emigration of children.

(2) Any such regulations may contain such consequential and incidental provisions as appear to the Secretary of State to be necessary or expedient, including, in particular, provisions for requiring information to be given to the Secretary of State as to the operations or intended operations of the organisation and for enabling the Secretary of State to be satisfied that suitable arrangements have been or will be made for the children's reception and welfare in the country to which they are going.

(3) The power conferred by Part II of this Act on the Secretary of State to make regulations as to the boarding-out of children by local authorities shall extend also to the boarding-out of children by voluntary organisations :

Provided that in the provisions of the said Part II conferring that power any reference to the supervision and inspection by a local authority of boarded-out children and the premises in which they are boarded out shall, in relation to children boarded out by voluntary organisations, be deemed to be a reference to supervision and inspection either by a local authority or, where it is so provided by or under the regulations, by a voluntary organisation.

(4) Where any regulation under this section provides that this subsection shall have effect in relation thereto, any person who contravenes or fails to comply with the regulation shall be liable on summary conviction to a fine not exceeding fifty pounds.

NOTES TO SECTION 33

Regulations as to voluntary organisations.—This section authorises the making of regulations controlling child emigration arranged through the agency of voluntary organisations (sub-ss. (1) and (2)) and the boarding-out of children by voluntary organisations (sub-s. (3)). Breach of specified regulations may be made punishable by a fine of not more than £50 (sub-s. (4)).

Regulations.—See s. 58, *post*.

Prosecutions.—See s. 55, *post*.

Subsection (1).—*Child emigration.*—On the committee stage in the House of Lords an assurance was given that regulations under this subsection will only be made after consultation with the Secretary of State for Commonwealth Relations and that other interested Government departments will also be consulted. See 154 H. of L. Official Reports 608. On the report stage a further assurance was given that the Home Office intend to secure that no children are emigrated unless there is absolute satisfaction that proper arrangements have been made for the care and upbringing of each child.

As to arrangements for child emigration made by local authorities, see s. 17, *ante*.

Subsection (3).—*Boarding-out regulations.*—See s. 14, *ante*, and notes thereto.

Supervision and inspection.—Under s. 14 (2) (d), *ante*, regulations as to the boarding out of children by local authorities may provide for the supervision and inspection by a local authority of such children and the premises in which they are boarded out. The proviso to the present subsection enables provision to be made in or under regulations as to the boarding-out by voluntary organisations for the

duties of supervision and inspection to be carried out either by a local authority or a voluntary organisation.

Definitions.—"Local authority" (s. 38, *post*); "child," "voluntary organisation" (s. 59 (1), *post*).

34. After-care of children formerly in care of local authorities or voluntary organisations.—(1) Where it comes to the knowledge of a local authority that there is in their area any child over compulsory school age who at the time when he ceased to be of that age or at any subsequent time was, but is no longer,—

- (a) in the care of a local authority under section one of this Act, or
- (b) in the care of a voluntary organisation,

then, unless the authority are satisfied that the welfare of the child does not require it, they shall be under a duty so long as he has not attained the age of eighteen to advise and befriend him :

Provided that where in a case falling within paragraph (b) of this subsection the local authority are satisfied that the voluntary organisation have the necessary facilities for advising and befriending him, the local authority may make arrangements whereby, while the arrangements continue in force, he shall be advised and befriended by the voluntary organisation instead of by the local authority.

(2) Where a child over compulsory school age—

- (a) ceases to be in the care of a local authority under section one of this Act and proposes to reside in the area of another local authority, or
- (b) ceases to be in the care of a voluntary organisation,

the authority or organisation shall inform the local authority for the area in which the child proposes to reside.

(3) Where it comes to the knowledge of a local authority or a voluntary organisation that a child whom they have been advising and befriending in pursuance of this section proposes to transfer or has transferred his residence to the area of another local authority, the first-mentioned local authority or, as the case may be, the voluntary organisation, shall inform the said other local authority.

NOTES TO SECTION 34

After-care.—This section makes provision for the after-care of children, satisfying three conditions, namely, (i) that they are over compulsory school age and under eighteen, (ii) that they have ceased to be in the care of a local authority or voluntary organisation, (iii) that the circumstances of the children is not such as to render after-care unnecessary for their welfare. The duty of providing after-care is imposed on the local authority for the area in which the child is for the time being resident. A local authority may, however, by arrangement delegate its duties as to the after-care of any specified child to the voluntary organisation in whose care the child formerly was if the authority is satisfied that the organisation has the necessary facilities for advising and befriending the child. While such delegation continues the authority is under no obligation to supervise the after-care given by the voluntary organisation, but they can apparently end the arrangement at any time if they are dissatisfied with it (sub-s. (1)). Obligations to give information, necessary for the practical working of the scheme, are imposed by sub-ss. (2) and (3), *supra*.

Subsection (1).—*Welfare.*—See notes to s. 1, *ante*. A local authority will be justified in most cases, in considering that no after-care is necessary for the child's welfare where the child has returned to live with normally good parents.

Subsection (2).—*Shall inform.*—These words impose an absolute obligation, but it is one which may, it seems, be impossible to fulfil, unless the information is forthcoming from the child or his parents, etc.

Subsection (3).—*Where it comes to the knowledge . . . shall inform.*—Here the obligation, in contrast to that imposed by sub-s. (2), *supra*, is qualified, and is only imposed where the local authority or voluntary organisation knows of the transfer or proposed transfer.

Definitions.—“Local authority” (s. 38, *post*); “child,” “compulsory school age,” “voluntary organisation” (s. 59 (1), *post*).

PART V

CHILD LIFE PROTECTION

Cross-reference.—For the amended text of the principal child life protection enactments relevant to Part V of this Act, see Appendix B, *post*.

35. General extension of Child Life Protection provisions to all children below school leaving age.—The following provisions, that is to say—

- (a) Part VII of the Public Health Act, 1936, Part XIII of the Public Health (London) Act, 1936, and Part I of the Children and Young Persons (Scotland) Act, 1937 (which provide for the protection of children under the age of nine who are maintained apart from their parents for reward); and
- (b) section seven of the Adoption of Children (Regulation) Act, 1939 (which provides for the supervision of children under the age of nine where arrangements are made through third parties for placing them in the care and possession of persons other than their parents),

shall be extended so as to apply to children of compulsory school age who are over the age of nine as they apply to children who are under that age; and subject to the provisions of the next following section references in the said provisions to the age of nine, and to nursing and maintaining, shall be construed accordingly.

NOTES TO SECTION 35

Child life protection.—This means the supervision of foster children, being children whose care is undertaken by someone apart from the parents for reward, and the supervision of the foster parents and the premises where the children are. The relevant statutory provisions are in Part VII of the Public Health Act, 1936 (29 Halsbury's Statutes 459), Part XIII of the Public Health (London) Act, 1936 (30 Halsbury's Statutes 581), and Part I of the Children and Young Persons (Scotland) Act, 1937; but, to take the Public Health Act, 1936, as an example, only certain sections, namely, ss. 206–219, in Part VII are concerned with child life protection, other sections within the Part relating to notification of births and maternity and child welfare. It is therefore a question whether ss. 35, 36 of the Children Act, 1948, affect these latter sections; despite the wording of para. (a) of s. 35, *supra*, it is submitted that they do not.

The child life protection provisions originally extended only to foster children who were under the age of nine years, and required foster parents to notify welfare authorities of the receipt of foster children and of removal or death, provide for the appointment of child protection visitors, and for the removal, upon the application by a welfare or local authority to a court of summary jurisdiction (in Scotland, to the sheriff), of children from unsuitable foster parents or premises. Penalties are provided for offences in relation to foster children. The welfare authority for the purposes of the Public Health Act, 1936, Part VII, will now be the county or county borough council, as the local authority for the purposes

of the present Act; see s. 38, *post*. The local authority's functions will be discharged through the children's committee, see s. 30 (1) (b), *post*.

Adoption of Children (Regulation) Act, 1939, s. 7.—See Appendix B, *post*. As originally enacted, this provided for the supervision by welfare authorities of children under the age of nine years in respect of whom arrangements with a view to adoption are being made by third parties. The section ceased to apply to a child on the making of an adoption order in respect of him or on his attaining nine (*ibid.*, sub-s. (2)). The local authority for the purposes of s. 38 of the present Act will be the welfare authority within the meaning of the 1939 Act (see *ibid.*, s. 16 (2) and last paragraph of this note); and the local authority's functions will be discharged through the children's committee, s. 39 (1) (c), *post*.

Extension effected.—S. 35, *supra*, brings within the ambit of the above enactments children who are over nine but below the upper limit of compulsory school age. By s. 36, *post*, they are further extended so as to apply to children over compulsory school age but under eighteen, if they applied at the time when the child ceased to be of compulsory school age, and by s. 37, *post*, the class of children deemed to be foster children taken for reward is extended to include orphans in respect of whom State allowances are payable to the persons maintaining them.

Commencement of extension.—The extension of the enactments referred to in para. (a) above applies as if the child had been received for reward at the commencement of the Act (see Sched. II, para. 10 (1), *post*), and any necessary notice may be given within one month of the commencement of the Act; as to the effect of the extension in relation to any increase of foster children beyond the number theretofore permitted to be kept on premises see *ibid.*, sub-para. (5).

The extension of the Adoption of Children (Regulation) Act, 1939, s. 7, applies as if possession of the child had been taken at the commencement of the Children Act, 1948; see Sched. II, para. 11 (1); as to notices see sub-paras (2) (3).

Definitions.—"Child," "compulsory school age" (s. 59 (1), *post*).

Consequential amendments.—See the amendments to the Public Health Act, 1936, the Public Health (London) Act, 1936 and the Adoption of Children (Regulation) Act, 1939, effected by s. 60 (2) and Sched. III, *post*.

36. Extension of certain Child Life Protection provisions to children up to eighteen.—Where any of the provisions specified in paragraphs (a) and (b) of the last foregoing section apply in respect of a child at the time when he ceases to be of compulsory school age, the said provisions and the provisions of this Act relating thereto shall continue to apply in respect of him—

- (a) until the time when he attains the age of eighteen or ceases to live apart from his parents with the person with whom he was living when he ceased to be of compulsory school age;
- (b) if he dies before attaining the age of eighteen and while living as aforesaid, as respects the notice to be given under the said provisions on his death.

NOTES TO SECTION 36

Child life protection after school leaving age.—See notes to s. 35, *ante*, particularly the note headed "Extension effected."

Paragraph (a).—*Parents.*—In relation to an adopted child this means the persons by whom he was adopted (see s. 59 (1), *post*). Thus, where a child is the subject of an adoption order and goes to live with the adopters he ceases to be living apart from his parents. See also s. 7 (2) of the Adoption of Children (Regulation) Act, 1939 (Appendix B, *post*), which provides that the provisions of that section shall cease to have effect with regard to any child on the making of an adoption order in respect of such child.

Attains the age of eighteen.—See the notes to s. 1, *ante*.

Paragraph (b).—*Notice to be given on his death.*—This notice is required to be given within twenty-four hours after the death of a foster child by the foster parent

to the coroner (see Public Health Act, 1936, s. 212 (29 Halsbury's Statutes 468), Public Health (London) Act, 1936, s. 264; 30 Halsbury's Statutes 585), or in Scotland to the procurator fiscal (see Children and Young Persons (Scotland) Act, 1937, s. 6).

Definitions.—"Child," "compulsory school age" (s. 59 (1), *post*).

Consequential amendments.—See the amendments to the Public Health Act, 1936, the Public Health (London) Act, 1936, and the Children and Young Persons (Scotland) Act, 1937, effected by s. 60 (2) and Sched. III, *post*.

37. Miscellaneous amendments of Child Life Protection provisions.—(1) Where a child one or both of whose parents are dead is being maintained by a person who is not a parent, guardian or relative of his, and by reason of his being so maintained a guardian's allowance under the National Insurance Act, 1946, or a family allowance under the Family Allowances Act, 1945, is payable to that person, the said person shall be treated for the purposes of the provisions specified in paragraph (a) of the last but one foregoing section as having undertaken, on the date hereinafter specified, the nursing and maintenance of the child for reward.

The date hereinbefore referred to is the last of the following dates, that is to say—

- (a) the date on which the application for the allowance was granted or, where the application was granted before the commencement of this Act but so as to take effect at a subsequent date not earlier than the commencement thereof, the date on which the allowance became payable;
- (b) the date of the death of the first to die of the child's parents;
- (c) where it is proved that at the later of the dates mentioned in the foregoing paragraphs the person in question had reasonable cause to believe that both parents of the child were alive, the date on which the said person became aware that one of the child's parents had died.

(2) A voluntary home shall be exempted from the provisions of Part VII of the Public Health Act, 1936, whether or not it is such a home as is mentioned in paragraphs (a) to (c) of subsection (1) of section two hundred and nineteen of that Act.

(3) Nothing in the said Part VII, in Part XIII of the Public Health (London) Act, 1936, or in Part I of the Children and Young Persons (Scotland) Act, 1937, shall apply in relation to any undertaking given by a person with whom a child is boarded out by the Minister of Pensions, by a local authority under Part II of this Act or by a voluntary organisation.

(4) The provisions of section seven of the Adoption of Children (Regulation) Act, 1939, shall not have effect in relation to any arrangements for the boarding-out of a child by a voluntary organisation or in relation to any arrangements in which the Minister of Pensions participates.

(5) Nothing in any of the provisions mentioned in section thirty-five of this Act shall apply in relation to a child on whom a requirement as to residence is imposed by a supervision order or probation order.

(6) For the avoidance of doubt it is hereby declared that the references in section two hundred and nineteen of the Public Health Act, 1936, section two hundred and seventy-one of the Public Health (London) Act, 1936, and section eleven of the Children and Young Persons (Scotland)

Act, 1937, to hospitals maintained by a Government department include references to hospitals maintained by Regional Hospital Boards on behalf of the Minister of Health or the Secretary of State.

NOTES TO SECTION 37

Generally.—See the notes to s. 35, *ante*.

Exemptions.—This section adds a number of new exemptions from the operation of the child life protection enactments, namely—

- (i) *Voluntary homes.*—The exemption for certain voluntary homes contained in s. 219 of the Public Health Act, 1936 (29 Halsbury's Statutes 469), is extended to all voluntary homes (sub-s. (2)), thus removing an anomaly since all voluntary homes are exempt from the corresponding provisions of the Public Health (London) Act, 1936, and the Children and Young Persons (Scotland) Act, 1933; see s. 271 of the London Act (30 Halsbury's Statutes 587), and s. 11 of the Scottish Act.
- (ii) *Public service boarding-out.*—The operation of the child life protection provisions of the Public Health Act, 1936, the Public Health (London) Act, 1936 and the Children and Young Persons (Scotland) Act, 1937, is excluded in relation to any undertaking given in relation to children boarded out whether by the Minister of Pensions, a local authority or a voluntary organisation (sub-s. (3), *supra*).
- (iii) *Public service adoption arrangements.*—The operation of s. 7 of the Adoption of Children (Regulation) Act, 1939, as to which see the notes to s. 35, *ante*, is excluded in relation to children boarded out by a voluntary organisation or where the Minister of Pensions or a voluntary organisation is concerned in the arrangements (sub-s. (4), *supra*). Here, again, an anomaly is removed since as originally enacted s. 7 of the 1939 Act has no application where a local authority takes part in the arrangements; see the proviso to sub-s. (1) thereof (32 Halsbury's Statutes 211).
- (iv) *Children under supervision or on probation.*—The operation of all the child life protection enactments and of s. 7 of the Adoption of Children (Regulation) Act, 1939, is excluded in relation to a child subject to a supervision order or probation order containing a condition as to residence apart from his parents (sub-s. (5), *supra*).

For the avoidance of doubt it is declared that the exemption for hospitals maintained by a Government department contained in the child life protection enactments extends also to hospitals maintained by Regional Hospital Boards (sub-s. (6) *supra*).

Subsection (1).—*Guardian's allowance.*—S. 19 of the National Insurance Act, 1946 (39 Halsbury's Statutes 439), gives a right to a guardian's allowance where a child's parents are dead and one at least of them was an insured person. Anyone who maintains the child as a child of his family for the time being is entitled to the allowance.

Family allowance.—For the purpose of calculating the allowance payable for every family under s. 1 of the Family Allowances Act, 1945 (38 Halsbury's Statutes 342), children are included in the family of the person by whom they are maintained; see Family Allowances Act, 1945, s. 3 (38 Halsbury's Statutes 343). As to the circumstances in which a person is to be treated as maintaining a child, see Family Allowances Act, 1945, Schedule (38 Halsbury's Statutes 355).

Public Health Act, 1936, s. 220.—29 Halsbury's Statutes 470.—This section defines "relative" as meaning "a grandparent, brother, sister, uncle or aunt, whether by consanguinity or affinity, or in consequence of adoption, and in the case of an illegitimate child a person who would be so related if the child were legitimate."

Subsection (2).—*Public Health Act, 1936, s. 219 (1) (a) to (c).*—29 Halsbury's Statutes 469. These paragraphs specify alternate conditions any of which if fulfilled in relation to a voluntary home will operate to put such home outside the scope of the child life protection provisions contained in Part VII of the Act (29 Halsbury's Statutes 460, *et seq.*).

Subsections (3) and (4).—*Boarding-out.*—Children who may be boarded out by the Minister of Pensions are those for whom he is responsible under s. 9 of the

War Pensions (Administrative Provisions) Act, 1918 (17 Halsbury's Statutes 540), as extended by the War Orphans Act, 1942 (35 Halsbury's Statutes 215); see further the notes to s. 7, *ante*. The power of a local authority under Part II of this Act to board out children in its care is conferred by s. 13 (1) (a), *ante*. Boarding-out by voluntary organisations is to be controlled by regulations under s. 33 (3), *ante*.

Subsection (6).—*Supervision Order—Probation Order.*—See the notes to s. 6, *ante*.

Subsection (7).—*Regional Hospital Boards.*—See ss. 11 and 12 of the National Health Service Act, 1947; 39 Halsbury's Statutes 532, *et seq.*

Definitions.—“Local authority” (s. 38, *post*); “child,” “parent,” “voluntary home,” “voluntary organisation” (s. 59 (1), *post*).

Consequential amendments.—See the amendments to the Public Health Act, 1936, the Public Health (London) Act, 1936, the Children and Young Persons (Scotland) Act, 1937, and the Adoption of Children (Regulation) Act, 1939, effected by s. 60 (2) and Sched. III, *post*.

PART VI

ADMINISTRATIVE AND FINANCIAL PROVISIONS

* **Cross-references.**—Other provisions relevant to the Part VI of the Act:—

Duty as to children removed to place of safety	—	—	—	—	—	Section	51
Duty of after-care	—	—	—	—	—	Section	34
Duty of caring for children	—	—	—	—	—	Section	1
Duty of child life protection	—	—	—	—	—	Sections	35, 36
Duty of to act as fit person	—	—	—	—	—	Section	5
Parental rights, power to assume	—	—	—	—	—	Sections	2, 3
Prosecutions	—	—	—	—	—	Section	55
Voluntary homes, conduct	—	—	—	—	—	Section	31
Voluntary homes, registration	—	—	—	—	—	Section	29

38. Local authorities.—(1) In England and Wales, the local authorities for the purposes of this Act and of Parts III and IV of the Children and Young Persons Act, 1933, and the welfare authorities for the purposes of the provisions relating to child life protection of Part VII of the Public Health Act, 1936, shall be the councils of counties and county boroughs, and the local authority for the purposes of Part XIII of the Public Health (London) Act, 1936, shall be the London County Council.

(2) In Scotland, the local authorities for the purposes of this Act shall be the councils of counties and large burghs.

NOTES TO SECTION 38

Local authorities.—The effect of this section is that county councils (including the London County Council) and county borough councils become the local authorities not only for the purposes of the present Act, but also for the purposes of the provisions of the Children and Young Persons Act, 1933, relating to children and young persons committed to the care of fit persons or sent to approved schools or remand homes, and of the child life protection provisions of the Public Health Acts; by virtue of s. 16 (2) (3) of the Adoption of Children (Regulation) Act, 1939 (32 Halsbury's Statutes 218), the same local authorities are welfare authorities for the purposes of s. 7 of that Act.

In Scotland the councils of counties and large burghs, which were already the local authorities for all purposes of the Children and Young Persons (Scotland) Act, 1937, become the local authorities for the purposes of the present Act.

For the purpose of their functions under the above enactments including the Adoption of Children (Regulation) Act, 1939, which are to be exercised in accordance with the general guidance of the Secretary of State (see s. 42, *post*), every local authority is, by s. 39, *post*, required to appoint a special children's committee unless the existence of such a committee is dispensed with under s. 40, *post*, and

to appoint a special children's officer ; see s. 41, *post*. The intention of this is that for the area of every county council, county borough council and council of a county burgh there shall be a separate department, dealing with children who for one reason or another are deprived of a normal home life, under a responsible officer, and administered by an *ad hoc* committee, or in exceptional circumstances by the council itself.

Parts III and IV of the Children and Young Persons Act, 1933.—26 Halsbury's Statutes 192, *et seq.*—Local education authorities were formerly the local authorities for the purpose of all Parts of the Act, see *ibid.*, s. 96 (26 Halsbury's Statutes 232), as amended by the Education Act, 1944, s. 121 and Sched. IX, Part I (37 Halsbury's Statutes 223, 226).

Part VII of the Public Health Act, 1936.—29 Halsbury's Statutes 460, *et seq.*—Welfare authorities for the purposes of this Part of the Act were in county boroughs, the county borough council, and in counties, either the county council or county district council ; see s. 200 (29 Halsbury's Statutes 460).

Part XIII of the Public Health (London) Act, 1936.—30 Halsbury's Statutes 581, *et seq.*—The local authorities for the purposes of this Part were the Common Council of the City of London and the Metropolitan borough councils ; see s. 256 (30 Halsbury's Statutes 581).

Consequential amendments.—See the amendments to the Children and Young Persons Act, 1933, s. 96, and the Public Health (London) Act, 1936, Part XIII, effected by s. 60 (2) and Sched. III, *post*.

39. Children's committee.—(1) Subject to the provisions of the next following section, every local authority shall establish a children's committee for the purposes of their functions under the following enactments, that is to say—

- (a) Parts III and IV of the Children and Young Persons Act, 1933, or, as the case may be, Parts IV and V of the Children and Young Persons (Scotland) Act, 1937 ;
- (b) the provisions relating to child life protection of Part VII of the Public Health Act, 1936, the provisions of Part XIII of the Public Health (London) Act, 1936, or the provisions of Part I of the Children and Young Persons (Scotland) Act, 1937, as the case may be ;
- (c) the Adoption of Children (Regulation) Act, 1939 ; and
- (d) this Act.

(2) All matters relating to the discharge of the functions of a local authority under the enactments specified in subsection (1) of this section shall stand referred to the children's committee, and except with the consent of the Secretary of State no matter not relating to the discharge of the said functions shall be referred to or dealt with by the children's committee.

(3) Before exercising any of the said functions a local authority shall, unless the matter is urgent, consider a report of the children's committee with respect thereto, and they may authorise the children's committee to exercise on their behalf any of the said functions except the power to borrow money or to levy or to issue a precept for a rate.

(4) The children's committee may include persons specially qualified by reason of experience or training in matters relating to the functions of the committee, notwithstanding that they are not members of the local authority :

Provided that at least a majority of the members of the committee shall be members of the authority.

(5) A children's committee may, subject to any restrictions imposed by the local authority, establish such sub-committees as the children's committee may determine, and any sub-committee established under this subsection shall be constituted in such manner as the children's committee may, subject to any restrictions so imposed, determine, and may include persons specially qualified as aforesaid notwithstanding that they are not members of the local authority or of the children's committee :

Provided that every such sub-committee shall include at least one member of the local authority.

(6) A sub-committee under the last foregoing subsection may be appointed by the children's committees of two or more local authorities jointly, so however that a sub-committee so appointed shall include at least one member of each of the local authorities.

(7) The children's committee or committees by which a sub-committee is appointed under this section may, subject to any restrictions imposed by the local authority or any of the respective local authorities, authorise the sub-committee to exercise on behalf of the children's committee or committees, as the case may be, any of their functions.

(8) The provisions of subsection (2) of this section shall not prevent a local authority from referring to any committee appointed by them other than the children's committee any matter relating to the discharge of their functions under the enactments specified in subsection (1) of this section which, by reason that it relates also to a general service of the authority, ought in the opinion of the authority to be so referred, and the provisions of subsections (2) and (3) of this section shall not apply to any matter which is so referred :

Provided that before deciding on any proposal for a reference under this subsection, the local authority shall receive and consider a report on the proposal from the children's committee.

NOTES TO SECTION 39

Administration.—Every local authority for the purposes of this Act, unless excused (see s. 40 (1), *post*), or concurring in the appointment of a joint committee (see s. 40 (4), *post*), is required to appoint a children's committee for the purpose of dealing with all matters relating to the discharge of the authority's functions under specified enactments, all of which relate to children who are deprived of a normal home life (sub-s. (1), *supra*). Such matters are to stand referred automatically to the children's committee, which except with the consent of the Secretary of State is to deal with no other matters (sub-s. (2)), and, except in cases of urgency, the authority must consider a report of the committee before they act therein (sub-s. (3)). The authority may delegate all its said functions to the committee other than those which involve borrowing or the raising of a rate (*ibid.*); and the children's committee may establish, or join with the children's committee of other local authorities in establishing, sub-committees or joint sub-committees with authority to exercise on behalf of the committee any of their functions (sub-ss. (5), (6) and (7)). A majority of the members of the committee sub-s. (4)), and at least one member of each sub-committee must be members of the local authority, while every joint sub-committee must include at least one member of each local authority appointing the joint committee (sub-s. (6)). Other committee, sub-committee and joint sub-committee members may be specially qualified persons who are not members of the local authority or, as the case may be, of any of the local authorities appointing the joint sub-committee (sub-ss. (4), (5) and (6)).

As to the appointment of the children's officer who will be the administrative head of the department controlled by the children's committee and will normally act as clerk at its meetings, see s. 41, *post*, and as to the power of the Secretary of

State to control the exercise of functions under the enactments specified in sub-s. (1) above, see s. 42, *post*.

Subsection (1).—*Children's committee.*—As to joint committees, see s. 40 (4) and (5), *post*.

Parts III and IV of the Children and Young Persons Act, 1933.—26 Halsbury's Statutes 192, *et seq.*—These Parts deal, amongst other things, with children and young persons committed to the care of fit persons, or sent to approved schools or remand homes. The functions of councils and county boroughs in relation to remand homes are expressly included in the reference in sub-s. (1); see 59 (2), *post*.

Parts IV and V of the Children and Young Persons (Scotland) Act, 1937.—These correspond to Parts III and IV of the 1933 Act.

Part VII of the Public Health Act, 1936.—29 Halsbury's Statutes 460, *et seq.*

Part XIII of the Public Health (London) Act, 1936.—30 Halsbury's Statutes 581, *et seq.*—See Appendix B, *post*.

Adoption of Children (Regulation) Act, 1939.—32 Halsbury's Statutes 205, *et seq.*—For s. 7 see Appendix B, *post*. The functions of local authorities under this Act relate to the registration of adoption societies and the supervision of children placed by third parties in the care of persons other than their parents.

Subsection (3).—*May authorise.*—As to the revocation of delegated powers and the exercise of such powers without revoking the delegation, see *Huth v. Clarke* (1890), 25 Q. B. D. 391; 33 Digest 17, 68; *cf. Blackpool Corporation v. Locker*, [1948] K. B. 349, at pp. 391, 392, [1948], 1 All E. R. 85, at p. 104. As to the ratification by a local authority of powers exercised without express delegation, see *Firth v. Staines*, [1897] 2 Q. B. 70; 38 Digest 169, 130; *Hussey v. Exeter Corporation* (1918), 87 L. J. Ch. 443; 25 Digest 133, 524 and *R. V. Chapman, Ex parte Arlidge*, [1918] 2 K. B. 298; Digest Supp. As to the extent of the power of delegation, see *Richardson v. Abertillery Urban District Council*; *Thomas v. Abertillery Urban District Council* (1928), 138 L. T. 688; Digest Supp.

Subsection (5).—*Shall include at least one member of the local authority.*—In relation to a joint committee this requirement is to be construed as a requirement that every sub-committee shall include one member of each of the combining authorities, see s. 40 (4), *post*.

Subsection (6).—*Joint sub-committees.*—These must be distinguished from joint committees appointed under s. 40 (4), *post*.

Subsection (7).—The power contained in this subsection overrides the general rule "*delegatus non potest delegare.*" Where the functions delegated to any sub-committee involve expenditure it will be prudent for the local authority to require a majority of the members to be members of the authority.

Definitions.—"Local authority" (s. 38, *ante*); "Functions," "precept for a rate" (s. 59 (1), *post*).

40. Modification, in certain cases, of requirements of last foregoing section.—(1) If, before a local authority have appointed a children's committee under the last foregoing section, the Secretary of State is satisfied that owing to special circumstances the authority can better discharge their functions under the enactments specified in subsection (1) of that section without establishing a children's committee, he may direct that the said section shall not apply to the authority.

(2) If, at any time after three years from the commencement of this Act, a local authority which have established a children's committee satisfy the Secretary of State that owing to special circumstances the authority can better discharge their functions under the enactments specified in subsection (1) of the last foregoing section without a children's committee, the Secretary of State may direct that thenceforth the said section shall not apply to the authority.

(3) A direction under subsection (1) or subsection (2) of this section may be revoked by the Secretary of State either—

- (a) on the application of the local authority concerned ; or
- (b) without any such application, if the Secretary of State is of the opinion that experience of the arrangements made by the authority for the discharge of their functions under the enactments specified in subsection (1) of the last foregoing section has shown that the arrangements are not satisfactory.

(4) Nothing in this or the last foregoing section shall be construed as prejudicing the powers conferred by section ninety-one of the Local Government Act, 1933, as to the appointment of joint committees, and references to the appointment of a children's committee by an authority, and to the children's committee of an authority, shall accordingly be construed, as respects England and Wales, as including references to concurrence in the appointment of a joint committee under the said section ninety-one, and to any joint committee so appointed ; and the requirement of the last foregoing section that a sub-committee shall include at least one member of the local authority shall, in relation to a sub-committee of any such joint committee, be construed as a requirement that the sub-committee shall include at least one member of each local authority.

(5) In Scotland, any two or more local authorities may agree to combine in the establishment of a children's committee for the discharge of their functions under the enactments specified in subsection (1) of the last foregoing section, and the provisions of sections one hundred and nineteen and one hundred and twenty-one of the Local Government (Scotland) Act, 1947, shall apply in so far as they are not inconsistent with the provisions of the last foregoing section. In relation to a sub-committee of any such joint committee, the requirement of the last foregoing section that a sub-committee shall include one member of the local authority shall be construed as a requirement that a sub-committee shall include at least one member of each local authority :

Provided that nothing in this or the last foregoing section shall be construed as precluding a local authority from joining another local authority in establishing remand homes in accordance with the provisions of subsection (1) of section eighty-one of the Children and Young Persons (Scotland) Act, 1937, and subsections (2) and (3) of the last foregoing section shall not apply to any arrangement so made.

NOTES TO SECTION 40

Administration—Special cases.—This section makes provision for the modification of the requirements of s. 39, *ante*, in a number of special cases.

Where the Secretary of State is satisfied that a particular local authority can fulfil its functions under s. 38 (1), *ante*, better without the appointment of a children's committee he may direct that the authority shall be relieved from the obligation to appoint such a committee (sub-s. (1)) ; similarly, if at any time more than three years after the commencement of the Act an authority which has appointed a committee satisfies him that they can better discharge their said functions without such a committee, he may give directions accordingly (sub-s. (2)). In the House of Lords it was suggested that directions dispensing with the establishment of a children's committee or permitting its dissolution would only be given in the case of local authorities with a very small area or a very small population per square mile (154 H. of L. Official Reports 817), and all such directions are to be revocable (sub-s. (3)).

Any two or more local authorities may combine in appointing a joint children's Committee (which must be distinguished from a joint sub-committee appointed under s. 39 (6), *ante*), both in England and Wales (sub-s. (4)) and in Scotland

(sub-s. (5)). Even where no joint committee is appointed two or more local authorities may with the consent of the Secretary of State, which will presumably only be given in the case of small authorities, share the services of a children's officer (s. 41 (3), *post*).

Subsection (2).—*The commencement of the Act.*—*i.e.*, July 5, 1948. See s. 62 (2), *post*.

Subsection (4).—*Local Government Act, 1933, s. 91.*—26 Halsbury's Statutes 355.—Under this section a local authority is authorised to concur with any one or more other local authorities in appointing a joint committee for any purpose in which they are jointly interested and may delegate to it any functions relating to the purpose of the joint committee other than powers of raising a rate or borrowing money. Where a local authority concur in appointing a joint committee for the purpose of discharging functions required by statute to be discharged through a committee appointed under the statute, as in the case of s. 39, *ante*, all provisions of the statute with regard to the functions and constitution of the statutory committee (including provisions as to the appointment of persons who are not members of the local authority) apply, with suitable modification, to the joint committee.

Subsection (5).—*Local Government (Scotland) Act, 1947, ss. 119, 121.*—S. 119 permits the voluntary combination of two or more local authorities in various ways including the appointment of joint committees, and s. 121 contains provisions as to the members and constitution of joint boards.

Definitions.—“Local authority” (s. 38, *ante*); “functions” (s. 59 (1), *post*).

41. The children's officer.—(1) For the purposes of their functions under the enactments specified in subsection (1) of section thirty-nine of this Act, a local authority shall in accordance with the provisions of this section appoint an officer to be known as the children's officer.

(2) A local authority shall not appoint a person to be the children's officer except after consultation with the Secretary of State, and for the purpose of such consultation shall send to the Secretary of State particulars showing the name, age, experience and qualifications of the persons from whom they propose to make a selection, and if the Secretary of State is of opinion that any of those persons is not a fit person to be the children's officer of the authority he may give directions prohibiting his appointment:

Provided that the Secretary of State may, if he thinks fit so to do in the case of the first appointment made under this section by any particular local authority, dispense with compliance with this subsection if the authority are proposing to appoint a person who, on the date of the passing of this Act, was performing as an officer of the authority functions corresponding to those falling to be performed after the commencement of this Act by the children's officer.

(3) Where the Secretary of State is satisfied that the same person can efficiently discharge the functions of children's officer for two or more local authorities, he may approve the appointment of one person as the children's officer by each of the authorities.

(4) The children's officer of an authority shall not, except with the consent of the Secretary of State, be employed by that authority in any other capacity.

(5) A local authority shall secure the provision of adequate staff for assisting the children's officer in the exercise of his functions.

(6) The provisions as to remuneration and tenure of office contained in sections one hundred and five and one hundred and six of the Local Government Act, 1933, section seventy-five of the London Government Act, 1939, or sections eighty-two and ninety-two of the Local Government (Scotland) Act, 1947, as the case may be, shall apply to children's officers.

NOTES TO SECTION 41

Children's officer.—Sub-s. (1) of this section requires every local authority to appoint a children's officer for the purpose of the functions entrusted to the children's committee (as to which see s. 39 (1), *ante*). The appointment is only to be made after consultation with the Secretary of State, who may prohibit the appointment of a particular applicant (sub-s. (2), *supra*). The same person may, with the consent of the Secretary of State, be appointed children's officer by more than one authority (sub-s. (3), *supra*), but he may not be employed in any other capacity without the Secretary of State's consent (sub-s. (4) *supra*). The children's officer is intended to be a "field officer," most of whose time will be spent outside the authority's office in making contacts with children, parents, homes and institutions and it has been announced that instructions to this effect will be included in a circular to be sent by the Secretary of State to local authorities (see 154 H. of L. Official Reports 824). To enable him to perform his duties efficiently the authority is required to provide him with adequate staff (sub-s. (5), *supra*).

The authority has the same powers of fixing the remuneration and regulating the tenure of office of the children's officer that it has in relation with other officers (sub-s. (6), *supra*).

Subsection (1).—*Appoint.*—It is advisable that the appointment should be under seal, see *Arnold v. Poole Corporation* (1842), 2 Dowl. (N. S.) 574; 13 Digest 383, III6; *R. v. Stamford Corporation* (1844), 6 Q. B. 433; 33 Digest 76, 486; and *Smith v. Cartwright* (1851), 6 Exch. 927; 33 Digest 72, 462.

Subsection (2).—*Consultation with the Secretary of State.*—This provision for consultation with the Minister responsible for the administration of the Act is similar to that contained in s. 88 of the Education Act, 1944 (37 Halsbury's Statutes 200), requiring consultation with the Minister of Education before the appointment of a Chief Education Officer.

Proviso.—Before the passing of the present Act some authorities had already appointed officers to do work analogous to that which is required of children's officers under the Act. Where such appointment was approved by the Secretary of State when it was made this proviso enables him to relieve the authority from the necessity again to refer the matter back to him.

Subsection (6).—*Local Government Act, 1933, ss. 105, 106.*—26 Halsbury's Statutes 361.—S. 105 as to county councils, and s. 106 as to borough councils, provide that the council may pay to its officers such reasonable remuneration as they may determine and that officers shall hold office during the pleasure of the council. The fact that by statute an officer holds office during the pleasure of a local authority does not prevent an agreement being made for determination on notice or affect any right or obligation of the officer to retire at a specified age or on the happening of a specified event in pursuance of any applicable superannuation Act or scheme; see the Local Government Act, 1933, s. 121 (26 Halsbury's Statutes 370).

Local Government (Scotland) Act, 1947, ss. 82, 92.—These sections correspond to ss. 105 and 106 of the Local Government Act, 1933, *supra*.

Definitions.—"Local authority" (s. 38, *ante*); "functions" (s. 59 (1), *post*).

42. Powers of Secretary of State with respect to functions of local authorities.—(1) Local authorities shall exercise their functions under the enactments specified in subsection (1) of section thirty-nine of this Act (including any discretion conferred on them thereunder) under the general guidance of the Secretary of State.

(2) Sections three hundred and twenty-two, three hundred and twenty-four and three hundred and twenty-five of the Public Health Act, 1936 (which make provision for the exercise by the Minister of Health of certain functions otherwise exercisable by certain authorities) shall not apply in relation to any functions of local authorities under Part VII of that Act, being functions relating to child life protection.

NOTES TO SECTION 42

Subsection (1).—In exercising the power of guidance conferred by this subsection the Secretary of State will have the assistance of one of the Advisory Councils constituted under ss. 43 and 44, *post*.

Subsection (2).—*Public Health Act, 1936, ss. 322, 324, 325.*—29 Halsbury's Statutes 525, 526, 527.—As to the functions of local authorities under Part VII of that Act see the notes to s. 38, *ante*.

Definitions.—"Local authority" (s. 38, *ante*); "functions" (s. 59 (1), *post*).

43. Advisory Council on Child Care.—(1) There shall be a council, to be known as the Advisory Council on Child Care, for the purpose of advising the Secretary of State on matters connected with the discharge of his functions in England and Wales under this Act, Parts IV and V of the Children and Young Persons Act, 1933, or any of the enactments specified in paragraphs (b) and (c) of subsection (1) of section thirty-nine of this Act.

(2) The said council shall consist of such persons, to be appointed by the Secretary of State, as the Secretary of State may think fit, being persons specially qualified to deal with matters affecting the welfare of children and persons having such other qualifications as the Secretary of State considers requisite.

Among the persons appointed under this subsection there shall be persons having experience in local government.

(3) The Secretary of State shall appoint a person to be chairman, and a person to be the secretary, of the said council.

(4) It shall be the duty of the said council to advise the Secretary of State on any matter which the Secretary of State may refer to them, being such a matter as is mentioned in subsection (1) of this section, and they may also, of their own motion, make representations to the Secretary of State as respects any such matter as is mentioned in that subsection.

(5) The Secretary of State may make out of moneys provided by Parliament such payments to the members of the said council in respect of travelling, subsistence and other expenses as he may with the consent of the Treasury determine.

NOTES TO SECTION 43

Advisory Council for England.—It is a common feature of recent social legislation to provide that the Minister responsible for the administration of a statute introducing major reforms shall be given the assistance of a standing body of experts, and the present section follows a familiar pattern. See, for example, the Education Act, 1944, s. 4 (37 Halsbury's Statutes 90), constituting the Central Councils for Education; the National Insurance (Industrial Injuries) Act, 1946, s. 61 (39 Halsbury's Statutes 379), constituting the Industrial Injuries Advisory Council, and the National Insurance Act, 1946, s. 41 (39 Halsbury's Statutes 456), constituting the National Insurance Advisory Committee.

The Advisory Committee on Child Care is to be appointed by the Home Secretary and to consist of experts on child welfare and of persons with such other qualifications as the Home Secretary deems desirable. Some members of the Council, whether child welfare experts or not, are to be persons with local government experience. The Council is not only to advise the Home Secretary at his express request, but may also without any such request make representations on any matters arising within its general terms of reference. No provision is made for the remuneration of the members, but they may be paid their travelling, subsistence and other expenses.

44. Advisory Council on Child Care for Scotland.—(1) There shall be a separate Advisory Council on Child Care for Scotland, for the purpose of advising the Secretary of State on matters connected with the discharge of his functions under this Act, Parts I, V and VI of the Children and Young Persons (Scotland) Act, 1937, and the Adoption of Children (Regulation) Act, 1939, and the provisions of subsections (2) to (4) of the last foregoing section shall apply accordingly.

(2) The Secretary of State may require the Advisory Council to appoint, and the council with the approval of the Secretary of State shall have power to appoint, committees to deal with any matter mentioned in the last foregoing subsection.

(3) Any committee appointed under the last foregoing subsection shall include such persons as may be nominated by the Secretary of State, being persons, other than members of the council, having special knowledge or experience of the subject with which the committee is required to deal.

(4) A report of any such committee shall be submitted to the Secretary of State by the council, who may make such comments thereon as they think fit.

(5) The Secretary of State may make out of moneys provided by Parliament such payments to the members of the said council and to the members of any committees appointed under the provisions of this section, in respect of travelling, subsistence and other expenses as he may with the consent of the Treasury determine.

NOTES TO SECTION 44

Advisory Council for Scotland.—This section provides for the constitution of an Advisory Council on Child Care for Scotland which will perform similar functions to the English Council, as to which see s. 43, *ante*. The provisions as to committees and the payment of committee members in sub-ss. (2) to (5) have no counterparts in s. 43.

Subsection (1).—*Children and Young Persons (Scotland) Act, 1937, Parts I, V and VI.*—Part I relates to child life protection, Part V to remand homes, approved schools and committal to "fit persons," and Part VI to voluntary homes.

Adoption of Children (Regulation) Act, 1939.—32 Halsbury's Statutes 205.

Definition.—"Functions" (s. 59 (1), *post*).

45. Grants for training in child care.—(1) The Secretary of State with the consent of the Treasury may out of moneys provided by Parliament defray or contribute towards any fees or expenses incurred by persons undergoing training approved by the Secretary of State with a view to, or in the course of, their employment for the purposes of any of the enactments specified in subsection (1) of section thirty-nine of this Act, or their employment by a voluntary organisation for similar purposes, and may defray or contribute towards the cost of maintenance of persons undergoing such training.

(2) The Secretary of State may out of moneys provided by Parliament make grants of such amounts, and subject to such conditions, as he may with the consent of the Treasury determine towards expenses incurred by any body of persons in providing courses suitable for persons undergoing training as aforesaid.

NOTE TO SECTION 45

Training grants.—This section authorises the Secretary of State with the consent of the Treasury to make out of public funds two distinct kinds of training grants :—

- (a) Grants, defraying fees or expenses or cost of maintenance, in respect of students taking courses of instruction with a view to, or in the course of, certain kinds of employment relating to children deprived of a normal home life (sub-s. (1)), and
- (b) Grants for the provision of courses for such students (sub-s. (2)).

The memorandum on the financial effects of the Act published with the Bill as originally presented in the House of Commons estimates that expenditure under this section in the first year will amount to no less than £65,000, showing that it is intended to induce a substantial number of persons to undergo training in child care. S. 47 (1), *post*, authorises the Secretary of State to deduct a proportion, not exceeding 50 per cent., of this expenditure from the grant payable to local authorities.

46. Grants to voluntary organisations.—(1) The Secretary of State may make out of moneys provided by Parliament grants of such amounts, and subject to such conditions, as he may with the consent of the Treasury determine towards expenses incurred or to be incurred by voluntary organisations, in circumstances such that it appears to the Secretary of State requisite that the grants should be made, for improving premises in which voluntary homes are being carried on or the equipment of voluntary homes, or for securing that voluntary homes will be better provided with qualified staff.

(2) A local authority may, with the consent of the Secretary of State, make contributions to any voluntary organisation the object or primary object of which is to promote the welfare of children.

NOTES TO SECTION 46

Grants to voluntary organisations.—Sub-s. (1) of this section authorises the Secretary of State, in certain circumstances, to make grants towards the improvement of voluntary homes. It is estimated in the financial memorandum published with the Bill—which became this Act—when it was first presented to the House of Commons that the total cost of such grants in the first year will amount to £48,000. S. 47 (1), *post*, empowers the Secretary of State to deduct a proportion, not exceeding 50 per cent., of this expenditure from the grants payable to local authorities.

Sub-s. (2) of the present section empowers local authorities, with the consent of the Secretary of State, to make contributions to voluntary organisations concerned with child welfare. Such contributions will rank for grant under s. 47 (1), *post*.

Definitions.—“ Local authority ” (s. 38, *ante*) ; “ voluntary home,” “ voluntary organisation ” (s. 59 (1), *post*).

47. Grants to local authorities.—(1) There shall be paid out of moneys provided by Parliament to a local authority in respect of expenditure incurred by them for the purpose of the discharge of their functions under any of the enactments specified in subsection (1) of section thirty-nine of this Act, other than expenses incurred as managers of an approved school or in respect of children sent to an approved school or in respect of remand homes,—

- (a) such sums not exceeding fifty per cent. of the expenditure as the Secretary of State may with the consent of the Treasury direct, and subject to such conditions as he may with the like consent determine ;

- (b) such additional sums as he may with the like consent direct as representing the share appropriate to the local authority of sums received under the provisions of the Children and Young Persons Act, 1933, or the Children and Young Persons (Scotland) Act, 1937, as the case may be, as to contributions towards expenses, or under subsection (3), or paragraph (b) of subsection (8), of section twenty-six of this Act, and paid over to the Secretary of State, other than such sums so paid over which were received in respect of children sent to approved schools,

subject however to the deduction of an amount equal to such proportion not exceeding fifty per cent. as the Secretary of State may with the consent of the Treasury determine of so much of the expenditure incurred by the Secretary of State under the two last foregoing sections as he may with the like consent allocate to that authority.

(2) No payment shall be made under section one hundred and four of the Children and Young Persons Act, 1933, or section one hundred and seven of the Children and Young Persons (Scotland) Act, 1937, (which provide for Exchequer grants for certain expenditure under those Acts) in respect of any expenditure in respect of which payments are authorised to be made under the last foregoing subsection.

NOTES TO SECTION 47

Financial provisions.—The general principle behind the financial arrangements embodied in sub-s. (1) of this section is that the cost over the whole field of care of children deprived of a normal home life, shall be shared equally between the Exchequer and the local authorities. Thus, it is provided that local authorities shall receive a grant of up to fifty per cent. of their total expenditure, but, on the other hand, shall contribute up to fifty per cent. of the Secretary of State's expenditure on grants for training in child care under s. 45, *ante*, and grants for the improvement of voluntary homes under s. 46, *ante*.

In addition to the grant based on expenditure, local authorities may be allowed a proportion of the sums received by the Secretary of State in respect of contributions towards expenses or under affiliation orders made at the instance of the local authority.

In calculating a local authority's expenditure eligible for grant, expenditure incurred as managers of an approved school, or in respect of children sent to an approved school or in respect of remand homes, as to which see the note below, is to be ignored. Likewise, in calculating sums received by the Secretary of State in respect of contributions, or under affiliation orders made at the instance of local authorities, sums in respect of children sent to approved schools are to be ignored.

Sub-s. (2) of the present section prevents the same expenditure from ranking for grants both under the Children and Young Persons Act, 1933, or the Children and Young Persons (Scotland) Act, 1937, and under the present Act.

Subsection (1).—*Expenses incurred as managers of an approved school, or in respect of children sent to an approved school or in respect of remand homes.*—S. 104 (1) of the Children and Young Persons Act, 1933 (26 Halsbury's Statutes 237), and s. 107 (1) of the Children and Young Persons (Scotland) Act, 1937, provide for the payment of Exchequer grants in respect of these expenses of such amount and on such conditions as the Secretary of State with the approval of the Treasury may recommend.

Contributions towards expenses.—See the notes to s. 23, *ante*. Sums received as contributions may be either sums paid pursuant to contribution orders made under s. 87 of the Children and Young Persons Act, 1933 (26 Halsbury's Statutes 224), or s. 91 of the Children and Young Persons (Scotland) Act, 1937, or sums paid under agreements obviating the necessity for obtaining contribution orders. In either case such sums are payable to the local authority in whose area the person liable to make them resides, by whom the balance after deducting the expenses of collec-

tion is paid over to the Secretary of State (Children and Young Persons Act, 1933, s. 86 (3); 26 Halsbury's Statutes 224; and see, as to Scotland, Children and Young Persons (Scotland) Act, 1937, s. 90 (3)).

The two last foregoing sections.—i.e., s. 45, ante, relating to training grants, and s. 46, ante, relating to grants for the improvement of voluntary homes.

Subsection (2).—*Children and Young Persons Act, 1933, s. 104.*—26 Halsbury's Statutes 237.

Definitions.—“Approved school,” “managers” (Children and Young Persons Act, 1933, s. 107; 26 Halsbury's Statutes 238); “local authority” (s. 38, *ante*).

48. Administrative expenses of Secretary of State.—The administrative expenses incurred by the Secretary of State under this Act shall be defrayed out of moneys provided by Parliament.

49. Accounts of councils of county boroughs.—(1) The council of every county borough shall keep separate accounts of the sums received and expended by them in the exercise of their functions under any of the enactments mentioned in subsection (1) of section thirty-nine of this Act, other than sums received or expended by them as managers of an approved school or in respect of children sent to an approved school or in respect of remand homes.

(2) The accounts to be kept under this section shall be made up and audited in like manner as the accounts of a county council.

(3) The enactments relating to the audit of accounts by a district auditor and to the matters incidental to such audit and consequential thereon shall have effect in relation to the accounts which the council of a county borough are required to keep under this section as they have effect in relation to the accounts of a county council.

NOTES TO SECTION 49

The necessity for this section arises from the fact that although by s. 219 of the Local Government Act, 1933 (26 Halsbury's Statutes 424), all the accounts of a county council are automatically subject to district audit, yet by ss. 237–240 of that Act (26 Halsbury's Statutes 433–436), the accounts of a borough council are not so subject in the absence of a statutory provision to that effect, or unless the council so determines.

Subsection (1).—*County borough.*—The councils of county boroughs are by s. 38, *ante*, local authorities for the purposes of the Act.

Separate accounts.—The necessity for keeping separate accounts arises from the fact that the majority of the other accounts of a county borough council are not necessarily subject to district audit.

Subsection (2).—*In like manner as the accounts of a county council.*—See Part X (ss. 219–243, inclusive), of the Local Government Act, 1933 (26 Halsbury's Statutes 424–437). By s. 235 of that Act (26 Halsbury's Statutes 432), the Minister of Health is enabled to make regulations generally with regard to the preparation and audit of accounts which are subject to audit by the district auditor.

PART VII

MISCELLANEOUS AND GENERAL

50. Appointment of guardians.—In section four of the Guardianship of Infants Act, 1925, the following subsection shall be inserted after subsection (2):—

“(2A) Where an infant 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 infant.”

NOTES TO SECTION 50

Guardianship.—This section amends the Guardianship of Infants Act, 1925 (9 Halsbury's Statutes 820), so as to enable a court of summary jurisdiction or a county court, or in Scotland the sheriff, to appoint a person on his own application to be guardian of a child (who must in the case of an application to a court of summary jurisdiction be under the age of sixteen) if he has no parent or guardian living and no one else has parental rights over him. Formerly, although under s. 4 of the Guardianship of Infants Act, 1925, as originally enacted (9 Halsbury's Statutes 821), the High Court, the county court and a court of summary jurisdiction, or in Scotland the sheriff, all had power to appoint a guardian to act jointly with a surviving parent in cases where there was no testamentary guardian appointed by the deceased parent, there was no statutory jurisdiction to appoint a guardian of an infant who had no living parents or guardian. Such an appointment could be made by the Chancery Division in the exercise of its inherent jurisdiction over infants (see Halsbury's Laws of England (2nd Edn.), Vol. 17, p. 695), but the expense involved in an application to the High Court prevented persons of small means from seeking the exercise of this jurisdiction in any but the most exceptional cases.

Little use has been made of the guardianship jurisdiction of the county court under the Guardianship of Infants Acts, 1886 and 1925, and it may be that most applications under the new sub-s. (2a), inserted in s. 4 of the 1925 Act by the present section, will be made to courts of summary jurisdiction. Such an application must be made by complaint; see Guardianship of Infants (Summary Jurisdiction) Rules, 1925, S. R. & O. 1925 No. 960/L. 24. Proceedings under the Acts of 1886 and 1925 are "domestic proceedings" for the purposes of the Summary Procedure (Domestic Proceedings) Act, 1937 (30 Halsbury's Statutes 344), with the result that the general public are not entitled to be present and that newspaper reports may only give certain bare particulars.

No other person having parental rights.—These words prevent an application for appointment of a guardian being made where a resolution of a local authority assuming parental rights under s. 2, *ante*, is in force.

The court.—See Guardianship of Infants Act, 1886, s. 9, Guardianship of Infants Act, 1925, s. 7 (1); 9 Halsbury's Statutes 788, 823.

51. Provisions as to places of safety.—(1) Local authorities shall make provision, in homes provided by them under Part II of this Act, for the reception and maintenance of children removed to a place of safety under the Children and Young Persons Act, 1933, the Children and Young Persons (Scotland) Act, 1937, the Public Health Act, 1936, the Public Health (London) Act, 1936, or the Adoption of Children (Regulation) Act, 1939.

(2) The provision to be made in pursuance of the last foregoing subsection shall as far as practicable be made in such separate accommodation for the temporary reception of children as is required to be provided by subsection (2) of section fifteen of this Act.

(3) Where under any of the enactments mentioned in subsection (1) of this section a child is removed to a place of safety not being a home provided by a local authority under Part II of this Act and not being a hospital vested in the Minister of Health or the Secretary of State, the expenses of the child's maintenance there shall be recoverable from the local authority within whose area the child was immediately before his removal.

NOTES TO SECTION 51

Places of safety.—Provision for the removal of a child to a place of safety is made by the statutes referred to in sub-s. (1), *supra*, in the following cases:—

- (1) By a constable or any person authorised by a justice of the peace when there is reason to believe that a person under seventeen is about to go abroad for the purpose of performing for profit (Children and Young Persons Act, 1933, s. 26 (6); 26 Halsbury's Statutes 190).

- (2) On a justice's warrant where there is reasonable cause to suspect that a child has been or is being assaulted, ill-treated or neglected or that any of certain specified offences has been or is being committed against him (Children and Young Persons Act, 1933, s. 40; 26 Halsbury's Statutes 197; Children and Young Persons (Scotland) Act, 1937, s. 47).
- (3) By a constable or any person authorised by any court or by any justice of the peace where any of the said specified offences has been or is believed to have been committed against the child or the child is about to be brought before a juvenile court as being in need of care or protection, or as being refractory or at the instance of a probation officer or other person under whose supervision he has been placed (Children and Young Persons Act, 1933, s. 67 (1); 26 Halsbury's Statutes 68; Children and Young Persons (Scotland) Act, 1937, s. 71).
- (4) On an order of a court of summary jurisdiction, or in cases of urgency of a justice, acting where necessary *ex parte*, where a foster child, or a child placed through the agency of a third party, not being a registered adoption society, in the care of a person who is not a parent, guardian or relative of the child, is about to be received or is being kept in overcrowded, insanitary or dangerous premises, or by a person who is unfit to have the care of him, or in any premises or by any person in contravention of certain statutory provisions, or in a detrimental environment (Public Health Act, 1936, s. 212; 29 Halsbury's Statutes 467; Public Health (London) Act, 1936, s. 261; 30 Halsbury's Statutes 584; Children and Young Persons (Scotland) Act, 1937, s. 5; Adoption of Children (Regulation) Act, 1939, s. 7 (6); 32 Halsbury's Statutes 211).

A juvenile court before whom a child is brought as being in need of care or protection, or as being refractory or by the probation officer or other person under whose supervision he has been placed may also make an interim order for his detention or continued detention in a place of safety (Children and Young Persons Act, 1933, s. 67 (2); 26 Halsbury's Statutes 210; Children and Young Persons (Scotland) Act, 1937, s. 71).

For the purposes of the above provisions a "place of safety" is "any home provided by a local authority under Part II of the Children Act, 1948, remand home, or police station or any hospital surgery, or any other suitable place, the occupier of which is willing temporarily to receive a child or young person" (Children and Young Persons Act, 1933, s. 107 (1); 26 Halsbury's Statutes 239; Public Health Act, 1936, s. 220; 29 Halsbury's Statutes 420; Public Health (London) Act, 1936, s. 304; 30 Halsbury's Statutes 604; Children and Young Persons (Scotland) Act, 1937, s. 110 (1); Adoption of Children (Regulation) Act, 1939, s. 16 (2); 32 Halsbury's Statutes 218 as amended by Sched. III, *post*, and the National Assistance Act, 1948, Sched. VII).

The effect of sub-ss. (1) and (2) of the present section is to make homes provided by local authorities pursuant to s. 15, *ante*, and in particular, wherever this is practicable, temporary reception homes, available for use as places of safety.

Sub-s. (3) makes the expenses of maintaining a child in a place of safety (other than a local authority's home or a State hospital) recoverable from the authority in whose area the child was immediately before removal to a place of safety. It should be noted that there is no obligation on such authority to pay these expenses until they are demanded, and it is understood that where a child is placed in a voluntary home the managers are frequently prepared to maintain him without seeking to recover the cost.

Definitions.—"Local authority" (s. 38, *ante*); "child" (s. 59 (1), *post*).

Consequential amendments.—See the amendments to the Children and Young Persons Act, 1933, s. 107; the Public Health Act, 1936, s. 220; the Public Health (London) Act, 1936, s. 304; and the Children and Young Persons (Scotland) Act, 1937, s. 110, effected by s. 60 (2) and Sched. III, *post*.

52. Amendment of Family Allowances Act, 1945, ss. 11 and 26.

—(1) In section eleven of the Family Allowances Act, 1945, the following subsection shall be substituted for subsection (3):—

"(3) A child in respect of whom there is in force a resolution of a local authority passed under subsection (1) of section two of the

Children Act, 1948, shall not, for the purposes of this Act, be treated as included in any family :

Provided that this subsection shall not have effect as respects any period during which under the provisions of section three or section four of the said Act of 1948 the child is allowed by the local authority to be, either for a fixed period or otherwise, under the control of a parent, guardian, relative or friend of the child."

(2) Subsection (1) of this section shall have effect both as respects England and Wales and as respects Scotland.

(3) For the avoidance of doubt it is hereby declared that references in the said section eleven to an order or resolution made or passed under any enactment include references to an order or resolution which by virtue of any other provision is deemed to be made or passed under the said enactment.

NOTES TO SECTION 52

Family allowances.—The replacement of sub-s. (3) of s. 11 of the Family Allowances Act, 1945 (38 Halsbury's Statutes 348), effected by this section is consequential on the replacement of the Poor Law Act, 1930, s. 52 (12 Halsbury's Statutes 994 ; repealed by the National Assistance Act, 1948), which gave power to a poor law authority by resolution to assume parental rights over certain children, by s. 2, *ante*, which enables a local authority by resolution to assume parental rights over a similar class of children.

Mutatis mutandis the substituted subsection is on similar lines to that which it replaces. The position as to family allowances and the assumption of parental rights under the Poor Law was the subject of Ministry of National Insurance, Leaflet Form 33 (England and Wales) ; see Clarke Hall and Morrison on Children, 3rd Edn., p. 239.

Subsection (1).—*Control of a parent, guardian, relative or friend.*—See s. 3 (3), *ante*.

Subsection (2).—*Scotland.*—The Poor Law Act, 1930, s. 52, *supra*, did not apply to Scotland and there was no machinery whereby a poor law authority in Scotland could assume parental rights over a child. S. 26 (9) of the Family Allowances Act, 1945, therefore, provided that in the application of that Act to Scotland a different sub-s. (3) should be substituted in s. 11 for that applying to England and Wales. S. 2 of the present Act giving power to a local authority to assume parental rights applies to Scotland as well as to England and Wales, and accordingly s. 26 (9) of the Family Allowances Act, 1945, is repealed by s. 60 (3) and Sched. IV, *post*, while the present subsection makes it clear that the new sub-s. (3) substituted in the Family Allowances Act, 1945, s. 11, applies to Scotland, as well as England and Wales.

Subsection (3).—*Deemed to be made or passed.*—The effect of these words is to create a statutory fiction by extending the meaning of a term to a subject-matter which, it is admitted, it does not properly designate, see *R. v. Norfolk County Council* (1891), 60 L. J. Q. B. 379 ; 26 Digest 267, 74, and the Australian case of *Muller v. Dalgety* (1909), 9 Ch. R. 693. A resolution under s. 52 of the Poor Law Act, 1930, in force immediately before the coming into operation of the present Act, is to be deemed to be a resolution duly passed under s. 2, *ante* ; see s. 60 (1) and Sched. II, para. 2, *post*.

Consequentially on the present subsection, the words " or deemed to be made " (referring to approved school orders) in the Family Allowances Act, 1945, s. 11(1), are repealed as being now redundant, by s. 60 (3) and Sched. IV, Part I, *post*.

53. Enforcement of orders for payment of money under Guardianship of Infants Acts.—An order of a court of summary jurisdiction for the payment of money under the Guardianship of Infants Act, 1886, whether made before or after the commencement of this Act, may be enforced, varied or revoked in like manner as an affiliation order,

and the enactments relating to affiliation orders shall apply accordingly, with the necessary modifications.

NOTES TO SECTION 53

Orders for Maintenance under Guardianship of Infants Acts.—Where the court makes an order under the Guardianship of Infants Act, 1886, s. 5 (9 Halsbury's Statutes 787), giving the custody of an infant to the mother, s. 3 (2) of the Guardianship of Infants Act, 1925 (9 Halsbury's Statutes 821), provides that the court may further order that the father shall pay to the mother towards the maintenance of the infant such weekly or other periodical sum as the court deems reasonable having regard to the father's means. Where the order is made by a court of summary jurisdiction the amount awarded for maintenance may not exceed 20s. per week (Guardianship of Infants Act, 1925, s. 7 (1) (c); 9 Halsbury's Statutes 823). The order may be enforced in the same manner as an order for the payment of a civil debt recoverable summarily (*ibid.*, s. 7 (4)), and may be varied or discharged by subsequent orders made on the application of either parent (*ibid.*, s. 3 (4)).

The effect of the present section which enables orders for maintenance under the Guardianship of Infants Act, 1886, to be enforced, varied or revoked in the same way as affiliation orders, is to make them enforceable by distress and committal, and to apply to maintenance orders the provisions reproducing Regulations 17B, 17C and 17D of the Defence (Administration of Justice) Regulations, 1940, contained in paras 5-7 of Sched. II to the Emergency Laws (Miscellaneous Provisions) Act, 1947, and which are made permanent by *ibid.*, s. 2 (see Appendix A, *post.*) The purpose of those provisions is to enable proceedings for enforcement, variation and revocation of orders to be taken in the most convenient court. Provision is made for the complaint to be heard by the court within whose jurisdiction the father resides, or, in the case of an application to vary or revoke an order, by the court within whose jurisdiction either the mother or father resides in lieu of the court which made the original order.

54. Provisions as to entry and inspection.—(1) In section one hundred and three of the Children and Young Persons Act, 1933, and section one hundred and six of the Children and Young Persons (Scotland) Act, 1937, (which provide for the appointment by the Secretary of State of inspectors for the purposes of the enactments relating to children and young persons) the references to the enactments relating to children and young persons shall include references to this Act.

(2) Any inspector appointed under the said section one hundred and three or the said section one hundred and six may enter any of the following places, that is to say—

- (a) any premises provided by a local authority under Part II of this Act ;
- (b) any premises in which under subsection (2) or subsection (3) of section thirteen of this Act accommodation and maintenance are for the time being provided for a child in the care of a local authority ;
- (c) any place where a foster child within the meaning of Part VII of the Public Health Act, 1936, or Part XIII of the Public Health (London) Act, 1936, is being maintained ;
- (d) any place where a child in respect of whom a notice is required to be given under Part I of the Children and Young Persons (Scotland) Act, 1937, is being maintained ;

(e) any place where a child is being maintained in pursuance of any arrangements to which subsection (1) of section seven of the Adoption of Children (Regulation) Act, 1939 (which relates to arrangements for taking over the care of children effected through third parties) applies; and

(f) any place where a child is for the time being boarded out either by a local authority or by a voluntary organisation, and inspect the place and any children therein.

(3) It shall be the duty of local authorities from time to time to cause children in voluntary homes in their area to be visited in the interests of the wellbeing of the children, and any person authorised in that behalf by a local authority may enter any voluntary home in the area of the authority for the purpose of visiting the children in the home.

(4) Any person authorised in that behalf by a local authority may enter any voluntary home outside the area of the authority for the purpose of visiting children in the home who are in the care of the authority under section one of this Act or are for the time being committed to the care of the authority as a fit person by an order of any court under the Children and Young Persons Act, 1933 or the Children and Young Persons (Scotland) Act, 1937.

(5) Nothing in the two last foregoing subsections shall apply to a voluntary home which, otherwise than by virtue of section ninety-four of the said Act of 1933 or section ninety-eight of the said Act of 1937, is as a whole subject to inspection by, or under the authority of, a Government department.

(6) A person who proposes to exercise any power of entry or inspection conferred by this Act shall if so required produce some duly authenticated document showing his authority to exercise the power.

(7) Any person who obstructs the exercise of any such power as aforesaid shall be guilty of an offence and liable on summary conviction to a fine not exceeding five pounds in the case of a first offence or twenty pounds in the case of a second or any subsequent offence.

NOTES TO SECTION 54

Subsection (1).—*Children and Young Persons Act, 1933, s. 103.*—26 Halsbury's Statutes 236.

Subsection (2).—*Paragraph (a).*—Premises provided by a local authority under Part II of this Act are homes (s. 15, *ante*), and hostels (s. 19, *ante*).

Paragraphs (c) (d) and (e).—See the notes to s. 35, *ante*.

Paragraph (f).—As to boarding-out by local authorities, see ss. 13 (1) (a) and 14, *ante*, and as to boarding-out by voluntary organisations, see s. 33 (3), *ante*.

Subsection (3).—This subsection places local authorities under a positive duty to arrange for children in voluntary homes in their areas to be visited.

Subsection (4).—*Committed to the care of a local authority as a fit person.*—See s. 5, *ante*, and notes thereto.

Subsection (7).—*Second Offence.*—As to the meaning of "second offence," see *R. v. South Shields Licensing Justices*, [1911] 2 K. B. 1; 30 Digest 82, 637.

55. Prosecution of offences.—(1) In England and Wales, a local authority may institute proceedings for any offence under this Act, the provisions of the Children and Young Persons Act, 1933, other than the provisions of Parts I and II thereof, or the provisions relating to child

life protection of Part VII of the Public Health Act, 1936, or Part XIII of the Public Health (London) Act, 1936.

(2) Subsection (5) of section twenty-three and subsection (1) of section one hundred and two of the Children and Young Persons (Scotland) Act, 1937 shall cease to have effect.

NOTES TO SECTION 55

Subsection (1).—Prosecutions.—Under s. 98 (1) of the Children and Young Persons Act, 1933 (26 Halsbury's Statutes 234), as originally enacted, a local education authority or a poor law authority could institute proceedings for an offence under that Act. By s. 60 (2) and Sched. III, *post*, a new subsection is substituted which empowers the local education authority to prosecute for offences under Parts I and II of the 1933 Act, which deal with matters not directly relating to the care of deprived children. By the present section offences under the other Parts of the 1933 Act as well as under the present Act and the enactments relating to child life protection (as to which see the notes to s. 35, *ante*), may be prosecuted for by the local authority for the purposes of the present Act (see s. 38, *ante*).

The local authority will generally authorise the children's officer to institute on its behalf proceedings before a court of summary jurisdiction for the offences to which the present subsection applies, and in that case the children's officer will be able to conduct such proceedings although he is not a certificated solicitor; see Local Government Act, 1933, s. 277; 26 Halsbury's Statutes 452; London Government Act, 1939, s. 177; 32 Halsbury's Statutes 340.

Subsection (2).—Scotland.—In Scotland it is the general practice for proceedings for offences under common or statute law to be initiated by the Procurator Fiscal. S. 102 (1) of the Children and Young Persons (Scotland) Act, 1937, provides that a local authority or a poor law authority may institute proceedings under ss. 12–15 and 22 of that Act, but proceedings have not been so instituted for many years. In order that proceedings under these sections may follow the general Scottish practice it is provided that sub-s. (1) of s. 102 shall cease to have effect, and the whole section is repealed by s. 60 (3) and Sched. IV, Part I, *post*. Similarly it is provided that s. 23 (5), imposing a duty on a county or burgh council to take proceedings in certain cases, is to cease to have effect and is repealed by s. 60 (3) and Sched. IV, Part I, *post*.

56. Acquisition of land.—(1) The council of a county borough may be authorised by the Minister of Health to purchase compulsorily any land, whether situated within or outside the area of the council, for the purpose of any of their functions under this Act; and the council of a county or large burgh in Scotland may be authorised by the Secretary of State to purchase compulsorily any land, whether situated within or outside the county or burgh, for the purpose of any of their functions under this Act.

(2) The Acquisition of Land (Authorisation Procedure) Act, 1946, shall apply in relation to the compulsory purchase of land under this section by the council of a county borough as, by virtue of subsection (1) of section one hundred and fifty-nine of the Local Government Act, 1933, it applies to the compulsory purchase of land by a county council for the purpose of their functions under this Act; and accordingly for the purposes of the said Act of 1946 subsection (1) of this section shall be deemed to have been in force immediately before the commencement of that Act.

(3) Section two of the said Act of 1946 (which confers temporary powers for the speedy acquisition of land in urgent cases) shall not apply to the acquisition of land for the purposes of this Act, whether by a county council or by a county borough council.

(4) The Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947 (other than section two thereof) shall apply in relation to the compulsory purchase of land under this section as if subsection (1) thereof had been in force immediately before the commencement of the said Act.

NOTES TO SECTION 56

Subsection (1).—The reason for this subsection lies in the fact that while a county council may be authorised by the Minister of Health to purchase land compulsorily for the purpose of any of their functions under a public general Act (Local Government Act, 1933, s. 159 (1); 26 Halsbury's Statutes 392; London Government Act, 1939, s. 100; 32 Halsbury's Statutes 306, in both cases as amended by Acquisition of Land (Authorisation Procedure) Act, 1946, s. 6 and Sched. IV; 39 Halsbury's Statutes 60, 69), a county borough council and the council of a county or large burgh in Scotland may, in the absence of special provision in that behalf, only be so authorised for certain limited purposes; see Local Government Act, 1933, s. 159 (2); 26 Halsbury's Statutes 392; Local Government (Scotland) Act, 1947, s. 160.

Subsection (2).—S. 1 (1) of the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Halsbury's Statutes 53), provides that the uniform procedure prescribed by that Act shall apply to compulsory purchases under public general Acts in force immediately before the commencement of that Act, other than certain specified Acts.

Subsection (3).—For s. 2 of the Act of 1946, see 39 Halsbury's Statutes 56.

Subsection (4).—The Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947, corresponds to the English Act of 1946; see the note to sub-s. (2), *supra*.

Definitions.—"Functions" (s. 59 (1), (2), *post*); as to council of a county in relation to Scotland, see s. 59 (4), *post*.

57. Transfer, superannuation and compensation of officers.—

(1) The Secretary of State may by regulations provide—

- (a) for the transfer to a local authority of officers employed immediately before the commencement of this Act by the Common Council of the City of London or the council of a metropolitan borough or county district solely or mainly for the purposes of functions transferred by this Act from that council to the said local authority;
- (b) for enabling the Common Council of the City of London and the council of any metropolitan borough or county district in the case of any officer of the council who is a contributory employee or local Act contributor within the meaning of the Local Government Superannuation Act, 1937, and is transferred under the regulations to secure, by resolution passed in respect of him not later than three months after his transfer under the regulations, that for the purposes of the said Act of 1937 any non-contributing service of his shall be reckonable as contributing service and, in the case of any such officer on whom if he had remained in their employment a similar benefit could have been conferred by the council on his becoming entitled to a superannuation allowance, that the length of his service shall be deemed for the purposes of the said Act of 1937 or, as the case may be, the local Act in question, to be increased by such period as may be specified in the resolution;

- (c) for granting to persons who immediately before being transferred under the regulations were, by virtue of the employment from which they are so transferred, entitled to participate in superannuation benefits, an option either to participate, by virtue of their employment by the local authority to which they are transferred under the regulations, in superannuation benefits under a superannuation scheme of the local authority specified in the regulations or to retain rights corresponding with those previously enjoyed by them ;
- (d) for the payment by local authorities, subject to such exceptions or conditions (if any) as may be prescribed by the regulations, of compensation to persons of such descriptions as may be so prescribed who immediately before such date as may be so prescribed were employed by the Common Council of the City of London, the council of a metropolitan borough or the council of a county district in such full-time work as may be prescribed by the regulations and who suffer loss of employment or loss or diminution of emoluments which is attributable to the passing of this Act ;
- (e) for extending any provision made under paragraph (d) of this subsection to persons of such descriptions as may be prescribed by the regulations who, having before such date as aforesaid been employed as aforesaid and being persons who would have been so employed immediately before that date but for any national service (as defined in the regulations) in which they have been engaged, lose the prospect of their re-employment in any such work as a consequence of the passing of this Act ;
- (f) for such matters supplementary to and consequential on the matters aforesaid as appear to the Secretary of State to be necessary.
- (2) Regulations under this section may provide for the determination by the Secretary of State of all questions arising under the regulations and may make different provisions for different classes of cases.

NOTES TO SECTION 57

Transfer of child life protection officers.—When the National Health Service Act, 1946, was passed it was intended that councils and county borough councils in their capacity of local health authorities (see s. 19 (1) ; 39 Halsbury's Statutes 537) should be welfare authorities for all the purposes (including those relating to child life protection) of Part VII of the Public Health Act, 1936, and local authorities for the purposes of Part XIII of the Public Health (London) Act, 1936, and provision to this end was made by s. 22 (3) of the 1946 Act ; 39 Halsbury's Statutes 539. If that subsection as originally enacted had come into force the transfer to county councils and county borough councils from the Common Council of the City of London, Metropolitan borough councils and county district councils of child life protection officers and the compensation of those detrimentally affected would have been provided for under s. 68 (1) of the National Health Service Act, 1946 (39 Halsbury's Statutes 567), and their superannuation rights would have been preserved under *ibid.*, s. 67 ; 39 Halsbury's Statutes 565.

The decision that county councils and county borough councils in their capacity of local authorities for the purposes of the present Act and not of local health authorities shall be welfare authorities for the purposes of the child life protection provisions of Part VII of the Public Health Act, 1936, and local authorities for the purposes of Part XIII of the Public Health (London) Act, 1936 (see s. 38, *ante*),

and the consequential amendments of s. 22 (3) of the National Health Service Act, 1946, effected by s. 60 and Sched. III, *post*, necessitated the passing of the present section in order that child life protection officers formerly employed by the Common Council, the Metropolitan borough councils and county district councils should not be prejudiced.

Subsection (1).—*Regulations.*—See the Children Act (Compensation of Officers) Regulations, 1948, S. I. 1948 No. 1501.

Local Government Superannuation Act, 1937.—See 30 Halsbury's Statutes 385.

58. Regulations and orders.—(1) Any power to make regulations or orders conferred on a Minister by this Act shall be exercisable by statutory instrument.

(2) Any statutory instrument made in the exercise of any power to make regulations conferred by this Act shall be subject to annulment in pursuance of resolution of either House of Parliament.

NOTE TO SECTION 58

Statutory Instruments.—See the Statutory Instruments Act, 1946 (39 Halsbury's Statutes 783). S. 5 thereof prescribes a standard period of forty days from the laying of a statutory instrument before Parliament as the period within which action must be taken by way of negative resolution (as under sub-s. (2) of the present section) to annul the instrument. S. 4 provides for copies of statutory instruments required to be laid before Parliament being laid before the instruments are brought into operation, save in exceptional urgent cases.

59. Interpretation.—(1) In this Act, except where the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively:—

“ approved school order ” has the same meaning as in the Children and Young Persons Act, 1933, or, as respects Scotland, the Children and Young Persons (Scotland) Act, 1937 ;

“ child ” means a person under the age of eighteen years ;

“ complain ” in relation to Scotland means to make an application, and the expressions “ complaint ” and “ complainant ” shall be construed accordingly ;

“ compulsory school age ” has in England and Wales the same meaning as in the Education Act, 1944, and in Scotland means school age as defined in the Education (Scotland) Act, 1946 ;

“ contribution order ” means in England or Wales a contribution order under section eighty-seven of the Children and Young Persons Act, 1933, and in Scotland a contribution order under section ninety-one of the Children and Young Persons (Scotland) Act, 1937 ;

“ functions ” includes powers and duties ;

“ guardian ” means a person appointed by deed or will or by order of a court of competent jurisdiction to be the guardian of a child ;

“ hospital ” has the meaning assigned to it by section seventy-nine of the National Health Service Act, 1946, or, as respects Scotland, section eighty of the National Health Service (Scotland) Act, 1947 ;

“ Large burgh ” has the same meaning as in the Local Government (Scotland) Act, 1947 ;

“ local education authority ” means a local education authority for the purposes of the Education Act, 1944, or in Scotland an education authority for the purposes of the Education (Scotland) Act, 1946 ;

“ parent ”—

(a) in relation to a child adopted in pursuance of any enactment, means the person or persons by whom he was adopted, to the exclusion of his natural parents ;

(b) in relation to a child who is illegitimate, means his mother, to the exclusion of his father ;

“ precept for a rate ”, in relation to Scotland, means requisition for a rate ;

“ recognisance ”, in relation to Scotland, means bond ;

“ recoverable summarily as a civil debt ”, in relation to Scotland, means recoverable as a civil debt ;

“ relative ” has, throughout Great Britain, the meaning assigned to it by section two hundred and twenty of the Public Health Act, 1936 ;

“ voluntary home ” has the same meaning as in Part V of the Children and Young Persons Act, 1933, or, as respects Scotland, Part VI of the Children and Young Persons (Scotland) Act, 1937 ;

“ voluntary organisation ” means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority.

(2) Any reference in this Act to the functions of a local authority under the Children and Young Persons Act, 1933 shall be construed as including a reference to the functions of the council of a county or county borough with respect to remand homes.

(3) References in this Act to any enactment shall, except where the context otherwise requires, be construed as references to the enactment as amended by or under any other enactment, including this Act.

(4) As respects Scotland any reference in this Act to a county or to the council thereof shall be construed, in relation to counties combined for the purposes mentioned in subsection (1) of section one hundred and eighteen of the Local Government (Scotland) Act, 1947, as a reference to the combined county or the joint county council.

(5) A small burgh, as defined in the said Act of 1947, shall for the purposes of this Act be deemed to be included in the county in the area of which it is situated.

NOTES TO SECTION 59

Section (1).—*Approved school order.*—See the Children and Young Persons Act, 1933, s. 107 (1) (26 Halsbury's Statutes 238), and the Children and Young Persons (Scotland) Act, 1937, s. 110 (1), where this expression is defined as an order made by a court sending a child or young person to a voluntary home.

Compulsory school age.—See the Education Act, 1944, s. 35 (37 Halsbury's Statutes 165). The phrase is defined to mean any age between five and fifteen years and the upper limit of compulsory school leaving age became fifteen on April 1, 1947. There is power by Order in Council to raise it to sixteen. If a person attains a particular age during the term of any school at which, when he attains that age, he is a registered

pupil, he is deemed not have attained that age until the end of the term; see Education Act, 1946, s. 8 (39 Halsbury's Statutes 127).

Contribution order.—For s. 87 of the Children and Young Persons Act, 1933, see Appendix A, *post*.

Hospital.—For the National Health Service Act, 1946, s. 79, see 39 Halsbury's Statutes 571.

Local education authority.—See the notes to s. 21, *ante*.

Relative.—For s. 220 of the Public Health Act, 1936, see 29 Halsbury's Statutes 470. "Relative" is there defined as meaning a grandparent, brother, sister, uncle or aunt, whether by consanguinity or affinity, or in consequence of adoption, and in the case of an illegitimate child a person who would be so related if the child were legitimate.

Voluntary home.—This expression is defined in the Children and Young Persons Act, 1933, s. 92 (26 Halsbury's Statutes 230), and the Children and Young Persons (Scotland) Act, 1937, s. 96. See the notes to s. 27, *ante*.

Subsection (2).—*Remand homes.*—The Children and Young Persons Act, 1933, s. 77 (26 Halsbury's Statutes 216), imposes on county councils and county borough councils the duty of providing remand homes.

Subsection (4).—*Combined counties.*—By the Local Government (Scotland) Act, 1947, s. 118 (1), the County of Kinross is combined with the County of Perth, and the County of Nairn is combined with the County of Moray. Each of the counties forming each combined county has its own county council and the members of the two separate county councils form the joint county council.

Subsection (5).—*Small burgh.*—See the definition in the Local Government (Scotland) Act, 1947, s. 379 (1).

60. Transitional provisions, minor amendments and repeals.—

(1) The transitional provisions set out in the Second Schedule to this Act shall have effect for the purposes of this Act.

(2) The enactments specified in the Third Schedule to this Act shall have effect subject to the amendments specified therein, being minor amendments and amendments consequential on the provisions of this Act.

(3) The enactments specified in the Fourth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule:

Provided that the repeal of the enactments specified in Part II of that Schedule shall take effect only on the first day of January, nineteen hundred and forty-nine.

NOTE TO SECTION 60

Subsection (3).—January 1, 1949, is named as the date for the repeal of the enactments mentioned in Part II of Sched. IV, *post*, which relate to voluntary homes because on that date the new system of control under s. 29, *ante*, comes into force.

61. Application to Isles of Scilly.—This Act shall, in its application to the Isles of Scilly, have effect subject to such exceptions, adaptations and modifications as may be prescribed by order of the Secretary of State, and any such order may be revoked or varied by a subsequent order.

NOTE TO SECTION 61

Generally as to the Isles of Scilly, *cf.* the Local Government Act, 1933, s. 292 (26 Halsbury's Statutes 160).

62. Short title, commencement and extent.—(1) This Act may be cited as the Children Act, 1948.

- (2) This Act shall come into operation on the fifth day of July, nineteen hundred and forty-eight.
- (3) This Act shall not extend to Northern Ireland.

SCHEDULES

FIRST SCHEDULE

[SECTION 30]

APPEAL TRIBUNALS

PART I

CONSTITUTION OF APPEAL TRIBUNALS FOR ENGLAND AND WALES

1. For the purpose of enabling appeal tribunals to be constituted as occasion may require, there shall be appointed two panels, that is to say—

- (a) a panel (hereinafter referred to as the "legal panel") appointed by the Lord Chancellor, of persons who will be available to act when required as chairman of any such tribunal; and
- (b) a panel (hereinafter referred to as the "welfare panel") appointed by the Lord President of the Council, of persons who will be available to act when required as members of any such tribunal.

2.—(1) No person shall be qualified to be appointed to the legal panel unless he possesses such legal qualifications as the Lord Chancellor considers suitable, and no person shall be qualified to be appointed to the welfare panel unless he has had such experience in children's welfare work as the Lord President of the Council considers suitable.

(2) An officer of any Government department shall be disqualified from being appointed to either of the said panels.

3. Any person appointed to be a member of either of the said panels shall hold office as such subject to such conditions as to the period of his membership and otherwise as may be determined by the Lord Chancellor or the Lord President of the Council, as the case may be.

4. Where any appeal is required to be determined by a tribunal constituted in accordance with this Part of this Schedule, the tribunal shall consist of a chairman being a member of the legal panel and two other members being members of the welfare panel, and the chairman and other members of the tribunal shall be impartial persons appointed from those panels by the Lord Chancellor and the Lord President of the Council respectively.

PART II

CONSTITUTION OF APPEAL TRIBUNALS FOR SCOTLAND

5. For the purpose of enabling appeal tribunals to be constituted as occasion may require, there shall be appointed by the Secretary of State a panel (hereinafter referred to as the "welfare panel") of persons to act when required as members of any such tribunal.

6. No officer of any Government department shall be qualified to be appointed to the welfare panel.

7. Any person appointed to be a member of the welfare panel shall hold office for such period and subject to such conditions as may be determined by the Secretary of State.

8. Where any appeal is required to be determined by a tribunal constituted in accordance with this Schedule, the tribunal shall consist of a sheriff (or, if

he is unable to act, a person qualified for appointment as sheriff nominated by the Lord President of the Court of Session), who shall be chairman, and two other members being impartial persons who shall be appointed from the welfare panel by the Secretary of State.

9. In this Part of this Schedule the expression "sheriff" does not include sheriff-substitute, and means the sheriff of the county in which the voluntary home to which the appeal relates is situated or is proposed to be established.

NOTES TO SCHEDULE I

Where the Home Secretary has refused an application for the registration of a voluntary home in England or Wales, pursuant to s. 29 (3) (b), *ante*, or has given notice that he proposes to remove such a home from the register pursuant to s. 29 (4), *ante*, a right of appeal is conferred by s. 30 (1), *ante*. The appeal is to be brought by notice in writing addressed to the Home Secretary requiring him to refer the refusal or proposal to an appeal tribunal constituted in accordance with Part I of this Schedule (s. 30 (2), *ante*), and the tribunal may either confirm the refusal or proposal, or may direct that the home be registered or not removed from the register, as the case may be (s. 30 (3), *ante*). The Lord Chancellor, with the concurrence of the Lord President of the Council, may make rules as to the practice and procedure to be followed with regard to the constitution of tribunals and as to proceedings before them and, in particular, as to the right of audience before tribunals (s. 30 (4), *ante*). Members of the tribunals may be paid such fees and allowances as the Home Secretary may, with the consent of the Treasury, determine (s. 30 (5), *ante*).

Similar provision is made for appeals against the refusal of registration of, or proposal to remove from the register voluntary homes in Scotland, except that appeal tribunals for Scotland are to be constituted in accordance with Part II of this Schedule and the necessary procedure rules are to be made by the Lord President of the Court of Session with the concurrence of the Secretary of State for Scotland.

Part I of the Schedule is modelled on Sched. VI to the Education Act, 1944 (37 Halsbury's Statutes 231), providing for the constitution of independent schools tribunals for England and Wales, and Part II is modelled on Sched. V to the Education (Scotland) Act, 1946, providing for the constitution of independent schools tribunals for Scotland.

SECOND SCHEDULE

[SECTION 60]

TRANSITIONAL PROVISIONS

1.—(1) Where, immediately before the commencement of this Act, a child was being relieved by a local authority under the enactments relating to the relief of the poor, and the relief was not outdoor relief, the provisions of this Act shall apply to him as if, at the commencement of this Act, he were in the care of the authority under section one thereof :

Provided that if the child has then attained the age of sixteen, or is being relieved as aforesaid together with a parent or other person in charge of him who has attained that age, this paragraph shall not apply if it appears to the authority more appropriate that the child should be treated as a person for whom accommodation is being provided under the National Assistance Act, 1948.

(2) If, immediately before the commencement of this Act, the cost of the relief referred to in the last foregoing sub-paragraph was recoverable by the local authority therein referred to from another local authority, the provisions of subsection (4) of section one of this Act shall apply to the child as if the first-mentioned authority had received him into their care as a child ordinarily resident in the area of that other authority.

2. Where, immediately before the commencement of this Act, a resolution passed under section fifty-two of the Poor Law Act, 1930, was in force with respect to a child, it shall, as from the commencement of this Act, be deemed to be a resolution duly passed and notified under section two of this Act.

3.—(1) Where immediately before the commencement of this Act an order made under subsection (1) of section sixty-one or subsection (2) of section

sixty-six of the Children and Young Persons (Scotland) Act, 1937, or subsection (2) of section thirty-eight of the Education (Scotland) Act, 1946, was in force committing a child to the care of an education authority as a fit person, that order shall as from the commencement of this Act be deemed to be an order committing him to the care of the council of the county, or county of a city comprised in the area of that education authority.

(2) Subsection (4) of section one of this Act shall apply to any such child as aforesaid in like manner as it applies to a child received by a local authority into their care.

4.—(1) Any rules of the Secretary of State in force immediately before the commencement of this Act under subsection (2) of section eighty-four of the Children and Young Persons Act, 1933, or subsection (2) of section eighty-eight of the Children and Young Persons (Scotland) Act, 1937, with respect to the boarding-out of children and young persons committed to the care of local authorities or, as the case may be, education authorities, under those Acts respectively shall, as from the commencement of this Act, have effect as if—

(a) they were regulations made under Part II of this Act; and

(b) they had been made so as to apply to children in the care of a local authority under section one of this Act in like manner as to children committed to the care of a local authority or education authority as a fit person,

and shall continue in force, and may be revoked and varied, accordingly.

(2) Where immediately before the commencement of this Act a child was boarded out under subsection (3) of the said section eighty-four or subsection (3) of the said section eighty-eight, then as from the commencement of this Act the boarding-out shall be deemed to be effected under Part II of this Act.

(3) Anything done before the commencement of this Act under any order made under the Poor Law Act, 1930, or under any regulations made under the Poor Law (Scotland) Act, 1934, being an order or regulations relating to the boarding-out of children and in force immediately before the commencement of this Act, shall be deemed to have been done under the corresponding provision of the said rules.

5. A contribution order made before the commencement of this Act shall not as respects any period after the commencement of this Act operate so as to require the making of any payment which could not have been required if this Act had been in force when the contribution order was made.

6.—(1) Any maintenance order in respect of a child in force immediately before the commencement of this Act under section nineteen of the Poor Law Act, 1930, shall, if at the commencement of this Act the child was under the care of the managers of an approved school, be deemed for the purposes of the Children and Young Persons Act, 1933, and of this Act to be a contribution order made on the sending of the child to the approved school.

(2) Paragraph (a) of subsection (5) of section ninety of the Children and Young Persons Act, 1933 (which contains special provisions as to contributions by poor law authorities to the expenses of approved schools) shall cease to have effect, and for the purposes of subsection (1) of the said section ninety (by which certain local authorities named in approved school orders are required to make contributions to the said expenses) where an approved school order has been made on the application of a local authority, being a poor law authority, in their capacity as poor law authority, the authority shall be deemed to have been named in the approved school order as being the authority within whose district the person to whom the order relates was resident.

(3) Paragraph (a) of subsection (4) of section ninety-four of the Children and Young Persons (Scotland) Act, 1937 (which contains special provisions as to contributions by poor law authorities to the expenses of approved schools in Scotland) shall cease to have effect, and for the purposes of subsection (1)

of the said section ninety-four (by which the education authority named in an approved school order is required to make contributions to the said expenses) where an approved school order has been made on the application of a poor law authority and no education authority has been named therein the education authority of the area which comprises the area of the poor law authority by whom the application was made shall be deemed to have been so named.

7. Where by virtue of the provisions of Part IV of this Act a home established before the commencement of this Act becomes a voluntary home within the meaning of Part V of the Children and Young Persons Act, 1933, or Part VI of the Children and Young Persons (Scotland) Act, 1937, the home shall, for the purposes of the said Part V or the said Part VI, be deemed to have been established at the commencement of this Act.

8.—(1) Any land which immediately before the commencement of this Act was held by a local authority solely for the purposes of a children's home shall be deemed to have been appropriated under the Local Government Act, 1933, the London Government Act, 1939, or the Local Government (Scotland) Act, 1947, as the case may be, for the purposes of a home to be provided under Part II of this Act.

(2) Where a local authority have taken any steps for the compulsory acquisition of land for the purposes of a children's home but the acquisition has not been completed at the commencement of this Act, anything duly done before the commencement thereof in relation to the acquisition shall have effect as if it had been duly done in relation to the compulsory acquisition of the land for the purposes of a home to be provided by the authority under Part II of this Act.

(3) In this paragraph the expression "children's home," does not include any premises provided or to be provided under the Public Health Act, 1936, the Public Health (London) Act, 1936, or the Notification of Births (Extension) Act, 1915.

9. Where in consequence of the passing of the National Health Service Act, 1946, a person became employed by the council of a county or county borough in their capacity as a local health authority and there is conferred on him by any regulations made under that Act an option, exercisable by virtue of that employment, to retain rights to superannuation benefits corresponding to those previously enjoyed by him, then if in consequence of the passing of this Act that person becomes employed by the said council for the purposes of a home provided under Part II thereof, he shall have the like rights in connection with the option as if his employment for the said purposes were employment by a local health authority.

10.—(1) Where by virtue of section thirty-five or thirty-seven of this Act the provisions of Part VII of the Public Health Act, 1936, Part XIII of the Public Health (London) Act, 1936, or Part I of the Children and Young Persons (Scotland) Act, 1937, become applicable to a child at the commencement of this Act, those provisions and the following provisions of this Schedule shall have effect as if the child had been received for reward at the commencement of this Act.

(2) Where by virtue of the said section thirty-five or thirty-seven the first mentioned provisions become applicable to a child at, or within one month after, the commencement of this Act, any notice required to be given before the reception of the child may be given within one month after the commencement of this Act :

Provided that nothing in this sub-paragraph shall exclude or postpone, as regards any child, the operation of any provision of the said Part VII or the said Part XIII relating to foster children or of the said Part I relating to children in respect of whom a notice is required to be given.

(3) Where by virtue of the said section thirty-five or thirty-seven the said provisions become applicable to a child at the commencement of this Act,

any notice required to be given before a change of residence may, if the change takes place not later than one month after the commencement of this Act, be given at any time before the expiration of the said month, and if such a notice is duly given no notice under the said provisions need be given in connection with the reception of the child.

(4) In the case of a child who at the commencement of this Act and by virtue of the said section thirty-five or thirty-seven becomes a foster child as defined in the said Part VII or the said Part XIII, or a child in respect of whom a notice is required to be given under the said Part I, a person shall not be guilty of an offence against the provisions of the said Part VII, Part XIII or Part I requiring in certain cases the consent of the welfare authority or local authority for the keeping of children if, not later than one month after the commencement of this Act, application for that consent was made and the child in question is not kept after notification has been received of the refusal of the application or after the expiration of such longer period as the welfare authority or local authority may allow.

(5) Where immediately before the commencement of this Act the keeping of any children in any premises was lawful under the provisions of the said Part VII, Part XIII or Part I limiting the number of children who may be so kept, a person shall not be guilty of an offence under the said provisions by reason only that by virtue of this Act the said provisions are extended to children in the premises above the age of nine, or that by virtue of section thirty-seven of this Act a child in the premises becomes a foster-child or a child in respect of whom a notice is required to be given under the said Part I, so long as—

(a) any conditions imposed under the said provisions are complied with, and

(b) no child is kept in the premises who was not kept there immediately before the commencement of this Act.

(6) Where by virtue of section thirty-seven of this Act the provisions of the said Part VII, Part XIII or Part I become applicable to a child after the commencement of this Act by reason of the death of a parent of the child, the provisions of the three last foregoing sub-paragraphs shall apply as if for references therein to the commencement of this Act there were substituted references to the date at which the said provisions become applicable to the child.

(7) Nothing in section thirty-five or thirty-seven of this Act shall affect any contract of life assurance entered into before the commencement thereof.

II.—(1) Where by virtue of section thirty-five of this Act the provisions of section seven of the Adoption of Children (Regulation) Act, 1939, become applicable to a child at the commencement of this Act, those provisions and the following provisions of this paragraph shall have effect as if possession of the child had been taken at the commencement of this Act.

(2) Where by virtue of the said section thirty-five the provisions of the said section seven become applicable to a child at the commencement of this Act, no notice under the said section seven need be given in connection with the taking possession of the child.

(3) Where by virtue of the said section thirty-five the provisions of the said section seven become applicable to a child within one month after the commencement of this Act, any notice required to be given before possession of the child is taken may be given within one month after the commencement of this Act.

(4) Where by virtue of the said section thirty-five the provisions of the said section seven become applicable to a child at the commencement of this Act, any notice required to be given before a change of residence may, if the change takes place not later than one month after the commencement of this Act, be given at any time before the expiration of the said month.

12. The transitional provisions of the National Assistance Act, 1948, shall take effect subject to the provisions of this Schedule.

NOTES TO SCHEDULE II

This Schedule derives its force from s. 60 (1), *ante*.

Poor Law Act, 1930, ss. 19, 52.—12 Halsbury's Statutes 979, 994.

Children and Young Persons Act, 1933, ss. 84 (2), 90.—26 Halsbury's Statutes 222, 227.

Contribution order.—See notes to s. 23, *ante*.

Voluntary home.—See notes to s. 27, *ante*.

Local Government Act, 1933.—26 Halsbury's Statutes 295, *et seq.*

London Government Act, 1939.—32 Halsbury's Statutes 260, *et seq.*

Notification of Births (Extension) Act, 1915.—15 Halsbury's Statutes 766, *et seq.*

Public Health Act, 1936, Part VII, Public Health (London) Act, 1936, Part XIII, Children and Young Persons (Scotland) Act, 1937, Part I.—See notes to s. 35, *ante*, and see Appendix B, *post*.

Adoption of Children (Regulation) Act, 1939, s. 7.—See Appendix B, *post*.

THIRD SCHEDULE

[SECTION 60]

MINOR AND CONSEQUENTIAL AMENDMENTS

The Children and Young Persons Act, 1933

23 & 24 Geo. 5, c. 12

In section seventy, in proviso (a) to subsection (2), for the words from "by" to "committed" there shall be substituted the words "the Poor Law Act, 1930, the Poor Law (Scotland) Act, 1934, the Children and Young Persons (Scotland) Act, 1937, or Part II of the Children Act, 1948, by a local authority or education authority".

In section eighty-two, in paragraph (a) of subsection (4), after the word "induces," there shall be inserted the words "or persistently attempts to induce".

In section eighty-four, subsections (2) and (5) shall not apply to children and young persons committed to the care of a local authority, and in the proviso to subsection (5) after the words "the child or young person consents" there shall be inserted the words "or, being too young to form or express a proper opinion on the matter, is to emigrate in company with a parent, guardian or relative of his, or is to emigrate for the purpose of joining a parent, guardian, relative or friend".

In section eighty-five, in subsection (2), for the words "by a local authority under this Act" there shall be substituted the words "under Part II of the Children Act, 1948, by a local authority to whose care he has been committed as a fit person", and in subsection (3), in paragraph (a), after the word "induces," there shall be inserted the words "or persistently attempts to induce," and for the words from "or with whom" to "Act" there shall be substituted the words "as a fit person or with whom he has been boarded out under Part II of the Children Act, 1948, by a local authority to whose care he has been so committed".

In section eighty-six, in subsection (1), for the words "the following persons" there shall be substituted the words "the persons specified in section twenty-four of the Children Act, 1948", and the words from "that is to say" to the end of the subsection shall be omitted.

In section ninety, in subsection (6), for the words from "by" to "committed" there shall be substituted the words "the Poor Law Act, 1930, the

Poor Law (Scotland) Act, 1934, the Children and Young Persons (Scotland) Act, 1937, or Part II of the Children Act, 1948, by a local authority or education authority ”.

In section ninety-five, in paragraph (a) of subsection (1), the words “ or otherwise ” shall be omitted.

In section ninety-six, in subsection (1), for the words “ this Act ” there shall be substituted the words “ Part II of this Act ”, and in subsection (7) at the beginning there shall be inserted the words “ Subject to the provisions of section thirty-nine of the Children Act, 1948 (which requires certain matters to be referred to the children’s committee and restricts the reference of other matters to that committee) ”.

In section ninety-seven, the words “ as respects young persons and ”, and in proviso (b) the words from “ but the London County Council ” to the end, shall be omitted.

For section ninety-eight there shall be substituted the following section :—

“ 98. Without prejudice to the provisions of the last foregoing section, a local education authority may institute proceedings for any offence under Part I or Part II of this Act.”

In section one hundred and two, in paragraph (c) of subsection (1), for the words “ a child or young person ” there shall be substituted the words “ himself or any other person ”.

In section one hundred and seven, in the definition of “ place of safety ”, after the word “ means ” there shall be inserted the words “ any home provided by a local authority under Part II of the Children Act, 1948 ”.

The Public Health Act, 1936

26 Geo. 5 & 1 Edw. 8, c. 49

In section two hundred and seven, in subsection (3), after the words “ or is removed ” there shall be inserted the words “ or removes himself ” and after the words “ the name and address of the person ” there shall be inserted the words “ (if any) ”.

In section two hundred and eleven, in subsection (1), for the word “ nine ” there shall be substituted the word “ eighteen ”.

In section two hundred and nineteen, in subsection (1), for the words from “ under the provisions of any Act ” to the words “ within the meaning of the Children and Young Persons Act, 1933 ” there shall be substituted the words “ on whom a requirement as to residence is imposed by a supervision order or probation order, or who undertakes the nursing or maintenance of a child boarded out by the Minister of Pensions, by a local authority under Part II of the Children Act, 1948, or by a voluntary organisation within the meaning of that Act, or to any voluntary home within the meaning of the Children and Young Persons Act, 1933, or to any school, hospital, convalescent home ”.

In section two hundred and twenty, in the definition of “ place of safety ”, after the word “ means ” there shall be inserted the words “ a home provided by a local authority under Part II of the Children Act, 1948 ”.

The Public Health (London) Act, 1936

26 Geo. 5 & 1 Edw. 8, c. 50.

Throughout Part XIII references to “ a local authority ” or “ every local authority ” shall be construed as references to “ the local authority ”, and not in accordance with the provisions of Part I of the Tenth Schedule to the National Health Service Act, 1946.

In section two hundred and fifty-seven, in subsection (3), the words “ for the district in which he proposes to reside ” shall be omitted; in subsection (4), after the words “ or is removed ” there shall be inserted the words “ or removes

himself" and after the words "the name and address of the person" there shall be inserted the words "(if any)".

In section two hundred and sixty, for the word "nine" there shall be substituted the word "eighteen".

In section two hundred and seventy-two, in subsection (3), for paragraph (b) there shall be substituted the following paragraphs—

"(b) in pursuance of any arrangement for the boarding out of a child by the Minister of Pensions, by a local authority under Part II of the Children Act, 1948, or by a voluntary organisation within the meaning of that Act;

(c) with respect to a child on whom a requirement as to residence is imposed by a supervision order or probation order."

In section three hundred and four, in the definition of "place of safety", after the word "means" there shall be inserted the words "any home provided by a local authority under Part II of the Children Act, 1948".

The Children and Young Persons (Scotland) Act, 1937

1 Edw. 8 & 1 Geo. 6, c. 37

In section one, in subsection (5), after the words "or is removed" there shall be inserted the words "or removes himself"; and after the words "the name and address of the person" there shall be inserted the words "(if any)".

In section four, for the word "nine" there shall be substituted the word "eighteen".

In section eleven, in subsection (1), for the words "or to any hospital" there shall be substituted the words "or to any person who undertakes the nursing or maintenance of a child on whom a requirement as to residence is imposed by a probation order, or who is boarded out by the Minister of Pensions, by a local authority under Part II of the Children Act, 1948, or by a voluntary organisation as defined in that Act, or to any hospital".

In section forty-three, for any reference to an education authority there shall be substituted a reference to a local authority; and in subsection (2), for the words from "and render available" to "likely to assist the court" there shall be substituted the words "render available to the court such information as to home surroundings as appears to them will assist the court and shall apply to the appropriate education authority for a report, which that authority shall have a duty to give, furnishing such information on the school record, health and character of the child or young person, and, in proper cases, on the availability of approved schools as shall appear to the education authority to be likely to assist the court".

In sections sixty-six and sixty-seven, for any reference to an education authority there shall be substituted a reference to a local authority.

In section seventy-four, in proviso (a) to subsection (2), for the words from "by" to "committed" there shall be substituted the words "the Poor Law Act, 1930 the Children and Young Persons Act, 1933, the Poor Law (Scotland) Act, 1934, or Part II of the Children Act, 1948, by a local authority or education authority".

In section eighty-six, in paragraph (a) of subsection (4), after the word "induces," there shall be inserted the words "or persistently attempts to induce".

In section eighty-eight, for any reference to an education authority there shall be substituted a reference to a local authority; subsections (2) and (5) shall not apply to children and young persons committed to the care of a local authority; and in the proviso to subsection (5), after the words "the child or young person consents" there shall be inserted the words "or, being too young to form or express a proper opinion on the matter, is to emigrate in company with a parent, guardian or relative of his, or is to emigrate for the purpose of joining a parent, guardian, relative or friend".

In section eighty-nine, in subsection (2), for the words "by an education authority under this Act" there shall be substituted the words "under Part II of the Children Act, 1948, by a local authority to whose care he has been committed as a fit person", for the words "the education authority" there shall be substituted the words "the local authority"; and in subsection (3), in paragraph (a), after the word "induces," there shall be inserted the words "or persistently attempts to induce," and for the words from "or with whom" to "Act" there shall be substituted the words "as a fit person or with whom he has been boarded out under Part II of the Children Act, 1948, by a local authority to whose care he has been so committed".

In section ninety, in subsection (1), for the words "the following persons" there shall be substituted the words "the persons specified in section twenty-four of the Children Act, 1948", and the words from "that is to say" to the end of the subsection shall be omitted; in subsection (2), for any reference to an education authority there shall be substituted a reference to a local authority; and in subsection (3), for the words "an education authority" there shall be substituted the words "a local authority", for the words from "the education authority" to "over by the authority" there shall be substituted the words "the local authority or the education authority, as the case may be, within whose area the person liable to make the contribution is for the time being residing, and shall be paid over by such authority".

In section ninety-one, for any reference to an education authority there shall be substituted, except in head (b) of subsection (2), a reference to a local authority; and in subsection (2), in head (a), after the words "committed, or" there shall be inserted the words "of the education authority", and in head (b), after the words "of the" there shall be inserted the words "local authority or the" and after the words "education authority" there shall be inserted the words "as the case may be".

In section ninety-three, in subsection (2), after the words "payable to" there shall be inserted the words "a local authority or" and after the words "education authority" there shall be inserted the words "as the case may be", and for the words "the education authority" there shall be substituted the words "the authority"; in subsection (3), after the words "clerk to" there shall be inserted the words "a local authority or to".

In section ninety-four, in subsection (5), for the words from "by" to "committed" there shall be substituted the words "the Poor Law Act, 1930, the Children and Young Persons Act, 1933, the Poor Law (Scotland) Act, 1934, or Part II of the Children Act, 1948, by a local authority or education authority".

In section one hundred and ten, in subsection (1), in the definition of "place of safety", after the word "means" there shall be inserted the words "any home provided by a local authority under Part II of the Children Act, 1948".

The Adoption of Children (Regulation) Act, 1939

2 & 3 Geo. 6, c. 27

In section seven, in paragraph (b) of subsection (8), for the words "under subsection (3) of section eighty-four of the Children and Young Persons Act, 1933," there shall be substituted the words "by a local authority under Part II of the Children Act, 1948".

In section sixteen, in subsection (2), in the definition of "welfare authority", after the word "purposes" there shall be inserted the words "of the provisions relating to child life protection"; and subsection (3) shall have effect as originally enacted and not as amended by the National Health Service Act, 1946.

The National Health Service Act, 1946

9 & 10 Geo. 6, c. 81

In section twenty-two, in subsection (3), for the words "Part VII" there shall be substituted the words "section two hundred and three", and the words from "and the local authority" to the end of the subsection shall be omitted.

The National Assistance Act, 1948

11 & 12 Geo. 6, c. 29

In the Sixth Schedule, in paragraph 8, in head (a) of sub-paragraph (2), after the word "Act," there shall be inserted the words "or of Part II of the Children Act, 1948."

NOTE TO SCHEDULE III

This Schedule derives its effect from s. 60 (2), *ante*. The amendments it effects are, in general, of a consequential nature only, and attention is drawn to those which are relevant to specific sections of the present Act in the notes thereto, *ante*.

FOURTH SCHEDULE

[SECTION 60]

REPEALS

PART I

ENACTMENTS REPEALED AS FROM COMMENCEMENT OF ACT

Session and Chapter	Enactment repealed	Extent of Repeal
15 & 16 Geo. 5, c. 45.	The Guardianship of Infants Act, 1925.	In section seven, subsection (4).
23 & 24 Geo. 5, c. 12	The Children and Young Persons Act, 1933.	In section seventy, in subsection (2), the words "made on the application of a poor law authority in their capacity as such or," in subsection (3) the words "or poor law" and in subsection (7) the words from the beginning of the subsection to "and"; in section eighty-four, subsection (3); in section eighty-seven, the proviso to subsection (1); in section eighty-eight, subsection (3); in section ninety, in subsection (5), paragraph (a), and the words from "but in the first" to the end of the subsection; in section one hundred and four, in subsection (1), sub-paragraph (ii) of paragraph (a).
26 Geo. 5 and 1 Edw. 8, c. 49.	The Public Health Act, 1936.	Section two hundred and eighteen.

Session and Chapter	Enactment repealed	Extent of Repeal
1 Edw. 8. and 1 Geo. 6, c. 37.	The Children and Young Persons (Scotland) Act, 1937.	In section twenty-three, subsection (5); in section forty-three, in subsection (2), the words "themselves charge any child or young person with any offence, or"; in section seventy-four, in subsection (2), the words "made on the application of a poor law authority in their capacity as such or"; in subsection (3), the words "or poor law"; in subsection (7), the words from the beginning of the subsection to "that authority, and"; in section eighty-eight, subsection (3); in section ninety-one, the proviso to subsection (1); in section ninety-two, subsection (3); in section ninety-four, in subsection (4), paragraph (a), and the words from "but in the first" to the end of the subsection; section one hundred and two; in section one hundred and seven, in subsection (1), sub-paragraph (ii) of paragraph (a).
2 & 3 Geo. 6, c. 27.	The Adoption of Children (Regulation) Act, 1939.	In section fifteen, in paragraph (c), in sub-paragraph (iii) the words "and to section eighty-four thereof" and the words "and to section eighty-eight thereof".
8 & 9 Geo. 6, c. 41	The Family Allowances Act, 1945.	In section eleven, in subsection (1), in paragraph (a) the words "or deemed to be made"; in section twenty-six, subsection (9).
9 & 10 Geo. 6, c. 81	The National Health Service Act, 1946.	In section twenty-two, in subsection (3), the words from "and the local" to the end of the subsection; in Part I of the Tenth Schedule, under the heading <i>The Public Health Act, 1936</i> , the entry relating to section two hundred and eighteen; under the heading <i>The Public Health (London) Act, 1936</i> , the entry relating to Part XIII; in the entry headed <i>The Adoption of Children (Regulation) Act, 1939</i> , the words from "and in section sixteen" to the end of the entry.

PART II

ENACTMENTS REPEALED AS FROM 1ST JANUARY, 1949

Session and Chapter	Enactment repealed	Extent of Repeal
23 & 24 Geo. 5, c. 12.	The Children and Young Persons Act, 1933.	Section ninety-five; in section one hundred and two, in subsection (1), the words from “(f) in the case” to the end of the subsection.
1 Edw. 8 and 1 Geo. 6, c. 37.	The Children and Young Persons (Scotland) Act, 1937.	Section ninety-nine.

NOTE TO SCHEDULE IV

This Schedule derives its force from s. 60 (3), *ante*. The enactments specified in Part II are not repealed until January 1, 1949, being the date at which the new system of control of voluntary homes provided for by s. 29, *ante*, comes into force.

THE NURSERIES AND CHILD-MINDERS REGULATION ACT, 1948

INTRODUCTORY NOTE

The purpose of this Act, which applies in Scotland as well as in England and Wales, is to ensure that children are well cared for when at nurseries of a particular class, the scope of which is roughly indicated by the description "day nurseries," or when in the care of a child-minder. Nurseries are within the Act if they are places where children below the upper limit of compulsory school age are looked after by the day or a substantial part of the day or for longer periods up to six days, whether for reward or not, and are premises which are not wholly or mainly used as private dwellings, nor within the exemptions in respect of hospitals and schools, etc., which are referred to below. Child-minders are not within the Act unless they receive into their homes for reward children under the age of five who are to be looked after similarly by the day or for up to six days at a time: but, although the class of child-minders is thus defined in the Act by virtue of s. 1 (1) (b), there is no penal sanction for their not registering unless the number of children exceeds two, the children come from more than one household, and the child-minder is not a relative of the children (s. 4 (2)). The distinction between nurseries on the one hand and child-minders on the other is kept throughout the Act and is emphasised by registration being in respect of the premises in the former case, and in respect of the person in the latter case: other principal distinctions between the two classes of cases are the different age limits of the children concerned, and the condition of taking reward which is only material to the case of the child-minder.

The general method of regulation and supervision is by requiring registration with the local health authority, and by conferring on that authority powers of entry and inspection and of imposing requirements by order, and of prosecuting for non-compliance.

Need for the statute.—The child life protection enactments, of which the Public Health Act, 1936, ss. 206–220 (see Appendix B, *post*), may be taken as an example, made provision for the supervision of homes where foster children were cared for apart from their parents. That legislation (*cf.* the Public Health Act, 1936, s. 206 (1) (a)) did not provide protection unless the child was received for reward and the foster-parent undertook his nursing and maintenance. Accordingly that legislation did not extend to the person who received children for the day only, but did not receive them for a substantial period such as a week or more, since a person receiving a child for the day did not undertake his nursing *and* maintenance. Nor did the legislation extend to any nursery where children were cared for without reward. Thus there were gaps in the protection afforded to children by this legislation apart altogether from the question of the age of the children (formerly up to nine years old, but now extended by the Children Act, 1948, s. 35, *ante*, to children below the compulsory school age upper limit) to which the legislation extended. The present Act is therefore to be viewed against the background of the previously existing child life protection legislation, and the problem of overlapping between rights of entry, etc. under that legislation and under this Act is provided for in ss. 9 and 10 of the present Act. It will be of importance to the legal adviser concerned to consider the proper exercise of these powers, and to decide in any doubtful case which powers are exercisable, a guiding principle being indicated in the notes to s. 9, *post*.

The need for women workers in certain industries has led to the setting up of a large number of day nurseries where mothers can leave their children while they themselves are at work. Many of these nurseries are provided by local authorities, and are outside the scope of the Act, but the present tendency, particularly in the cotton manufacturing areas of the North-west, is for such nurseries to be set up actually inside, or on the premises of mills and factories to serve the needs of the mothers employed there. The demand for female labour has also led to the establishment of private nurseries in private houses and for private profit, and to the growth of the practice of daily "minding," which was traditional in Lancashire before the last war, and has now spread elsewhere.

Hitherto, for the legal reasons indicated above, there has been no statutory control of nurseries provided by employers or private persons or of child-minders, and children looked after in such nurseries or by minders were probably the only groups of children not in the continuous care of their parents for whom supervision was not provided under some statutory enactment. Cases have come to light in which it has been found that this lack of control and supervision has been seriously detrimental to the children concerned. Nurseries have been found to be overcrowded, structurally unsuitable or deficient in sanitary accommodation, insufficiently equipped, understaffed or staffed by unsuitable persons; while some persons engaged in daily minding were clearly unsuited for their self-appointed task, or for their own profit received in their homes more children than could properly be accommodated.

The Minister of Health, replying on July 1, 1948, to a question in the House of Commons, gave the following figures for England and Wales—that the number of day nurseries maintained by welfare authorities and by voluntary organisations in agreement with those authorities was 908, that the number of children per nursery averaged 48, and that the total number of children under two years of age so cared for was 13,800. The figures indicate the considerable extent of daily caring for children apart from their parents. Homes and institutions maintained by local authorities within the Public Health Act, 1936, s. 219 (see Appendix B, *post*), are exempt from the present Act under s. 8 (1), *post*, but in comparing the care and amenities respectively available in a local authority's establishment and a private establishment it is material to bear in mind that the average cost of accommodating a child in a day nursery in London is 23/- weekly, of which the average amount recovered from parents is 5/6 weekly (see 452 H. of C. Official Report, Written Answers Col. 225).

The Act seeks to remedy any such abuses as those referred to above by establishing a dual system of registration by the local health authority of nursery premises on the one hand, and of persons engaged in the business of child-minding on the other hand, and by giving extensive powers of supervision over registered nurseries and somewhat less stringent ones over child-minders.

Registration.—Registration under the Act will in effect be compulsory in most cases since it is an offence, when three months have elapsed after the commencement of the Act, to carry on a nursery within the scope of the Act unless the premises are registered, or for a person to act as a child-minder of three or more children, to whom he is not related, from more than one household unless he is registered (s. 4 (1) and (2)). A registered child-minder who acquires a new home must give notice to the local authority and until he does so is treated as unregistered in relation to the reception of children in the new home (s. 4 (3)). Registration is to be effected on the application of the person carrying on or proposing to carry on the nursery, or acting or proposing to act as a child-minder (s. 1 (2)), and it may be refused on the grounds of the unfitness to look after children of the staff of the nursery or of the person seeking registration as a child-minder, or (except in the case of nurseries existing at the date of the Act) because of the unfitness of the nursery premises or of the minder's home (s. 1 (3) and (4)). Where the application is granted conditions, breach whereof is an offence (s. 4 (1) and (2)), may be imposed by order (s. 2 (4)), which may be varied or revoked at any time (s. 2 (6)). In the case of a registered nursery these conditions, in addition to limiting the number of children to be received (s. 2 (1)), and requiring precautions to be taken against exposure to infectious disease (s. 2 (3)), may be such as to secure that a properly qualified person is in charge, that the rest of the staff is adequate both as regards numbers and qualifications, that the nursery is adequately equipped and the premises and equipment adequately maintained, that the children are properly fed and kept under medical supervision and that proper registers are

kept (s. 2 (4)). In the case of a nursery existing at the date of the Act, no condition may be imposed requiring defects of staffing, premises or equipment to be remedied before a reasonable time has elapsed (s. 2 (7)). In the case of a registered child-minder, the only requirements which may be imposed are those limiting the number of children to be received (s. 2 (2)), and requiring the taking of precautions against exposure to infectious diseases (s. 2 (3)). As evidence of registration the local health authority is to issue a certificate showing on the face of it any requirements which have been imposed, and when any change occurs in the circumstances particulars whereof are stated in the certificate, an amended certificate is to be issued (s. 3).

Registration may be cancelled if any conditions imposed are not obeyed, or if it appears that circumstances exist which would have justified a refusal to register the nursery premises or the child-minder, as the case may be (s. 5). Again there is a saving for existing nurseries designed to allow them a reasonable time in which to comply with conditions as to premises (*ibid.*, proviso).

Procedure and appeals.—Where a local authority propose to refuse or cancel a registration or to impose requirements the applicant, occupier or person registered, must be given an opportunity of being heard by the authority and, if aggrieved by the authority's decision may appeal to a court of summary jurisdiction, or in Scotland, to the sheriff (s. 6). A further right of appeal lies from a court of summary jurisdiction to quarter sessions (sub-s. (5) of s. 6 and the Public Health Act, 1936, s. 301, Appendix B, *post*).

Inspection.—The local health authority's authorised inspector may enter a nursery at any reasonable time and carry out an inspection of the children, the arrangements for their welfare and the records kept concerning them (s. 7 (1)). There is no such unqualified power to enter the home of a registered child-minder, but if the inspector is refused admission, or if he reasonably suspects that children are received in the home of a person who is not but ought to be registered, or in any other premises in breach of the Act, he may obtain a warrant from a justice of the peace, or in Scotland, the sheriff, authorising him to enter and carry out an inspection (s. 7 (2)). Obstructing an inspector is an offence leading to penalties (s. 7 (4)). Nursery premises and child-minders' homes in which children subject to child life protection enactments are received are saved from dual inspection (ss. 9 and 10).

Exemptions.—Hospitals and certain other institutions which are subject to supervision under other statutes or which are provided by public authorities, are exempt from registration as nurseries (s. 8). Minders are only required to register where they mind children to whom they are not related and the number of children minded exceeds two and they come from more than one household (s. 4 (2)). Registration is not required in the case of a nursery used mainly for the reception of children subject to the child life protection enactments (s. 9 (1)), or by a minder who has in his home any child subject to those enactments (s. 9 (2)).

Prosecutions and penalties.—Prosecutions for offences under the Act may be instituted by the local health authority (s. 11). The maximum penalty for being unregistered when registration is required by the Act, or for breach of conditions of registration is, on the first offence, a fine of £25, and on a subsequent offence, a fine of £25 or a month's imprisonment, or both (s. 4).

THE NURSERIES AND CHILD-MINDERS REGULATION ACT, 1948

11 & 12 Geo. 6, Ch. 53

ARRANGEMENT OF SECTIONS

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An Act to provide for the regulation of certain nurseries and of persons who for reward receive children into their homes to look after them ; and for purposes connected with the matters aforesaid.

[30th July 1948]

1. Registration of nurseries and child-minders.—(1) Every local health authority shall keep registers—

(a) of premises in their area, other than premises wholly or mainly used as private dwellings, where children are received to be looked after for the day or a substantial part thereof or for any longer period not exceeding six days ;

(b) of persons in their area who for reward receive into their homes children under the age of five to be looked after as aforesaid.

The registers kept under this subsection shall be open to inspection at all reasonable times.

(2) Any person receiving or proposing to receive children as mentioned in paragraph (a) or (b) of the foregoing subsection may make application to the local health authority for registration thereunder, and on receipt of such an application the local health authority shall, subject to the provisions of this section, register the premises to which or person to whom the application relates.

(3) The local health authority may by order refuse to register any premises if they are satisfied that any person employed or proposed to be employed in looking after children at the premises is not a fit person to look after children, or, where the premises were not at the commencement of this Act in use for the reception of children as mentioned in paragraph (a) of subsection (1) of this section, if the local authority are satisfied that the premises are not fit to be used for that purpose.

(4) The local health authority may by order refuse to register any person if they are satisfied that that person, or any person employed or proposed to be employed by him in looking after children, is not a fit person to look after children or that the premises in which the children are received or proposed to be received are not fit (whether because of the condition thereof or for any reason connected with other persons therein) to be used for the purpose.

NOTES TO SECTION I

Registration of premises and of persons.—County and county borough councils, as local health authorities (see *infra*), are required by sub-s. (1) to keep registers; but this section does not make application for registration compulsory, though the penalties provided by s. 4, *post*, in effect oblige occupiers of nurseries within the Act and child-minders to apply for registration. Such occupiers will have three months' grace from July 30, 1948, within which their premises are to be registered, and child-minders are not obliged to register, though they may do so, unless failure to register will bring them within the penal scope of s. 4, *post* (see particularly sub-s. (2) of that section). Two registers, which are to be available for public inspection, are to be kept, namely:—

- (i) *A register of premises.*—This will be a register of actual buildings or parts of buildings used as nurseries, that is to say, where children under the upper limit of compulsory school age (see s. 13 (2), *post*), are received to be looked after for the day or a substantial part of the day or for any longer period not exceeding six days at a time. There are three main categories of exception from registration in this register: they are (a) premises used wholly or mainly as private dwellings (see *infra*), (b) institutions, e.g. schools, in respect of which exemption is conferred by s. 8, *post*, and (c) premises used mainly for the reception of children for periods exceeding six days and to which the child life protection enactments (defined in s. 13 (2), *post*) apply (see s. 9 (1), *post*). By the Public Health Act, 1936, s. 206 (Appendix B, *post*), the Public Health (London) Act, 1936, s. 257 (Appendix B, *post*), and the Children and Young Persons (Scotland) Act, 1937, s. 1 (Appendix B, *post*), as extended by the Children Act, 1948, ss. 35, 36, *ante*, provision is made for notice to be given to the local authority before the reception of children under the upper limit of compulsory school age for reward for nursing and maintenance apart from their parents.
- (ii) *A register of persons.*—This will be a register including the names and addresses (see s. 3 (1), *post*) of persons, who for reward receive into their homes children under the age of five years to be looked after for the day, or a substantial part of the day, or for any longer period not exceeding six days. Exception is conferred in respect of homes within the Public Health Act, 1936, s. 219 (Appendix B, *post*), or the Children and Young Persons (Scotland) Act, 1937, s. 11 (Appendix B, *post*), by s. 8 (1) of this Act, *post*; in addition, registration is not in effect obligatory on the child-minder, unless failure to register would bring him within the penal scope of s. 4 (2) taken in conjunction with s. 9 (2) of this Act. Registration may be required in respect of more than one home, if a new home is acquired by a person whose name is already registered (s. 4 (3), *post*).

If application for registration is made by a person receiving or proposing to receive children, the local authority is bound to register unless they refuse by order on the grounds mentioned in sub-ss. (3) and (4), *supra*; but they may, in the case

of a registration of premises in use for the reception of children at the commencement of this Act, require by order made on the occasion of registration that repairs or alterations be carried out (s. 2 (4) (c), (5), *post*). Notice of intention to refuse registration, or to require the carrying out of repairs, etc., is to be given in accordance with s. 6 (1) (2), *post*, and the order of refusal or imposing the requirement may be made the subject of appeal in accordance with sub-s. (4) of that section. The consequences of registration include liability to the imposition of requirements under s. 2, and inspection of premises (ss. 7 (1), 9, 10, *post*).

As to the issue of a certificate of registration, see s. 3, *post*; as to cancellation of registration, see s. 5, *post*.

Subsection (1).—“*Local health authority.*”—S. 19 (1) of the National Health Service Act, 1946 (39 Halsbury's Statutes 537) provides that county councils and county borough councils shall be local health authorities.

Wholly or mainly used as private dwellings.—Premises of this nature are not themselves to be registered under the Act but such one of the occupants (who will not necessarily be the occupier in the legal sense) as carries on upon such premises the business of looking after children is to be registered as a child-minder if the children received by him are under five years of age. Whether premises are mainly used as a private dwelling-house is a question of fact in each case, in answering which it is thought that the word “mainly” should be given its ordinary dictionary meaning of “for the most part; chiefly; principally” (*Miller v. Otilie (Owners)*, [1944] K. B. 188; [1944] 1 All E. R. 277, C. A.; 2nd Digest Supp.); and “private dwelling-house” should be construed as meaning a private residence (*Bristol Guardians v. Bristol Waterworks Co.*, [1912] 1 Ch. 111; affirmed, [1914] A. C. 379; 43 Digest 1066, 62; and see *Barnes v. Shore* (1846), 1 Rob. Eccl. 382; 19 Digest 525, 3876): although the acts of sleeping upon premises at night and having meals on them by day are acts that are residential in character, they are not conclusive evidence of the use of a house as a dwelling-house; see *Macmillan & Co., Ltd. v. Rees*, [1946] 1 All E. R. 675, C. A.; 2nd Digest Supp.

Subsection (2).—*Application for registration.*—No special form of application is prescribed. Local health authorities are, therefore, themselves to prescribe the particulars to be given in each application, for which purpose the provisions of s. 3 (1) and a consideration of the exempting provisions of ss. 8 and 9 and of the information requisite for the discharge of functions under s. 2, are relevant.

Subsections (3) and (4).—*Refusal of registration.*—As to giving notice of intention to make an order of refusal, and as to the right of appeal, see s. 6, *post*. Apprehension of a change in circumstances likely to render premises unsuitable for registration would, in general, not be a proper ground for refusing registration in view of the power of cancellation conferred by s. 5, *post*.

Imposition of requirements.—See s. 2 (5), (7), *post*: save for requirements made under para (c) of sub-s. (4) of s. 2, the order may be made on registration, or at any time thereafter.

Fitness of premises.—If premises are not fit, but were in use as a nursery at the commencement of the Act (July 30, 1948), the local health authority may not refuse registration of the premises, but may require repairs, etc., to be carried out, in which case they must allow reasonable time for doing the work and the registration cannot be cancelled for failure to do the work unless the time has expired (see ss. 2 (7), 5 proviso, *post*).

Definition.—“Child” (s. 13 (2), *post*).

2. Power to impose requirements in connection with registration.—(1) The local health authority may by order require that no greater number of children shall be received in premises registered under the foregoing section than may be specified in the order.

(2) The local health authority may by order require in the case of a person registered under the foregoing section that the number of children received in his home as mentioned in paragraph (b) of subsection (1) of that section, together with any other children in his home, shall not at any time exceed such number as may be specified in the order.

(3) The local health authority may by order made as respects any premises or person registered under the foregoing section require the taking of precautions against the exposure of the children received in the premises to infectious diseases.

(4) The local health authority may by order made as respects any premises registered under the foregoing section impose requirements for securing—

- (a) that a person with such qualifications as may be specified by the authority shall be in charge of the premises and of the persons employed thereat ;
- (b) that the premises shall be adequately staffed, both as respects the number and as respects the qualifications or experience of the persons employed thereat, and adequately equipped ;
- (c) in the case of premises which at the commencement of this Act were in use for the reception of children as mentioned in paragraph (a) of subsection (1) of section one of this Act, that such repairs shall be carried out on the premises, or such alterations thereof or additions thereto shall be made, as may be specified in the order ;
- (d) that the premises and the equipment thereof shall be adequately maintained ;
- (e) that there shall be adequate arrangements for feeding the children received in the premises and that an adequate and suitable diet shall be provided for them ;
- (f) that the children received in the premises shall be under medical supervision ;
- (g) that records shall be kept in relation to the children received at the premises containing such particulars as may be specified by the authority.

(5) An order under paragraph (c) of the last foregoing subsection may be made either on registration or at any time within one month thereafter, and any other order under this section may be made either on registration or at any subsequent time.

(6) An order under this section may be varied or revoked by a subsequent order of the local health authority.

(7) In the case of premises which at the commencement of this Act were in use for the reception of children as mentioned in paragraph (a) of subsection (1) of section one of this Act, no requirement shall be imposed under paragraphs (a) to (c) of subsection (4) of this section so as to require anything to be done before the expiration of a reasonable time from the commencement of this Act.

NOTES TO SECTION 2

Regulation of premises and persons.—The distinction between the registration of *premises* and the registration of *persons* drawn in s. 1, *ante*, has already been noted. The power of regulation by order is of different scope in the two cases. If the registration is in respect of the person (*i.e.* the case of a child-minder), the only powers of regulation are those for controlling the number of children received (sub-s. (2), *supra*), and for requiring the taking of precautions against exposure to infectious diseases (sub-s. (3), *supra*). Similar powers are

conferred if the registration is of premises (sub-ss. (1) and (3), *supra*), but in addition the seven further powers mentioned in paras. (a) to (g) of sub-s. (4) apply.

Procedure.—Powers of imposing requirements must in all cases be exercised by order of the local health authority. Orders cannot be made under this section before registration under s. 1 is effected; in the case of an order under sub-s. (4) (c), *supra*, the power can only be exercised on registration or within one month after registration (sub-s. (5), *supra*). Orders may only be made upon notice in accordance with the provisions of s. 6, *post*, and subject to the right of appeal thereby conferred, save that an order merely varying or revoking a previous order (*cf.* sub-s. (6), *supra*), and not imposing any new requirement or increasing any existing requirement does not, it seems, come within the scope of s. 6, *post*.

Requirements imposed under the above section are to be specified in the certificate of registration (s. 3 (1), *post*).

Sanctions.—Failure to observe the requirements imposed by an order may have penal consequences (see s. 4, *post*), or lead to cancellation of the registration (see s. 5, *post*). Prosecutions in England and Wales may be undertaken by the local health authority (see s. 11, *post*). As to entry and inspection, see s. 7, *post*.

Subsection (4) (a) to (c).—Note the provisions of sub-s. (7) requiring reasonable time to be allowed for compliance with orders, if the premises were used for the reception of children at the commencement of the Act, *i.e.*, July 30, 1948.

Subsection (7)—Reasonable time.—What is a reasonable time must depend on the particular circumstances of each case; *cf.* *Alexinadi v. Robinson* (1861), 2 F. & F. 679; 42 Digest 953, 266. The time within which the requirement is to be fulfilled should, it is suggested, be stated in the order both for practical convenience and in view of the terms of the proviso to s. 5, *post*. If the time is thought by the applicant or the occupier to be too short, the proper course will be to raise the matter by so informing the authority in writing, pursuant to sub-s. (2) of s. 6, *post*.

Definitions.—“Children” (s. 13 (2), *post*); as to the meaning of “local health authority,” see notes to s. 1, *ante*; “month” means calendar month (Interpretation Act, 1889, s. 3; 18 Halsbury’s Statutes 993).

3. Certificates of registration.—(1) The local health authority shall issue certificates of registration under section one of this Act, and any such certificate shall specify the situation of the premises to which, or the name and address of the person to whom, the registration relates and any requirements imposed under the last foregoing section.

(2) On any change occurring in the circumstances particulars of which are stated in a certificate issued under this section, the local health authority shall issue an amended certificate.

(3) Where the local health authority are satisfied that any certificate under this section has been lost or destroyed, the authority shall, on payment of such fee (if any) not exceeding two shillings and sixpence as the authority may determine, issue a copy of the certificate.

NOTES TO SECTION 3

Contents of certificate.—The address of a child-minder will generally be that of his home in which he receives children (*cf.* s. 1 (1) (b), *ante*).

Change of circumstances.—The Act does not contain any provision requiring a certificate to be delivered up on cancellation of a registration; nor, save indirectly through the sanctions provided by s. 4, *post*, does it require any person to inform the local health authority of a change in circumstances, other than the acquisition by a child-minder of a new home (see s. 4 (3), *post*). The local health authority’s means of knowledge, so far as they rest on this statute, are substantially those provided by ss. 7, 9, 10, *post*, and consist in their powers of entry and inspection.

Definition.—"Local health authority" (National Health Service Act, 1946, s. 19 (1); 39 Halsbury's Statutes 537).

4. Penalties for failure to register and for breach of requirements under section two.—(1) If at any time after the expiration of three months from the commencement of this Act a child is received in any premises as mentioned in paragraph (a) of subsection (1) of section one of this Act and the premises are not registered under that section or any requirement imposed under section two of this Act is contravened or not complied with, the occupier of the premises shall be guilty of an offence.

(2) Where at any such time as aforesaid a person receives as mentioned in paragraph (b) of subsection (1) of section one of this Act children of whom he is not a relative, and

(a) the number of the children exceeds two, and

(b) the children come from more than one household,

then if he is not registered under section one of this Act, or if he contravenes or fails to comply with any requirement imposed under section two thereof, he shall be guilty of an offence.

(3) Where a person has been registered under section one of this Act and while he is so registered he acquires a new home, then until he has given notice thereof to the local health authority he shall not for the purposes of the last foregoing subsection be treated as being so registered in relation to the reception of children in the new home.

(4) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding twenty-five pounds or, in the case of a second or subsequent offence, to imprisonment for a term not exceeding one month or to a fine not exceeding twenty-five pounds or to both such imprisonment and such fine:

Provided that in the case of a first offence under subsection (2) of this section the fine which may be imposed shall not exceed five pounds.

NOTES TO SECTION 4

See generally the initial note to s. 1 of this Act, *ante*; as to powers of entry and inspection, *cf.* s. 7, *post*. As to the exclusion of this section where child life protection provisions apply, see s. 9, *post*.

Subsection (1).—This subsection applies only in respect of nurseries within the Act, *i.e.* premises as distinct from child-minders. The *occupier* of the premises may not necessarily be the same person as the applicant for registration who may be "any person receiving or proposing to receive children, *etc.*" (see sub-s. (2) of s. 1, *ante*). "Occupier" means, it is submitted, the person in legal occupation and control of the premises (*Bruce v. McManus*, [1915] 3 K. B. 1; 42 Digest 924, 188) and not the manager or other person, by whatever name called, in charge of day to day running. That the occupier and the applicant for registration need not be the same person is shown by the requirement of notifying both of them contained in sub-s. (1) of s. 6, *post*.

Subsection (2).—*Requirement imposed under section two.*—The only requirements which can be imposed by s. 2, *ante*, in relation to a child-minder are those limiting the number of children to be received or requiring the taking of precautions against exposure to infectious diseases.

Second offence.—See *R. v. South Shields Licensing Justices*, [1911] 2 K. B. 1; 30 Digest 82, 637.

Definitions.—"Child" (s. 13 (2), *post*); but note that the effect of s. 1 (1) (b), *ante*, is to limit the meaning of "children" in sub-s. (2) of the present section to children under five years of age; "relative" (s. 13 (2), *post*).

5. Cancellation of registration.—Where—

- (a) there has been a contravention of, or non-compliance with, any requirement imposed under section two of this Act in relation to any premises or person registered under section one thereof, or
- (b) it appears to the local health authority as respects any premises or person registered under the said section one, that circumstances exist which would justify a refusal under subsection (3) or subsection (4) of that section to register the premises or person,

the local health authority may by order cancel the registration :

Provided that where a requirement to carry out repairs or make alterations or additions has been imposed under paragraph (c) of subsection (4) of section two of this Act, the registration of the premises shall not be cancelled by virtue of paragraph (b) of this section on the grounds that the premises are not fit to be used for the reception of children if—

- (i) the time limited by subsection (7) of the said section two for complying with the requirement has not expired, and
- (ii) it is shown that the condition of the premises is due to the repairs not having been carried out or the alterations or additions not having been made.

NOTES TO SECTION 5

Cancellation of registration.—This section enables the local authority by order to cancel the registration of a nursery or child-minder if any requirements imposed by order under s. 2, *ante*, have not been obeyed, or if any person employed in the nursery or the child-minder or any person employed by the minder is not a fit person to look after children or if the nursery building is structurally unfit to be used for the reception of children or if the minder's house is unfit so to be used either by reason of its condition or for some reason connected with its other inmates (see s. 1 (3), (4), *ante*). The proviso prevents the registration of existing nurseries being cancelled on the ground of structural defects until a reasonable opportunity of remedying such defects has been given.

If the local health authority propose to cancel a registration they must follow the procedure laid down in s. 6 (1)–(3), *post*, and a right of appeal against the cancellation is conferred on any person aggrieved thereby, see s. 6 (4), *post*.

Time of cancellation.—The order for cancellation does not take effect before the time of appealing against it has expired or the appeal is determined (s. 6 (4), *post*).

Definitions.—“Local health authority” (National Health Service Act, 1946, s. 19 (1); 39 Halsbury's Statutes 537); “child” (s. 13 (2), *post*).

6. Appeals.—(1) Not less than fourteen days before making an order under this Act refusing an application for registration, cancelling any registration, or imposing any requirement under section two of this Act, the local health authority shall send to the applicant, to the occupier of the premises to which the registration relates, or to the person registered, as the case may be, notice of their intention to make such an order.

(2) Every such notice shall state the grounds on which the authority intend to make the order and shall contain an intimation that if within fourteen days after the receipt of the notice the said applicant, occupier or person informs the authority in writing of his desire to show cause, in person or by a representative, why the order should not be made, the authority shall before making the order afford him an opportunity so to do.

(3) If the local authority, after giving the said applicant, occupier or person such an opportunity as aforesaid, decide to refuse the application, cancel the registration, or impose the requirement, as the case may be, they shall make an order to that effect and shall send him a copy of the order.

(4) A person aggrieved by an order under this Act refusing an application for registration or cancelling any registration, or imposing any requirement under section two of this Act, may appeal to a court of summary jurisdiction, or in Scotland the sheriff, having jurisdiction in the place where the premises in question are situated if the order relates to the registration of premises, or in the place where the person in question resides if the order relates to the registration of a person; and an order cancelling any registration shall not take effect until the expiration of the time within which an appeal may be brought under this section or, where such an appeal is brought, before the determination of the appeal.

(5) Sections three hundred to three hundred and two of the Public Health Act, 1936 (which relate to appeals) shall apply for the purposes of this section as if the provisions of this Act were contained in that Act and that Act extended to London.

(6) Any notice required to be sent under subsection (1) of this section, and any copy of an order required to be sent under subsection (3) thereof, may be sent by post in a registered letter.

(7) In the application of this section to Scotland, subsection (5) shall be omitted, and any appeal under subsection (4) shall be brought within twenty-one days from the date of the order to which the appeal relates.

NOTES TO SECTION 6

Procedure and appeals.—This section provides that where a local health authority propose to make an order refusing a registration (see s. 1, *ante*), or cancelling a registration (see s. 5, *ante*), or imposing any requirement pursuant to s. 2, *ante*, they must give to the person who will be affected fourteen days' notice of their proposal to make the order (sub-s. (1)). The notice must state the grounds for the proposed order and contain an intimation to the person to whom it is addressed that he will, if he so desires and informs the authority in writing of his desire within fourteen days after receipt of the notice, be given an opportunity to be heard by the authority (sub-s. (2)).

If the order is finally made, after the person affected has been given an opportunity of being heard (sub-s. (3)), or, presumably, where he has not sought such an opportunity, that person, if aggrieved by the authority's decision, may appeal to a court of summary jurisdiction, or, in Scotland, the sheriff (sub-s. (4)), a further right of appeal lying from a court of summary jurisdiction to quarter sessions (sub-s. (5)).

Subsection (1).—*Occupier.*—See the notes to s. 4, *ante*.

Subsection (2).—*A representative.*—No professional qualifications are required for a representative who may, therefore, be any person nominated for the purpose.

Subsection (3).—*May make an order.*—Note that an order cancelling a registration is suspended until the expiration of the time allowed for an appeal, or, where an appeal is brought, until the determination of the appeal, see sub-s. (4), *supra*.

Subsection (4).—*Person aggrieved.*—A person aggrieved is a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something; see *Re Baron, Ex parte Debtor v. Official Receiver*, [1943] Ch. 177, at p. 179; [1943] 2 All E. R. 662, at p. 664; 2nd Digest Supp., citing *per James, L. J.*, in *Re Sidebotham, Ex parte Sidebotham* (1880), 14 Ch. D. 458, at p. 465; 4 Digest 225, 2114.

Subsection (5).—*Sections 300–302 of the Public Health Act, 1936.*—See Appendix B, *post*. S. 300 provides that an appeal to a court of summary jurisdiction shall be by complaint and shall be brought within twenty-one days after notice of the order appealed against is served on the appellant, and that whenever such an appeal lies against an order the document notifying the person concerned shall state the right of appeal and the time within which the appeal must be brought. S. 301 provides that a further right of appeal against a decision of a court of summary jurisdiction shall lie to quarter sessions; and s. 302 provides that effect shall be given to the decision of any court upon an appeal and in particular that any necessary entry shall be made on any register. The procedure on appeal to quarter sessions will be under the Summary Jurisdiction Act, 1879, s. 31, as substituted by the Summary Jurisdiction (Appeals) Act, 1933; 26 Halsbury's Statutes 545; which is amended by the National Health Service Act, 1946, s. 76 and Tenth Schedule, Part II; 39 Halsbury's Statutes 570, 590.

Subsection (6).—*May be sent by post in a registered letter.*—These words are permissive only and would appear not to exclude personal service or service by ordinary letter; see *Sharpley v. Manby*, [1942] 1 K. B. 217; [1942] 1 All E. R. 66, C. A.; 2nd Digest Supp., and compare the provisions of the Interpretation Act, 1889, s. 26; 18 Halsbury's Statutes 1002. It will, however, in all cases be safer to serve all notices under sub-s. (1), *supra*, and all orders under sub-s. (3), *supra*, by registered post.

Definitions.—“Court of summary jurisdiction” (Interpretation Act, 1889 s. 13 (11); 18 Halsbury's Statutes 997); “in writing” (*ibid.*, s. 20; 18 Halsbury's Statutes 1001); “local health authority” (National Health Service Act, 1946, s. 19 (1); 39 Halsbury's Statutes 537).

7. Inspection.—(1) Any person authorised in that behalf by a local health authority may at all reasonable times enter any premises in the area of the authority which are used for the reception of children as mentioned in paragraph (a) of subsection (1) of section one of this Act, and may inspect the premises and the children so received therein, the arrangements for their welfare, and any records relating to them kept in pursuance of this Act.

(2) If any person authorised as aforesaid is refused admission to the home of a person registered under section one of this Act, or has reasonable cause to believe that children are being received in a person's home or in any other premises in contravention of section four of this Act, he may apply to a justice of the peace or in Scotland to the sheriff, and if the justice or sheriff is satisfied on sworn information in writing that admission has been refused or, as the case may be, that there is reasonable cause to believe that children are being received as aforesaid, the justice or sheriff may grant a warrant authorising the applicant to enter the home or other premises and carry out any such inspection as is mentioned in subsection (1) of this section.

(3) A person who proposes to exercise any power of entry or inspection conferred by or under this section shall if so required produce some duly authenticated document showing his authority to exercise the power.

(4) Any person who obstructs the exercise of any such power as aforesaid shall be guilty of an offence and liable on summary conviction to a fine not exceeding five pounds in the case of a first offence or twenty pounds in the case of a second or any subsequent offence.

NOTES TO SECTION 7

As to the prevention of overlap between these provisions, and those of child life protection enactments, see ss. 9, 10, *post*.

Powers of entry and inspection.—An inspector should have documentary authority which he should produce on request (sub-s. (3)); his title to enter and inspect then rests on two conditions being satisfied, namely, (i) that the premises

are in fact used for the reception of children "to be looked after for the day or a substantial part thereof or for any longer period not exceeding six days," and are not exempt either as being wholly or mainly used as a private dwelling (s. 1 (1) (a), *ante*), or under ss. 8 or 9 (1), *post*. A mere opinion or belief, or reasonable suspicion, that premises are so used will not legally justify an entry, if the fact is that they are not. In doubtful cases, therefore, the better course will be not to insist on being allowed to enter, if the right of entry is disputed, but to apply under sub-s. (2) for a warrant, so that there may be no risk of entry being a trespass.

Sub-s. (1) does *not* confer power to enter the home of a person registered as a child-minder: it extends only to premises, as distinct from persons, registered under s. 1, *ante*. To enter and inspect as of right the home of a registered child-minder, a warrant under sub-s. (2), *supra*, is requisite.

The power of inspection extends not only to the premises but also to (i) the children, (ii) the arrangements for their welfare (*cf.* s. 2 (4) (e) (f), *ante*), and (iii) any records relating to them kept in pursuance of a requirement under s. 2 (4) (g), *ante*, or otherwise in pursuance of the Act. The Act does *not* confer, however, any power to require the furnishing of oral information.

Entry pursuant to warrant.—Clearly a warrant is unnecessary in any case where admission is voluntarily allowed; in other cases a warrant will be needed to entitle a person to inspect as of right (i) the home of a registered child-minder, and (ii) premises (whether nurseries or homes of child-minders) as to which there is reasonable cause to believe that children are being received in contravention of s. 4, *ante*, although if they were nurseries that in fact were being used as mentioned in sub-s. (1), *supra*, there would be a right to inspect them without warrant. Resistance to a warrant may amount to an offence under sub-s. (4); as to any right to force an entry, compare *e.g.* the Betting and Lotteries Act, 1934, s. 27 (27 Halsbury's Statutes 293), where the words "if necessary by force," which are absent from this section, are expressly included, and consider the Statutes of Forcible Entry, *e.g.* 5 Ric. 2 Stat. 1, c. 7; 10 Halsbury's Statutes 310. As to the mode of executing a warrant, compare *Launock v. Brown* (1819), 2 B. & Ald. 592; 14 Digest 189, 1692 (entry to arrest for misdemeanour); the cause of coming should be signified and a request for admittance should be made, and in addition the document showing authority to enter should be produced if required (sub-s. (3), *supra*).

Subsection (2).—*Reasonable cause.*—*Prima facie* the words "if any person . . . has reasonable cause to believe" mean "if there is reasonable cause for believing and the person in question in fact believes"; but they may also mean "if the person acting on what he thinks is reasonable cause (and, of course, acting in good faith) believes": *Liversidge v. Anderson*, [1942] A. C. 206, at p. 220; [1941] 3 All E. R. 338, at p. 345, *per* Lord Maugham; 2nd Digest Supp.

The person applying for the warrant should state the grounds of his belief fully and fairly.

Granting a warrant.—It would seem that the action of granting such a warrant is a judicial one. See *Hope v. Evered* (1886), 17 Q. B. D. 338; 15 Digest 850, 9342. The person named in the warrant must observe its directions strictly, and cannot delegate its execution to another.

Subsection (4).—*Prosecutions.* The local health authority is empowered to prosecute (s. 11, *post*).

Second offence.—See notes to s. 4, *ante*.

Definitions.—"Child" (s. 13 (2), *post*); "in writing" (Interpretation Act, 1889, s. 20; 18 Halsbury's Statutes 1001); "local health authority" (National Health Service Act, 1946, s. 19 (1); 39 Halsbury's Statutes 537).

8. Exemption of certain institutions from provisions of Act.—

(1) Nothing in this Act shall apply to the reception of children in any hospital, or in any such home or other institution as is mentioned in section two hundred and nineteen of the Public Health Act, 1936, or section eleven of the Children and Young Persons (Scotland) Act, 1937.

(2) Nothing in this Act shall apply to the reception of children in any school, notwithstanding that they are received to be looked after and not for the purpose of education.

(3) Nothing in this Act shall apply to the reception of children in a nursery school in respect of which payments are made by the Minister of Education under section one hundred of the Education Act, 1944, or by the Secretary of State under section seventy of the Education (Scotland) Act, 1946, or which is recognised as efficient by the Minister of Education or included in a scheme submitted under section seven and approved by the Secretary of State under section sixty-five of the said Act of 1946, or to the reception of children in any play centre maintained or assisted by a local education authority under section fifty-three of the said Act of 1944, or by an education authority under section three of the said Act of 1946.

NOTES TO SECTION 8

Exemption of hospitals, schools and play centres, etc.—This section grants total exemption from registration, or entry and inspection, under the Act in the case of hospitals, homes, schools, play centres and other institutions which are subject to supervision under other enactments, or are provided by local authorities.

Subsection (1).—*Section 219 of the Public Health Act, 1936, or section 11 of the Children and Young Persons (Scotland) Act, 1937.*—See Appendix B, *post*. S. 219 of the 1936 Act, as amended by the Children Act, 1948, s. 59 and Sched. III, *ante*, grants exemption from the child life protection provisions of that Act, as to which see the notes to s. 9, *post*, in the case of voluntary homes and of any school, hospital, convalescent home, or other institution which is maintained by a Government department, local authority or other statutory or chartered authority or body, or which has been granted a certificate of exemption from the operation of the said provisions or which has been certified or approved by the Board of Control and in which no children or young persons are received other than mental defectives.

S. 11 of the Children and Young Persons (Scotland) Act, 1937 (see Appendix B, *post*), confers similar exemptions from the operation of the child life protection provisions of that Act.

Subsection (2).—This subsection will cover the case of school buildings which are open in the holidays for organised games or other activities and where children are admitted to spend the day, as well as nursery classes in schools, as to which see Education Act, 1944, s. 8 (2) (b); 39 Halsbury's Statutes 134.

Subsection (3).—*Section 100 of the Education Act, 1944, or section 70 of the Education (Scotland) Act, 1946.*—S. 100 of the 1944 Act (37 Halsbury's Statutes 207) gives the Minister of Education power to make grants to local education authorities and to other persons providing educational services. S. 70 of the 1946 Act gives corresponding powers to the Secretary of State for Scotland.

Section 53 of the said Act of 1944, or section 3 of the said Act of 1946.—S. 53 of the Education Act, 1944 (37 Halsbury's Statutes 179), empowers a local education authority with the approval of the Minister of Education to maintain or assist the maintenance of facilities for recreation and physical training including play centres. S. 3 of the Education (Scotland) Act, 1946, gives corresponding powers to education authorities in Scotland.

Definitions.—"Child," "hospital," "school" (s. 13 (2), *post*).

9. Exclusion of sections four and seven of Act where child life protection enactments apply.—(1) Where premises falling within paragraph (a) of subsection (1) of section one of this Act are used mainly for the reception of children for periods exceeding six days and in such circumstances that the child life protection enactments apply, sections four and seven of this Act shall not apply to the premises and the provisions of the child life protection enactments as to entry and inspection shall extend to all children received in the premises.

(2) Where a person receives children into his home in such circumstances that apart from this subsection he would be required by subsection (2) of section four of this Act to be registered under section one thereof, then so long as provision for entry and inspection as respects

any of those children or any other child received into his home is made by or under the child life protection enactments or any enactment relating to the boarding-out of children,—

- (a) sections four and seven of this Act shall not apply,
- (b) the said provision for entry and inspection shall apply in relation to all the children aforesaid.

NOTES TO SECTION 9

For the terms of the child life protection enactments as amended, see Appendix B, *post*.

Exclusion of dual control.—This section and s. 10, *post*, prevent nurseries and child-minders from being subject to control both under the present Act and under the child life protection provisions of other statutes (as to which see the notes to ss. 35–37 of the Children Act, 1948, *ante*), which give powers of supervision over persons taking foster children for reward, the principle being that the code applicable to the main user of the premises shall be the one to be applied. Thus, in the case of a nursery which is mainly used for the reception of children for more than six days at a time, the child life protection enactments will apply and sub-s. (1) of the present section will exempt the occupier of premises from the penalties for non-registration imposed by s. 4, *ante*, and the premises from inspection under s. 7, *ante*. Inspection will be under the child life protection enactments. On the other hand, where the main use of the nursery is for the reception of children for periods of less than six days at a time, s. 10, *post*, provides that all the children shall be inspected under s. 7, *ante*, although it will be necessary to comply with the child life enactments as to notification in the case of children received for longer periods.

So far as child-minders are concerned, sub-s. (2), *supra*, provides that where any children received are subject to inspection under the child life protection enactments, or any boarding-out enactments, all the children will be subject to inspection under those enactments, and the minder will be exempt from the penal scope of s. 4, *ante*, and his home will be exempt from entry and inspection under s. 7, *ante*.

Subsection (1).—*The provisions of the child life protection enactments as to entry and inspection:*—See the Public Health Act, 1936, s. 209; the Public Health (London) Act, 1936, s. 258; the Children and Young Persons (Scotland) Act, 1937, s. 2, and the Adoption of Children (Regulation) Act, 1939, s. 7, which are set out in Appendix B, *post*.

Subsection (2).—*Boarding out.*—See s. 54 (2) of the Children Act, 1948, *ante*, as to the inspection of children boarded-out either by a local authority or a voluntary organisation.

Definitions.—“Child,” “child life protection enactments” (s. 13 (2), *post*).

10. Exclusion of child life protection enactments where premises registered under Act.—Where premises registered under section one of this Act are used wholly or mainly for the reception of children as mentioned in paragraph (a) of subsection (1) of that section, the provisions of the child life protection enactments as to entry and inspection shall not apply in relation to any children received at the premises, and the provisions of section seven of this Act shall apply in relation to all children received thereat.

NOTE TO SECTION 10

See the notes to s. 9, *ante*.

11. Prosecution of offences.—In England and Wales, the local health authority may prosecute for any offence under this Act.

NOTES TO SECTION 11

As to offences under the Act, see ss. 4 and 7 (4), *ante*.

Local health authority.—See the National Health Service Act, 1946, s. 19 (1); 39 Halsbury's Statutes 537.

12. Payments out of moneys provided by Parliament.—There shall be defrayed out of moneys provided by Parliament any increase attributable to the provisions of this Act in grants payable under any other Act out of moneys so provided.

NOTE TO SECTION 12

Financial provisions.—Expenditure incurred by a local health authority in discharging its functions under the Act will automatically increase equalisation grants under the Local Government Act, 1948, and will attract Exchequer grant of 50 per cent. under s. 53 of the National Health Service Act, 1946 (39 Halsbury's Statutes 559), as amended by s. 7 of the Local Government Act, 1948, or under the corresponding Scottish provisions. The present section therefore provides for any increase in such grants attributable to the Act to be paid out of moneys provided by Parliament.

13. Short title, interpretation and extent.—(1) This Act may be cited as the Nurseries and Child-Minders Regulation Act, 1948.

(2) In this Act the following expressions have the meanings hereby assigned to them respectively, that is to say:—

“child” means a person who has not attained the upper limit of compulsory school age;

“child life protection enactments” means the provisions relating to child life protection of Part VII of the Public Health Act, 1936, the provisions of Part XIII of the Public Health (London) Act, 1936, the provisions of Part I of the Children and Young Persons (Scotland) Act, 1937, or the provisions of section seven of the Adoption of Children (Regulation) Act, 1939;

“compulsory school age”, in England and Wales, has the same meaning as in the Education Act, 1944, and in Scotland means school age as defined in the Education (Scotland) Act, 1946;

“hospital” has the same meaning as in section seventy nine of the National Health Service Act, 1946, or, as respects Scotland, section eighty of the National Health Service (Scotland) Act, 1947;

“relative” means a grandparent, brother, sister, uncle or aunt, whether by consanguinity or affinity, or in consequence of adoption, and as respects an illegitimate child includes a person who would be so related if the child were legitimate;

“school”, except in the expression “nursery school”, means an institution of which the sole or main purpose is the provision of education for children of compulsory school age.

(3) References in this Act to any enactment shall be construed as references to that enactment as amended by any subsequent enactment

(4) This Act shall not extend to Northern Ireland.

NOTES TO SECTION 13

Subsection (2).—*Child life protection enactments.*—See Appendix B, *post*.

Compulsory school age.—By the Education Act, 1944, s. 35 (37 Halsbury's Statutes 163), compulsory school age is defined as being any age between five and fifteen years, but provision is made for raising the upper limit to sixteen by Order in Council at some later date. As to a child attaining a particular age during a school term, see note to the Children Act, 1948, s. 59, *ante*.

Hospital.—For s. 79 of the National Health Service Act, 1946, see 39 Halsbury's Statutes 571.

APPENDIX A
ENACTMENTS CONCERNING CONTRIBUTION,
AFFILIATION AND MAINTENANCE ORDERS

CHILDREN AND YOUNG PERSONS ACT, 1933

[23 & 24 Geo. 5, c. 12]

(Ss. 86-89)

PART IV

REMAND HOMES, APPROVED SCHOOLS, AND PERSONS TO WHOSE CARE CHILDREN
AND YOUNG PERSONS MAY BE COMMITTED

NOTE.—For the application of this Part of this Act to orders made on an application under the Children Act, 1948, s. 26 (1), or to revived affiliation orders, see sub-s. (5) of s. 26; *cf.* generally Part III of that Act.

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Provisions as to Contributions towards Expenses

86. Contributions to be made by parents, &c., of children and young persons committed to the care of fit persons, or to approved schools.—

(1) Where an order has been made by a court committing a child or young person to the care of a fit person, or sending him to an approved school, it shall be the duty of [the person specified in section twenty-four of the Children Act, 1948] to make contributions in respect of him, *that is to say*:—

(a) *his father or stepfather;*

(b) *his mother or stepmother;*

(c) *any person who, at the date when any such order as aforesaid is made, is cohabiting with the mother of the child or young person, whether he is his putative father or not.*

(2) Where the child or young person has been committed to the care of a fit person not being a local authority, contributions under this section shall be payable to that person to be applied by him in or towards the maintenance, or otherwise for the benefit, of the child or young person.

(3) Where the child or young person has been committed to the care of a local authority, or ordered to be sent to an approved school, the contributions shall be payable to the council of the county or county borough within which the person liable to make the contributions is for the time being residing, and shall be paid over by the council to the Secretary of State at such times and in such manner, but subject to such deductions in respect of the services rendered by the council, as may be prescribed.

(4) Any sums received by the Secretary of State under the last foregoing subsection shall be applied in such manner as the Treasury may direct as appropriations in aid of moneys provided by Parliament for the purposes of this Act.

NOTES

The words in square brackets in sub-s. (1) were substituted, and the words in italics were deleted, by the Children Act, 1948, s. 60 and Sched. III, as from July 5, 1948.

See, generally, the Children Act, 1948, s. 24.

87. Enforcement of duty of parent, &c., to make contributions.—

(1) Where an order has been made by a court committing a child or young

person to the care of a fit person or sending him to an approved school, the court which makes it may at the same time, and any court of summary jurisdiction in the place where the person to be charged is for the time being residing may subsequently at any time, make an order (hereafter in this Act referred to as a "contribution order") on any person who is under the last foregoing section liable to make contributions in respect of the child or young person, requiring him to contribute such weekly sum as the court having regard to his means thinks fit :

Provided that the total amount to be contributed for any week in respect of any one child or young person under contribution orders shall not (together with any sum payable in respect of that child or young person under an affiliation order with respect to which an order under the next following section is in force) exceed such sum as may be prescribed in relation to different circumstances and, in the case of children sent to approved schools, in relation to different schools or classes of school.

(2) A contribution order may, if the child or young person is committed to the care of a fit person not being a local authority, be made on the application of that person and may, if the child or young person is committed to the care of a local authority, or ordered to be sent to an approved school, be made on the application—

(a) in the case of an order applied for at the time when the child or young person is so dealt with, of the local authority to whose care he has been committed, or who are named in the approved school order, as the case may be ;

(b) in the case of an order applied for subsequently, of the council of the county or county borough entitled to receive contributions.

(3) A contribution order shall remain in force, in the case of a child or young person committed to the care of a fit person, so long as the order for his committal is in force, and in the case of a child or young person ordered to be sent to an approved school, until he ceases to be under the care of the managers of such a school :

Provided that no contributions shall be payable under a contribution order in respect of any period during which a person ordered to be sent to an approved school is out on licence or under supervision from such a school.

(4) Subject to the provisions of this subsection—

(a) a contribution order shall be enforceable as an affiliation order and the enactments relating to the enforcement of affiliation orders shall apply accordingly, subject to any necessary modifications ; and

(b) section thirty of the Criminal Justice Administration Act, 1914 (which contains provisions as to orders for the periodical payment of money made by courts of summary jurisdiction) shall apply to every contribution order whether the court which made it was, or was not, a court of summary jurisdiction ;

but any powers conferred by any of the enactments aforesaid on any justices or courts of summary jurisdiction shall be exercisable, and exercisable only, by justices and courts of summary jurisdiction having jurisdiction in the place where the person liable is for the time being residing.

(5) A person on whom a contribution order is made shall, if he changes his address, forthwith give notice thereof to the person who was, immediately before the change, entitled to receive the contributions and, if he fails so to do, he shall be liable on summary conviction to a fine not exceeding two pounds.

NOTE

The proviso to sub-s. (1) was repealed by the Children Act, 1948, s. 60 and Sched. IV, Part I, as from July 5, 1948 ; cf. s. 24 of that Act.

88. Provision as to affiliation orders.—(1) Where a child or young person who is ordered by a court to be committed to the care of a fit person, or to be sent to an approved school, is illegitimate, and an affiliation order for his maintenance is in force, that court may at the same time, and any court of summary jurisdiction having jurisdiction in the place where the putative father is for the time being residing may subsequently at any time, order the payments under the affiliation order to be paid to the person who is from time to time entitled under section eighty-six of this Act to receive contributions in respect of the child or young person.

Applications for orders under this subsection may be made by the persons by whom, and in the circumstances in which, applications for contribution orders may be made.

(2) Where an order made under this section with respect to an affiliation order is in force—

- (a) any powers conferred on any justices or courts of summary jurisdiction by the enactments relating to the enforcement of affiliation orders or by section thirty of the Criminal Justice Administration Act, 1914, shall as respects the affiliation order in question be exercisable, and exercisable only, by justices and courts of summary jurisdiction having jurisdiction in the place where the person liable is for the time being residing ;
- (b) any sums received under the affiliation order shall be applied in like manner as if they were contributions received under a contribution order ;
- (c) if the putative father changes his address, he shall forthwith give notice thereof to the person who was immediately before the change entitled to receive payments under the order and, if he fails so to do, he shall be liable on summary conviction to a fine not exceeding two pounds ;
- (d) section one of the Affiliation Orders Act, 1914 (which relates to the duties of collecting officers), shall not apply in relation to the affiliation order, but nothing in this paragraph shall affect any powers of any court under section thirty of the Criminal Justice Administration Act, 1914, to order payments to be made through an officer of the court or any other specified person or officer.

(3) *The making of an order under this section with respect to an affiliation order shall not, where the putative father was, at the date of the order committing the child or young person to the care of a fit person or ordering him to be sent to an approved school, cohabiting with the mother of the child or young person, be taken to relieve him from his obligation under the last two foregoing sections to make contributions in respect of the child or young person, except to the extent of any sums actually paid under the affiliation order to the person entitled to receive contributions.*

(4) The making of an order under this section with respect to an affiliation order shall not extend the duration of that order, and that order shall not in any case remain in force (except for the purpose of the recovery of arrears)—

- (a) in the case of a child or young person committed to the care of a fit person, after the order for his committal has ceased to be in force ;
- (b) in the case of a child or young person ordered to be sent to an approved school, after he has been released from his school, either absolutely, or on licence or under supervision :

Provided that, where an affiliation order would, but for the provisions of this subsection have continued in force, the mother, or any person entitled to make an application for an order under section three of the Affiliation Orders Act, 1914, may apply to a court of summary jurisdiction having jurisdiction in the place where she or he is for the time being residing, for an order that the affiliation order may be revived, and that payments thereunder may until

the expiration thereof be made to the applicant at such rate (not exceeding the maximum rate allowed by the law in the case of affiliation orders) as may be proper, and the court may make such an order accordingly, and where such an order is so made, any power to vary, revoke or again revive the affiliation order or any part thereof, being a power which would but for the provisions of this subsection be vested in the court which originally made the affiliation order, shall be exercisable, and exercisable only, by the court which made the order under this subsection.

NOTES

Sub-s. (3) was repealed by the Children Act, 1948, s. 60 and Sched. IV, Part I, as from July 5, 1948.

Subsection (2) (a).—See the Children Act, 1948, s. 26 (6).

Subsection (4).—In applying to children in the care of a local authority under s. 1 of the Children Act, 1948, sub-s. (4), *supra*, has effect as if the words "after the child or young person has ceased to be in the care of a local authority under section one of the Children Act, 1948" were substituted for paras. (a) and (b); see the Children Act, 1948 s. 23 (3). Cf. also the Children Act, 1948, s. 26 (4).

89. Miscellaneous provisions as to contribution orders.—(1) The Secretary of State may in his discretion remit the whole or any part of any payment ordered under either of the two last foregoing sections to be made to a person entitled to receive contributions thereunder.

(2) Where, by virtue of an order made under either of the two last foregoing sections, any sum is payable to the council of a county or county borough, the council of the county or county borough in which the person liable under the order is for the time being residing shall be entitled to receive and give a discharge for, and, if necessary, enforce payment of, any arrears accrued due under the order, notwithstanding that those arrears may have accrued at a time when he was not resident in that county or county borough.

(3) In any proceedings under either of the two last foregoing sections a certificate purporting to be signed by the clerk to a council for the time being entitled to receive contributions, or by some other officer of the council duly authorised in that behalf, and stating that any sum due to the council under an order is overdue and unpaid shall be evidence of the facts stated therein.

(4) *Nothing in this or in the three last foregoing sections shall apply in relation to an approved school order made on the application of a poor law authority in their capacity as such, but the sending of a child or young person to an approved school under such an order shall not affect any maintenance order made under section nineteen of the Poor Law Act, 1930, or any power of the poor law authority to obtain such an order, and for the purposes of the enactments relating to affiliation orders, he shall, while under the care of the managers of an approved school, be deemed to be still in receipt of relief.*

NOTE

Sub-s. (4) was repealed by the National Assistance Act, 1948, s. 62 (3) and Sched. VII, Part III, as from the appointed day, *i.e.*, July 5, 1948; see the National Assistance Act (Appointed Day) Order, 1948, S. I. 1948 No. 1218.

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CHILDREN AND YOUNG PERSONS (SCOTLAND) ACT, 1937

[1 Edw. 8 & 1 Geo. 6, c. 37]

(ss. 90-92)

PART V

REMAND HOMES, APPROVED SCHOOLS AND PERSONS TO WHOSE CARE CHILDREN AND YOUNG PERSONS MAY BE COMMITTED

* * * * *

Provisions as to Contributions towards Expenses

90. Contributions to be made by parents, &c., of children and young persons committed to the care of fit persons, or to approved schools.—

(1) Where an order has been made by a court committing a child or young

person to the care of a fit person, or sending him to an approved school, it shall be the duty of [the person specified in section twenty-four of the Children Act, 1948] to make contributions in respect of him, *that is to say* :—

- (a) *his father or stepfather ;*
- (b) *his mother or stepmother ; and*
- (c) *any person who, at the date when any such order as aforesaid is made, is cohabiting with the mother of the child or young person, whether he is his father or not.*

(2) Where the child or young person has been committed to the care of a fit person not being [a local authority], contributions under this section shall (except where a direction for payment to [a local authority] is given under subsection (4) of the next following section) be payable to that person to be applied by him in or towards the maintenance, or otherwise for the benefit, of the child or young person.

(3) Where the child or young person has been committed to the care of [a local authority], or ordered to be sent to an approved school, the contributions shall be payable to [the local authority or the education authority, as the case may be, within whose area the person liable to make the contribution is for the time being residing, and shall be paid over by such authority] to the Scottish Education Department at such times and in such manner, but subject to such deductions in respect of the services rendered by the authority, as may be prescribed.

(4) Any sums received by the Scottish Education Department under the last foregoing subsection shall be applied in such manner as the Treasury may direct as appropriations in aid of moneys provided by Parliament for the purposes of this Act.

NOTE

The words in italics in sub-s. (1) were deleted, and the words in square brackets in sub-s. (1), (2) and (3) were substituted, by the Children Act, 1948, s. 60 and Sched. III, as from July 5, 1948.

91. Enforcement of duty of parent, &c., to make contributions.—(1) Where an order has been made by a court committing a child or young person to the care of a fit person or sending him to an approved school, the court which makes it may at the same time, and any court of summary jurisdiction having jurisdiction in the place where the person to be charged is for the time being residing may subsequently at any time, make an order (hereafter in this Act referred to as a "contribution order") on any person who is under the last foregoing section liable to make contributions in respect of the child or young person, requiring him to contribute such weekly sum as the court having regard to his means thinks fit :

Provided that the total amount to be contributed for any week in respect of any one child or young person under contribution orders shall not (together with any sum payable in respect of that child or young person under a decree for aliment with respect to which an order under the next following section is in force) exceed such sum as may be prescribed, and for this purpose different sums may be prescribed in relation to different circumstances and, in the case of children sent to approved schools, in relation to different schools or classes of school.

(2) A contribution order may, if the child or young person is committed to the care of a fit person not being [a local authority], be made on the application of that person and may, if the child or young person is committed to the care of [a local authority], or ordered to be sent to an approved school, be made on the application—

- (a) in the case of an order applied for at the time when the child or young person is so dealt with, of the [local] authority to whose care he has been committed, or [of the education authority] who are named in the approved school order, as the case may be ;

(b) in the case of an order applied for subsequently, of the [local authority or the] education authority [as the case may be] entitled to receive contributions.

(3) Where a contribution order has been made on any person to whom any pension or income capable of being arrested is payable, the court making the order may at the same time, and any court of summary jurisdiction having jurisdiction in the place where such person is for the time being resident, may subsequently at any time, after giving the person by whom the pension or income is payable an opportunity of being heard, order that such part as the court may see fit of the pension or income be paid to the person who is for the time being entitled to receive the contributions under the contribution order. Any order made under this subsection shall be an authority to the person by whom the pension or income is payable to make the payment so ordered and the receipt of the person for the time being entitled to receive the contributions shall be a good discharge to the person by whom the pension or income is payable.

(4) Where a contribution order has been made in respect of a child or young person committed to the care of a fit person, not being [a local authority], the court making the contribution order may at the same time, on the application of that person, and any court of summary jurisdiction having jurisdiction in the place where the person liable in payment of the contributions is for the time being resident, may subsequently at any time, on the like application, direct that the contributions shall, in lieu of being payable to the person to whose care the child or young person has been committed, be payable to the [local] authority within whose area the person liable in payment of the contributions is for the time being resident, and any sums received by that authority in pursuance of such direction shall be paid over to the person to whose care the child or young person has been committed and shall be applied by him in or towards the maintenance, or otherwise for the benefit, of the child or young person.

(5) A contribution order shall remain in force, in the case of a child or young person committed to the care of a fit person, so long as the order for his committal is in force, and in the case of a child or young person ordered to be sent to an approved school, until he ceases to be under the care of the managers of such a school :

Provided that no contributions shall be payable under a contribution order in respect of any period during which a person ordered to be sent to an approved school is out on licence or under supervision from such a school.

(6) A contribution order may be revoked or varied by any court of summary jurisdiction having jurisdiction in the place where the person liable is for the time being residing and shall be enforceable in like manner as a decree for alimony.

(7) A person on whom a contribution order is made shall, if he changes his address, forthwith give notice thereof to the person who was, immediately before the change, entitled to receive the contributions and, if he fails so to do, he shall be liable on conviction by a court of summary jurisdiction to a fine not exceeding two pounds.

NOTES

The proviso to sub-s. (1) was repealed by the Children Act, 1948, s. 60 and Sched. IV, Part I.

The words in square brackets in sub-s. (2), paras. (a) and (b) were substituted or added, and the words in square brackets elsewhere in sub-s. (2) and in sub-s. (4) were substituted, by the Children Act, 1948, s. 60 and Sched. III, as from July 5, 1948.

Education Authority.—References to "a local authority" were substituted for references to "an education authority" (except in sub-s. (2), para. (b)) by the Children Act, 1948, s. 60 and Sched. III.

92. Provision as to decrees for aliment.—(1) Where a child or young person who is ordered by a court to be committed to the care of a fit person, or to be sent to an approved school, is illegitimate, and a decree for aliment in respect of him is in force, that court may at the same time, and any court of summary jurisdiction having jurisdiction in the place where the father is for the time being residing may subsequently at any time, order the payments under the decree for aliment to be paid to the person who is from time to time entitled under either of the last two foregoing sections of this Act to receive contributions in respect of the child or young person.

Applications for orders under this subsection may be made by the persons by whom, and in the circumstances in which, applications for contribution orders may be made.

(2) Where an order made under this section with respect to a decree for aliment is in force—

(a) any sums received under the decree for aliment shall be applied in like manner as if they were contributions received under a contribution order ;

(b) if the father changes his address, he shall forthwith give notice thereof to the person who was immediately before the change entitled to receive payments under the order and, if he fails so to do, he shall be liable on conviction by a court of summary jurisdiction to a fine not exceeding two pounds.

(3) *The making of an order under this section with respect to a decree for aliment shall not, where the father was, at the date of the order committing the child or young person to the care of a fit person or ordering him to be sent to an approved school, cohabiting with the mother of the child or young person, be taken to relieve him from his obligations under the last two foregoing sections to make contributions in respect of the child or young person, except to the extent of any sums actually paid under the decree for aliment to the person entitled to receive contributions.*

NOTE

Sub-s. (3) was repealed by the Children Act, 1948, s. 60 and Sched. IV, Part I.

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EMERGENCY LAWS (MISCELLANEOUS PROVISIONS) ACT, 1947

[11 & 12 Geo. 6, c. 10]

(Second Schedule, paras. 6-8)

PERMANENT ENACTMENT OF PROVISIONS OF CERTAIN DEFENCE REGULATIONS

Note.—By section 2 of this Act these provisions, together with those of regulation 17 B of the Defence (Administration of Justice) Regulations, 1940 (concerning the enforcement of affiliation and maintenance orders) preserved by para. 5 of this Schedule, are to have permanent effect.

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*Provisions reproducing Regulation 17C of Defence
(Administration of Justice) Regulations, 1940*

6. Revocation, revival and variation of affiliation and maintenance orders.—(1) The following provisions shall have effect as respects complaints under subsection (3) of section thirty of the Criminal Justice Administration Act, 1914, or section seven of the Summary Jurisdiction (Married Women) Act, 1895, as amended by section nine of the Money Payments (Justices Procedure) Act, 1935, for the revocation, discharge, revival, alteration or variation of an affiliation order or a maintenance order.

(2) A complaint may be made to a court of summary jurisdiction having jurisdiction in the place where the complainant is for the time being, instead of to the court which made the order (hereafter in this paragraph referred to as "the original court").

(3) The court to which the complaint is made whether it is the original court or any other court shall take no action thereon unless and until the complainant furnishes the court with written particulars—

- (a) of the nature of the evidence by which it is proposed to support the complaint ; and
- (b) of the occupations of the complainant and the defendant and of the address of the complainant and of the last address of the defendant known to the complainant ; and
- (c) of the names, addresses and occupations of any other persons whom the complainant proposes to call as witnesses on the hearing of the complaint :

Provided that this sub-paragraph shall not apply where the complaint is made to the original court and it appears to the court that the last address of the defendant known to the complainant is within the jurisdiction of that court.

(4) Where the complaint is made to the original court and it appears that the places stated in the said particulars as being the addresses of the complainant and defendant are within the jurisdiction of another court or other courts of summary jurisdiction, or that one of them is within the jurisdiction of another such court :—

- (a) the original court shall, having regard to the said particulars, determine whether the complaint could more conveniently be dealt with by the original court or by that other court or one of those other courts ;
- (b) if the original court determines that the complaint could more conveniently be dealt with by itself, it shall issue a summons and hear and determine the complaint accordingly ;
- (c) if the original court determines that the complaint could more conveniently be dealt with by some other such court of summary jurisdiction as aforesaid—
 - (i) it shall order the clerk of the court to send by post to the clerk of that other court the complaint and the said particulars ; and
 - (ii) on receipt thereof by the clerk of that other court, that other court shall issue a summons and hear and determine the complaint as if it were the original court.

(5) Where by virtue of sub-paragraph (2) hereof the complaint is made to a court other than the original court—

- (a) that other court shall order the clerk thereof to send the complaint and the said particulars by post to the clerk of the original court ;
- (b) on receipt of the complaint and the said particulars by the clerk of the original court, paragraph (4) hereof shall apply as if the complaint had been made to the original court.

(6) Where by virtue of these provisions an affiliation order or a maintenance order is revoked, discharged, revived, altered or varied by order of a court of summary jurisdiction other than the original court—

- (a) the clerk of that other court shall forthwith send by post an extract from the register kept by him under section twenty-two of the Summary Jurisdiction Act, 1879, containing a minute or memorandum of the order of that other court to the clerk of the original court ; and
- (b) on receipt of the extract, the clerk of the original court shall enter the minute or memorandum in the register kept by him as aforesaid.

*Provisions reproducing Regulation 17D of the Defence
(Administration of Justice) Regulations, 1940*

7. Evidence of affiliation and maintenance orders.—(1) An extract from the register kept under section twenty-two of the Summary Jurisdiction Act, 1879, by the clerk of a court of summary jurisdiction, purporting to be certified by the clerk of that court to be a true extract, and containing a minute or memorandum of—

- (a) an affiliation order or maintenance order made by the court ; or
- (b) an order made by the court revoking, discharging, reviving, altering or varying an affiliation order or maintenance order made by the court or some other court ; or
- (c) an order whereof a minute or memorandum has been entered in the register by virtue of sub-paragraph (6) of the last preceding paragraph ;

shall, in any proceedings before any other court of summary jurisdiction relating to the enforcement of the order or the revocation, discharge, revival, alteration or variation of the order, be evidence of the making of the order.

(2) A certificate purporting to be signed by the clerk of a court of summary jurisdiction, and stating that no minute or memorandum of an order revoking, discharging, reviving, altering or varying an affiliation order or maintenance order made by the court is entered in the register kept by him as aforesaid, shall, in any such proceedings as aforesaid, be evidence that the affiliation order or maintenance order has not been revoked, discharged, revived, altered or varied.

(3) Nothing in these provisions shall be taken to prejudice the provisions of subsection (2) of the said section twenty-two (which provides that a register kept as aforesaid or an extract therefrom, shall be evidence of the matters entered therein for the purpose of informing a court of summary jurisdiction for the same county, borough or place).

Interpretation, extent and savings

8. Interpretation, extent and savings.—(1) In paragraphs 5, 6 and 7 of this Schedule, the expression "affiliation order" has the same meaning as in the Affiliation Orders Act, 1914, and the expression "maintenance order" means an order made under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, or under those Acts as amended by section eleven of the Matrimonial Causes Act, 1937, requiring a husband to pay a weekly sum to his wife or to an officer of the court or third person on her behalf, and the expression "court" means, except in relation to the hearing and determination of a complaint, any justice or justices having jurisdiction in the petty sessional division or place for which the court acts.

(2) Paragraphs 5, 6 and 7 of this Schedule shall not extend to Scotland or Northern Ireland.

(3) Any order, complaint, proceeding, summons, warrant, certificate, determination, extract, entry, minute, memorandum or other thing, made, taken, issued or done under Regulation 17B, Regulation 17C or Regulation 17D of the Defence (Administration of Justice) Regulations, 1940, shall, if in force immediately before the commencement of this Act, continue in force and have effect as if made, taken, issued or done under the corresponding provision of paragraph 5, paragraph 6 or paragraph 7 of this Schedule.

NATIONAL ASSISTANCE ACT, 1948

[II & 12 Geo. 6, c. 29]

(s. 44)

* * * * *

Recovery of Expenses

44. Affiliation orders.—(1) The following provisions of this section shall have effect where—

(a) assistance is given under Part II of this Act by reference to the requirements of an illegitimate child, or

(b) accommodation is provided for an illegitimate child by, or by arrangement with, a local authority under Part III of this Act,

and the provisions of the last foregoing section shall not apply in relation to the father of the child.

(2) If no affiliation order is in force, the Board or local authority may within three years from the time when the assistance was given or accommodation provided make application to a court of summary jurisdiction having jurisdiction in the place where the mother of the child resides for a summons to be served under section three of the Bastardy Laws Amendment Act, 1872.

(3) In any proceedings on an application under the last foregoing subsection the court shall hear such evidence as the Board or local authority may produce, in addition to the evidence required to be heard by section four of the said Act of 1872, and shall in all other respects, but subject to the provisions of the next following subsection, proceed as on an application made by the mother under the said section three.

(4) An order under section four of the said Act of 1872 made on an application under subsection (2) of this section may be made so as to provide that the payments, or a part of the payments, to be made thereunder shall, in lieu of being made to the mother or a person appointed to have the custody of the child, be made to the Board or local authority or to such other person as the court may direct.

(5) On an application by the Board or local authority in any proceedings under the said section three brought by the mother of the child an order under the said section four may be made so as to provide as aforesaid.

(6) Any order under the said section four, whether made before or after the commencement of this Act, may on the application of the Board or local authority be varied so as to provide as aforesaid; and any order under the said section four which provides as aforesaid may on the application of the mother of the child be varied so as to provide that the payments thereunder shall be made to the mother or a person appointed to have the custody of the child.

(7) In the application of this section to Scotland, subsection (1) shall have effect as if all the words after " Part III of this Act " were omitted and the following provisions shall have effect in substitution for the five last foregoing subsections :—

(a) the Board or the local authority shall have the like right as the mother to raise an action of affiliation and aliment concluding for payment of aliment for the child;

(b) where in any action of affiliation and aliment in respect of the child, whether at the instance of the Board or the local authority under the last foregoing paragraph or at the instance of the mother, the court grants or has granted decree against any person for payment

of aliment for the child, the court may, at the time of granting the decree or at any subsequent time, on the application of the Board or the local authority, order that the sums due under the decree or any part thereof shall in lieu of being paid to the mother of the child be paid to the Board or the local authority or such person as the court may direct ;

- (c) the Board, or local authority or other person in whose favour any such order as aforesaid is made shall have the like right to enforce the decree (so far as relating to the said sums) by diligence, including the right to take proceedings under the Civil Imprisonment (Scotland) Act, 1882, as if the decree were a decree in favour of the Board or authority or person.

(8) Subsection (6) of the last foregoing section shall apply to payments recovered by the Board or local authority under an order made in pursuance of subsections (4) to (7) of this section as it applies to payments recovered by the Board or local authority under that section.

(9) The Secretary of State may issue such new or altered forms of proceedings as he may deem necessary or expedient for giving effect to the foregoing provisions of this section, so far as they apply to England and Wales.

* * * * *

APPENDIX B
CHILD LIFE PROTECTION ENACTMENTS

PUBLIC HEALTH ACT, 1936

[26 Geo. 5 & 1 Edw. 8, c. 49]

(Ss. 206-220 and 300-302)

PART VII

NOTIFICATION OF BIRTHS; MATERNITY AND CHILD WELFARE, AND
CHILD LIFE PROTECTION

* * * * *

Child life protection

INTRODUCTORY NOTE.—For the extension of this Part of this Act to children of compulsory school age who are over the age of nine, see the Children Act, 1948, ss. 35 (a), 36. Nothing in this Part of this Act is to apply in relation to any undertaking given by a person with whom a child is boarded-out by the Minister of Pensions, by a local authority under Part II of the Children Act, 1948, or by a voluntary organisation (the Children Act, 1948, s. 37 (3)). Welfare authorities under the Public Health Act, 1936, were defined in s. 200 of that Act (see 29 Halsbury's Statutes 460) repealed on July 5, 1948, by National Health Service Act, 1946, s. 76 and Tenth Schedule, Part II.

Children for whom accommodation is provided under Defence (General) Regulations 1939 (S. R. & O. 1939 No. 927), reg. 22, or under an evacuation plan are excluded from the application of ss. 206-219 of the Public Health Act, 1936. Regulation 22 is continued in force until December 10, 1950; see Emergency Laws (Miscellaneous Provisions) Act, 1947, s. 1, and Sched. I, Part III, and Emergency Laws (Transitional Provisions) Act, 1946, s. 1, and Schedule I, Part I.

206. Notices to be given by persons receiving children for reward.—

(1) A person who undertakes for reward the nursing and maintenance of a child under the age of nine years apart from his parents, or having no parents, shall give notice thereof to the welfare authority—

- (a) in the case of a child not already in his care, being the first child under the age of nine years proposed to be received by him for reward in the premises occupied, or proposed to be occupied, for the purpose, not less than seven days before he receives the child;
- (b) in the case of any other child not already in his care, not less than forty-eight hours before he receives the child; and
- (c) in the case of a child already in his care without reward, within forty-eight hours after entering into the undertaking:

Provided that, in proceedings in respect of a failure to give such notice as aforesaid, it shall be a defence for the defendant to prove that he received the child upon an emergency and gave notice within twenty-four hours thereafter.

For the purposes of this subsection, an undertaking shall be deemed to be an undertaking for reward if there is any payment or gift of money or money's worth, or any promise to pay or give money or money's worth, irrespective of whether there is any intention of making profit.

(2) The notice required by the preceding subsection shall state the name and sex of the child, the date and place of his birth, the name of the person undertaking his nursing and maintenance, any premises in which he is to be, or is being, kept, whether in the daytime or at night, and the name and address of the person from whom he is to be, or was, received.

(3) In the following provisions of this Part of this Act a child under the age of nine years in respect of whom a notice has been or ought to have been given under this section, or under subsection (2) of the next succeeding section, or under section one of the Children Act, 1908, and who is still living apart

from his parents, if any, with the person by whom the notice was, or ought to have been, given, is referred to as a "foster child."

NOTES

Age of nine years.—See introductory note, *supra*.

Welfare authority.—See the Children Act, 1948, s. 38.

207. Notices to be given if residence is changed, or if foster child dies, or is removed.—(1) If a person who is maintaining a foster child changes his residence, he shall at least seven days before so doing give to the welfare authority notice of the change, and, where the residence to which he moves is situate in the area of another welfare authority, he shall at least seven days before so moving give to that welfare authority the like notice as respects each foster child in his care as he is required to give on the first reception of a foster child :

Provided that, where an immediate change of residence is necessitated by any emergency, a notice under this subsection may be given at any time within forty-eight hours after the change of residence.

(2) If a person who in London, or in any place outside England and Wales, is nursing and maintaining for reward a child under the age of nine years apart from his parents, or having no parents, comes to reside in the area of a welfare authority, he shall, within forty-eight hours give to that authority the like notice in respect of every such child in his care as he is required to give on the first reception of a foster child.

(3) If a foster child dies, or is removed [or removes himself] from the care of the person who has undertaken his nursing and maintenance, that person shall, within twenty-four hours thereof, give to the welfare authority and to the person from whom the child was received notice in writing of the death or removal and, in a case of removal, the notice shall also state the name and address of the person [(if any)] to whose care the child has been transferred.

NOTES

The words in square brackets in sub-s. (3) were added by the Children Act, 1948, s. 60 and Sched. III, as from July 5, 1948.

Foster child.—See s. 206 (3), *ante*.

208. Penalties for failure to give notices.—(1) If any person required to give a notice under either of the two last preceding sections fails to give the notice before the latest time specified for giving the notice, he shall be guilty of an offence and, if the consideration for the nursing and maintenance of the child in respect of whom notice ought to have been given consisted in whole or in part of a lump sum, the person failing to give the notice shall, in addition to any other penalty under this Part of this Act, be liable to forfeit that sum, or such less sum as the court having cognizance of the case may deem just, and the sum forfeited shall be applied for the benefit of the child in such manner as the court may direct.

(2) Where under this section any such sum as aforesaid is ordered to be forfeited, the order may be enforced as if it were an order for the payment of a civil debt recoverable summarily.

(3) For the purposes of any enactment by which the time for taking proceedings is limited, an offence under this section shall be deemed to continue so long as the child in respect of whom a notice ought to have been given remains in the care of the offender without any notice having been given.

209. Appointment and powers of child protection visitors.—(1) Every welfare authority shall from time to time make inquiry whether there are any persons residing within their area who undertake the nursing and maintenance of foster children.

(2) If any such persons are found, the welfare authority shall appoint one or more persons to be child protection visitors, whose duty it shall be to visit from time to time any foster children and the premises in which they are kept in order to satisfy themselves as to the health and well-being of the children and to give any necessary advice or directions as to the care of their health

and their maintenance :

Provided that the authority may, either in addition to or in lieu of appointing child protection visitors, authorise one or more suitable persons to exercise the powers of such visitors, subject to such terms and conditions as may be stated in the authorisation, and, where any children have been placed out to nurse in the area of the authority by any philanthropic society, may, if satisfied that the interests of the children are properly safeguarded, so authorise the society to exercise those powers as respects those children, subject, however, to the obligation to furnish periodical reports to the welfare authority.

Where a welfare authority appoint or authorise one person only to act under this subsection, that person, and where they so appoint or authorise two or more persons, one at least of those persons, shall be a woman.

(3) If a person who undertakes the nursing and maintenance of a foster child refuses to allow any such visitor or other person to visit or examine the child or the premises in which the child is kept, he shall be guilty of an offence.

(4) If any such visitor or other person is refused admission to any premises in contravention of this Part of this Act, or has reason to believe that a child under the age of nine years is being kept in any premises in contravention of this Part of this Act, he may apply to a justice of the peace, and the justice, if satisfied on sworn information in writing that admission has been so refused, or that there is reasonable ground for believing that an offence under this Part of this Act has been committed, may grant a warrant authorising the visitor or other person to enter the premises for the purpose of ascertaining whether any such offence as aforesaid has been committed, and, if any person obstructs any visitor or other person acting in pursuance of such a warrant, he shall be guilty of an offence.

NOTE

Foster child.—See s. 206 (3), *ante*.

210. Persons prohibited from receiving foster children.—A foster child shall not without the consent of the welfare authority be kept—

- (a) by any person from whose care any child or infant has been removed under this Part of this Act, Part I of the Children Act, 1908, or the Infant Life Protection Act, 1897; or
- (b) in any premises from which any child or infant has been removed under this Part of this Act or Part I of the Children Act, 1908, by reason of the premises being dangerous or insanitary, or under the Infant Life Protection Act, 1897, by reason of the premises being so unfit as to endanger the health of the child or infant; or
- (c) by any person who has been convicted of any offence under Part I of the Children and Young Persons Act, 1933, or Part II of the Children Act, 1908, or any offence of cruelty under the Prevention of Cruelty to Children Act, 1904,

and any person keeping a foster child contrary to this section, or causing a foster child to be so kept, shall be guilty of an offence.

NOTE

Foster child.—See s. 206 (3), *ante*.

211. Power of welfare authority to prevent overcrowding where foster children kept.—(1) The welfare authority may fix the maximum number of children under the age of [eighteen] years who may be kept in any premises in which a foster child is kept, and may also impose conditions to be complied with so long as the number of children kept in the premises exceeds a specified number.

(2) If the maximum number so fixed is exceeded, or if any condition so imposed is not complied with, a person who keeps a foster child in those premises shall be guilty of an offence.

NOTES

The word in square brackets in sub-s. (1) was substituted for "nine" by the Children

Act, 1948, s. 60 and Sched. III; *cf.* Introductory Note to this Part of this Act, *ante*.

Foster child.—See s. 206 (3), *ante*.

212. Removal of foster children kept in unsuitable premises, or by unsuitable persons.—(1) If a foster child is about to be received, or is being kept—

- (a) in any premises which are overcrowded, insanitary or dangerous; or
- (b) by any person who, by reason of old age, infirmity, ill health, ignorance, negligence, inebriety, immorality or criminal conduct, or for any other reason, is unfit to have care of the child; or
- (c) in any premises, or by any person, in contravention of any of the provisions of this Part of this Act; or
- (d) in an environment which is detrimental to the child,

a court of summary jurisdiction may, on the application of the welfare authority, make an order for the removal of the child to a place of safety until he can be restored to his relatives, or until other arrangements can be made with respect to him; and, upon proof that there is imminent danger to the health or well-being of the child concerned, a justice (acting, if he deems it necessary, *ex parte*) may exercise the like power on the application of a visitor, or other person appointed or authorised to execute the provisions of this Part of this Act.

(2) An order made under the foregoing subsection may be enforced by a visitor or other person appointed or authorised as aforesaid; and any person who refuses to comply with such an order upon its being produced, or who obstructs any such visitor or person as aforesaid in the enforcement of the order, shall be guilty of an offence.

NOTE

Foster child.—See s. 206 (3), *ante*.

213. Death of foster child to be notified to coroner.—(1) In the case of the death of a foster child, the person who had the care of the child shall within twenty-four hours of the death give notice in writing thereof to the coroner of the district within which the body of the child lies, and the coroner shall hold an inquest thereon, unless there is produced to him a certificate of a registered medical practitioner certifying that that practitioner has personally attended the child during his last illness and certifying also the cause of death, and the coroner is satisfied that there is no ground for holding an inquest.

(2) If the person required to give notice under this section fails to give notice within the time specified for the purpose, he shall be guilty of an offence.

NOTE

Foster child.—See s. 206 (3), *ante*.

214. Avoidance of insurances on lives of foster children.—A person who keeps a foster child shall be deemed to have no interest in the life of the child for the purposes of the Life Assurance Act, 1774, and, if any such person directly or indirectly insures or attempts to insure the life of a foster child, he shall be guilty of an offence and, if any company, society, or person knowingly issues, or procures or attempts to procure to be issued, to or for the benefit of such a person as aforesaid or to any person on his behalf, a policy on the life of a foster child, the company, society, or person shall be guilty of an offence.

NOTE

Foster child.—See s. 206 (3), *ante*.

215. Prohibition of anonymous advertisements offering to undertake care of children.—(1) No advertisement indicating that a person or society will undertake, or will arrange for, the nursing and maintenance of a child

shall be published, unless that person's name and residence, or, as the case may be, that society's name and office, are truly stated in the advertisement.

(2) Any person who causes to be published, or knowingly publishes, an advertisement in contravention of the provisions of this section shall be guilty of an offence.

216. Offences in connection with notices under this Part of Act.—If any person required to give any notice under the foregoing provisions of this Part of this Act relating to child life protection knowingly makes, or causes or procures any other person to make, any false or misleading statement in any such notice, he shall be guilty of an offence.

217. Other offences under this Part of Act.—Any person guilty of an offence under the foregoing provisions of this Part of this Act relating to child life protection shall be liable to imprisonment for a term not exceeding six months, or to a fine not exceeding twenty-five pounds, or to both such imprisonment and such fine, and the court may order any child in respect of which the offence was committed to be removed to a place of safety.

218. Welfare authority may maintain child in place of safety.—*Where a child is removed under this Part of this Act to a place of safety [other than a hospital vested in the Minister], the welfare authority may defray the expenses of his maintenance therein.*

NOTES

The words in square brackets were added by the National Health Service Act, 1946, s. 76 and Sched. X, Part I (39 Halsbury's Statutes 570, 588) as from the appointed day, *i.e.* July 5, 1948; see the National Health Service Act (Appointed Day) Order, 1948, S. I. 1948 No. 1218.

This section was repealed by the Children Act, 1948, s. 60 and Sched. IV, Part I, as from July 5, 1948.

219. Exemptions from this Part of Act.—(1) The foregoing provisions of this Part of this Act relating to child life protection shall not extend to any relative or legal guardian of a child who undertakes the nursing and maintenance of the child, or to any person who undertakes the nursing or maintenance of a child [on whom a requirement as to residence is imposed by a supervision order or probation order, or who undertakes the nursing or maintenance of a child boarded out by the Minister of Pensions, by a local authority under Part II of the Children Act, 1948, or by a voluntary organisation within the meaning of that Act, or to any voluntary home within the meaning of the Children and Young Persons Act, 1933, or to any school, hospital, convalescent home], or other institution, being a school, hospital, home or institution—

- (a) which is maintained by a Government department, county council (including the London County Council), local authority or metropolitan borough council, or any other authority or body constituted by special Act of Parliament or incorporated by Royal Charter; or
- (b) in respect of which a certificate of exemption from the said provisions granted by the welfare authority is in force; or
- (c) which is an institution, house, or home certified or approved by the [Minister] under the Mental Deficiency Acts, 1913 to 1927, and in which no children or young persons who are not mental defectives within the meaning of those Acts are received;

nor shall the said provisions apply in relation to any mental defective who is under care elsewhere than in a certified institution, certified house or approved home, if he is so under care with the consent of the Board of Control, or if notice with respect to him has been given to the Board in accordance with subsection (2) of section fifty-one of the Mental Deficiency Act, 1913.

(2) Where a person undertakes the nursing and maintenance of children who are boarded out with that person in succession for short holidays only by a bona fide charitable organisation, the welfare authority may exempt that person from the obligation to give notice under this Part of this Act in respect of each individual child received, on condition that notice is given in respect of the first such child received by that person in each year, but for the purposes of the other provisions of this Part of this Act a child in respect of whom notice ought, but for such exemption, to have been given shall be deemed to be a foster child.

(3) A welfare authority may exempt from being visited, either unconditionally or subject to such conditions as they think fit, any particular premises within their area which appear to them to be so conducted that it is unnecessary that they should be visited by child protection visitors.

(4) An exemption granted under this section, or under any corresponding enactment repealed by this Act, may at any time be withdrawn by the welfare authority.

NOTES

The words first appearing in square brackets in sub-s. (1) were substituted by the Children Act, 1948, s. 60 and Sched. III.

The word in square brackets in sub-s. (1) (c) was substituted by the National Health Service Act, 1946, s. 76 and Sched. X, Part I (39 Halsbury's Statutes 570, 588), as from July 1, 1947, the appointed day; see S. R. & O. 1947 No. 783.

References to hospitals maintained by a Government department include references to hospitals maintained by Regional Hospitals Boards on behalf of the Minister of Health or Secretary of State (the Children Act, 1948, s. 37 (6)).

Voluntary homes.—For exemption, see the Children Act, 1948, s. 37 (6).

220. Interpretation of Part VII.—In this Part of this Act—

the expression "relative" means a grandparent, brother, sister, uncle, or aunt, whether by consanguinity or affinity, or in consequence of adoption, and, in the case of an illegitimate child, a person who would be so related if the child were legitimate;

the expression "adoption" means adoption under the Adoption of Children Act, 1926, or any corresponding enactment applicable to Scotland or Northern Ireland;

the expression "legal guardian" means a person appointed according to law to be the guardian of a child, either by deed or will, or by order of a court of competent jurisdiction; and

the expression "place of safety" means [a home provided by a local authority under Part II of the Children Act, 1948], a remand home, *public assistance institution*, or police station, or any hospital, surgery or other suitable place, the occupier of which is willing temporarily to receive a child.

NOTES

The words in square brackets were added by the Children Act, 1948, s. 60 and Schedule III.

The words in italics were repealed by the National Assistance Act, 1948, s. 62 and Schedule VII, Part III, as from the appointed day, *i.e.* July 5, 1948; see S. I. 1948 No. 1218.

* * * * *

PART XII

GENERAL

* * * * *

Appeals and other applications to courts of summary jurisdiction, and appeals to quarter sessions

300. Appeals and applications to courts of summary jurisdiction.—

(1) Where any enactment in this Act provides—

(a) for an appeal to a court of summary jurisdiction against a requirement, refusal or other decision of a council; or

(b) for any matter to be determined by, or an application in respect of any matter to be made to, a court of summary jurisdiction, the procedure shall be by way of complaint for an order, and the Summary Jurisdiction Acts shall apply to the proceedings.

(2) The time within which any such appeal may be brought shall be twenty-one days from the date on which notice of the council's requirement, refusal or other decision was served upon the person desiring to appeal, and for the purposes of this subsection the making of the complaint shall be deemed to be the bringing of the appeal.

(3) In any case where such an appeal lies, the document notifying to the person concerned the decision of the council in the matter shall state the right of appeal to a court of summary jurisdiction and the time within which such an appeal may be brought.

NOTES

This section is extended to London by the Nurseries and Child-Minders Regulation Act, 1948, s. 6 (5) for the purposes of that section.

Enactment.—This includes any enactment in a provisional order confirmed by Parliament (the Public Health Act, 1936, s. 343; 29 Halsbury's Statutes 536).

301. Appeals to quarter sessions against decisions of justices.—Subject as hereinafter provided, where a person aggrieved by any order, determination or other decision of a court of summary jurisdiction under this Act is not by any other enactment authorised to appeal to a court of quarter sessions, he may appeal to such a court :

Provided that nothing in this section shall be construed as conferring a right of appeal from the decision of a court of summary jurisdiction in any case if each of the parties concerned might under this Act have required that the dispute should be determined by arbitration instead of by such a court.

NOTES

This section is extended to London by the Nurseries and Child-Minders Regulation Act, 1948, s. 6 (5) for the purposes of that section.

Enactment.—See note to s. 300, *ante*.

302. Effect of decision of court upon an appeal.—Where upon an appeal under this Act a court varies or reverses any decision of a council, it shall be the duty of the council to give effect to the order of the court and, in particular, to grant or issue any necessary consent, certificate or other document, and to make any necessary entry in any register.

NOTE

This section is extended to London by the Nurseries and Child-Minders Regulation Act, 1948, s. 6 (5) for the purposes of that section.

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PUBLIC HEALTH (LONDON) ACT, 1936

(26 Geo. 5 & 1 Edw. 8, c. 50)

(Ss. 256-272, 309 (3))

* * * * *

PART XIII

CHILD LIFE PROTECTION

INTRODUCTORY NOTE.—For the extension of Part XIII of this Act to children of compulsory school age who are over the age of nine, see the Children Act, 1948, ss. 35 (a), 36. Nothing in this Part of this Act is to apply in relation to any undertaking given by a person with whom a child is boarded out by the Minister of Pensions, by a local authority under Part II of the Children Act, 1948, or by a voluntary organisation (see s. 37 (3) of that Act).

Throughout Part XIII of the Public Health (London) Act, 1936, references to "a local authority" or "every local authority" are to be construed, as from July 5, 1948, as

references to "the local authority." The National Health Insurance Act, 1946, Sched. X, Part I, would otherwise have substituted, as from July 5, 1948 (on July 1, 1947, in the case of s. 271, see note to s. 271, *post*), reference to "the local health authority" (the Children Act, 1948, s. 60 and Sched. III).

256. Local authorities for purposes of Part XIII.—*The local authorities for the purposes of this Part of this Act shall be—*

- (a) *as respects the city, the common council,*
 - (b) *as respects a borough, the council of the borough, and*
 - (c) *as respects any other part of the county, the county council;*
- and the area as respects which any council are by this section constituted the local authority is in this Part of this Act referred to as "the district" of that authority.*

NOTE

S. 256 was repealed by the National Health Service Act, 1946, s. 76 and Sched. X, Part II (39 Halsbury's Statutes 570, 591), as from the appointed day, *i.e.* July 5, 1948; see the National Health Service Act (Appointed Day) Order, 1948, S. I. 1948 No. 112. See, now, the Children Act, 1948, s. 38 (1) by which the L.C.C. is the local authority.

257. Notice of reception of children for reward.—(1) A person who undertakes for reward the nursing and maintenance of a child under the age of nine years apart from his parents, or having no parents, shall give a written notice of the fact (in this Part of this Act referred to as a "reception notice") to the local authority—

- (a) in the case of a child not already in his care, being the first child under the age of nine years proposed to be received by him for reward in the premises occupied or proposed to be occupied for the purpose, not less than seven days before he receives the child;
- (b) in the case of any other child not already in his care, not less than forty-eight hours before he receives the child;
- (c) in the case of a child already in his care without reward, within forty-eight hours after entering into the undertaking.

For the purposes of this subsection, an undertaking shall be deemed to be an undertaking for reward if there is any payment or gift of money or money's worth, or any promise to pay or give money or money's worth, irrespective of whether there is any intention of making profit.

(2) Every reception notice shall state the name and sex of the child to whom the notice relates, the date and place of his birth, the name of the person undertaking his nursing and maintenance, the premises within which he is to be, or is being, kept, and the name of the person from whom he is to be, or was, received.

(3) If a person who is maintaining a foster child changes his residence, he shall, at least seven days before so doing, give to the local authority written notice of the proposed change, and where—

- (a) *being resident in the county, he proposes to change his residence so as to reside in the district of another local authority for the purposes of this Part of this Act, or*

- (b) *being resident outside the county, he proposes to change his residence so as to reside within the county,*

he shall, at least seven days before so changing his residence, give to the local authority *for the district in which he proposes to reside* the like notice, in respect of each foster child in his care, as he is by this section required to give on the first reception of a foster child:

Provided that, where an immediate change of residence is necessitated by any emergency, a notice under this subsection may be given at any time within forty-eight hours after the change of residence.

(4) If a foster child dies while in the care of the person who has undertaken his nursing and maintenance, or is removed [or removes himself] from the

care of the said person, that person shall, within twenty-four hours after the death or removal, as the case may be, give to the local authority and to the person from whom the child was received, written notice of the death or removal, and in a case of removal, the notice shall also state the name and address of the person [(if any)] into whose care the child has been transferred.

(5) If any person required by this Part of this Act to give any notice fails to give the notice before the latest time specified for giving it, he shall be guilty of an offence, and if the consideration for which the said person undertook the nursing and maintenance of the child in respect of whom the notice ought to have been given consisted, in whole or in part, of a lump sum, the person in default shall, in addition to any other penalty to which he is liable under this Part of this Act, be liable to forfeit that sum or such part thereof as the court having cognisance of the case thinks just :

Provided that, upon a charge in respect of a failure to give a reception notice, it shall be a good defence for the defendant to prove that the child in question was received by him upon an emergency, and that a notice containing particulars required by subsection (2) of this section was given by him to the local authority within twelve hours after the reception of the child.

(6) For the purpose of any enactment by which the time for taking proceedings is limited, an offence under this section shall be deemed to continue so long as the child in respect of whom the requisite reception notice ought to have been given remains in the care of the offender without such a notice having been given.

(7) Any sum forfeited under this section in respect of a child shall be applied for the benefit of the child in such manner as the court may direct, and the order of the court directing the forfeiture may be enforced as if it were an order made on complaint.

NOTES

Sub-s. (3), para. (a) was deleted by the National Health Service Act, 1946, s. 76 and Sched. X, Part I (39 Halsbury's Statutes 570, 589), as from the appointed day, *i.e.*, July 5, 1948; see S. I., 1948 No. 112.

The other words in italics in sub-s. (3) were deleted, and those in square brackets in sub-s. (4) were added, by the Children Act, 1948, s. 60 (2) and Sched. III, as from July 5, 1948.

Local Authority.—For the purposes of this part of this Act, the local authority are the London County Council (the Children Act, 1948, s. 38 (1)); see, also, the Third Schedule to that Act.

258. Inspectors and visitors.—(1) Every local authority shall from time to time make inquiries for the purpose of ascertaining whether there is residing within the district of the authority any person who undertakes the nursing and maintenance of foster children.

(2) If any person who undertakes the nursing and maintenance of foster children is found in the district of the local authority, the authority shall, subject to the provisions of the next following subsection, appoint one or more persons to be child protection visitors, whose duty it shall be from time to time to visit any foster children and the premises in which they are kept, in order to satisfy themselves as to the health and well-being of the children and to give any necessary advice or directions as to the care of their health or as to their maintenance.

(3) A local authority may, in addition to, or in lieu of, appointing child protection visitors, authorise in writing one or more suitable persons to exercise the powers of such visitors under this Part of this Act, and where any children have, by the direction of any philanthropic society, been placed out to nurse in the district of the local authority, the authority, if satisfied that the interests of the children are properly safeguarded, may so authorise the society to exercise the powers aforesaid as respects those children.

Any authority given under this subsection shall be subject to such conditions (if any) as may be stated therein, so, however, that any authority so given to a philanthropic society shall be subject to a condition requiring the society to furnish periodical reports to the local authority.

(4) Where a local authority, in the exercise of their powers under the last two foregoing subsections, appoint or authorise one person only, that person shall be a woman, and where the authority so appoint or authorise two or more persons, one at least of those persons shall be a woman.

(5) A local authority may exempt from visitation under this section any premises within their district which appear to them to be so conducted that it is unnecessary that they should be visited, and any such exemption may be granted either absolutely or subject to such conditions as the local authority think fit.

(6) If any person who undertakes the nursing and maintenance of a foster child refuses to allow a child protection visitor, or a person having the powers of such a visitor, to visit or examine the child or the premises in which the child is kept, he shall be guilty of an offence.

(7) If a child protection visitor or a person having the powers of such a visitor is refused admittance to any premises which he is entitled under this section to visit, or has reason to believe that a child under the age of nine years is being kept in any premises in contravention of this Part of this Act, he may apply to a justice, and if the justice is satisfied, upon written information given on oath, that there is reasonable ground for believing that an offence under this Part of this Act has been committed, he may grant a warrant authorising the applicant to enter the premises for the purpose of ascertaining whether any such offence has been committed; and if any person obstructs any person acting in pursuance of a warrant granted under this subsection, he shall be guilty of an offence.

NOTE

Local Authority.—See s. 38 (1) of the Children Act, 1948; *cf.* the Third Schedule to that Act, and Introductory Note to this Part of this Act. The local authority are the London County Council.

259. Restrictions on receiving children for reward.—A foster child shall not, without the written consent of the local authority, be kept—

(a) by any person from whose care any child has been removed under this Part of this Act or under Part I of the Children Act, 1908, or under the Infant Life Protection Act, 1897, or

(b) in any premises from which any child or infant has been removed under this Part of this Act or under Part I of the Children Act, 1908, by reason of the premises being dangerous or insanitary, or has been removed under the Infant Life Protection Act, 1897, by reason of the premises being so unfit as to endanger the health of the child or infant, or

(c) by any person who has been convicted of any offence under Part I of the Children and Young Persons Act, 1933, or Part II of the Children Act, 1908, or of any offence of cruelty under the Prevention of Cruelty to Children Act, 1904;

and every person who keeps a foster child in contravention of this section, or causes a foster child to be kept in contravention of this section, shall be guilty of an offence.

NOTES

Foster child.—See s. 272 (1), *post*.

Local Authority.—For the purposes of this Part of this Act, the local authority are the London County Council (the Children Act, 1948, s. 38 (1)).

260. Prevention of overcrowding.—A local authority may fix the maximum number of children under the age of [eighteen] years who may be kept in any premises in the district of the authority in which a foster child is kept, and may also impose conditions to be complied with so long as the number of children kept in those premises exceeds a specified number; and if at any time the maximum number so fixed is exceeded, or any condition so imposed is not complied with, a person who keeps a foster child in those premises shall be guilty of an offence.

NOTES

The word in square brackets was substituted for "nine" by the Children Act, 1948, s. 60 and Sched. III.

Local Authority.—The reference to "a local authority" is to be construed as a reference to "the local authority" (the Children Act, 1948, s. 60 and Sched. III); *cf.* the Introductory Note to this Part of this Act. For the purposes of this Part of this Act, the local authority are the London County Council (the Children Act, 1948, s. 38 (1)).

261. Removal of children kept in unsuitable premises, or by unsuitable persons.—(1) If a foster child is about to be received, or is being kept,—

- (a) in any premises which are overcrowded, insanitary or dangerous, or
- (b) by any person who, by reason of old age, infirmity, ill-health, ignorance, negligence, inebriety, immorality or criminal conduct, or for any other reason, is unfit to have the care of the child, or
- (c) in any premises or by any person in contravention of this Part of this Act, or

(d) in an environment which is detrimental to the child, a court of summary jurisdiction may, on the complaint of the local authority, make an order directing the removal of the child to a place of safety until he can be restored to his relatives or until other arrangements can be made with respect to him; and, upon proof that there is imminent danger to the health or well-being of the child concerned, a single justice may exercise the like power on the application of a child protection visitor or a person having the powers of such a visitor, and, if need be, may exercise that power *ex parte*.

(2) An order made under the foregoing subsection may be enforced by a constable, or by a child protection visitor or a person having the powers of such a visitor; and any person who refuses to comply with such an order upon its being produced, or who obstructs any such constable, visitor or person as aforesaid in the enforcement of the order, shall be guilty of an offence.

NOTE

Local Authority.—For the purposes of this Part of this Act, the local authority are the London County Council (the Children Act, 1948, s. 38 (1)); and see the Introductory Note to this Part of this Act.

262. Anonymous advertisements offering to undertake care of children.—(1) No advertisement indicating that a person or society will undertake, or will arrange for, the nursing and maintenance of a child under the age of nine years shall be published unless the name and residence of the person or the name and office of the society, as the case may be, are stated in the advertisement.

(2) Every person who knowingly publishes any advertisement in contravention of this section shall be guilty of an offence.

NOTE

Nine years.—See the Introductory Note to this Part of this Act.

263. Avoidance of insurances of lives of children kept for reward.—A person who keeps a foster child shall be deemed, for the purposes of the Life Assurance Act, 1774, to have no interest in the life of the child, and if any

such person directly or indirectly insures or attempts to insure the life of a foster child, he shall be guilty of an offence; and if any company, society or person knowingly issues, or procures or attempts to procure to be issued, to, or for the benefit of, such a person as aforesaid or to any person on his behalf a policy insuring the life of a foster child, the company, society or person shall be guilty of an offence.

NOTE

Foster child.—See s. 272, *post*.

264. Notice of death of foster child.—(1) In the event of the death of a foster child, the person who had the care of the child shall, within twenty-four hours after the death, give written notice thereof to the coroner of the district within which the body of the child lies, and the coroner shall hold an inquest on the body unless—

(a) there is produced to him a certificate under the hand of a legally qualified medical practitioner, certifying that he has personally attended the child during his last illness and specifying the cause of the death; and

(b) the coroner is satisfied that there is no ground for holding an inquest.

(2) If any person required to give a notice under this section fails to give the notice within the time specified for giving it, he shall be guilty of an offence.

265. Prosecution of offences and application of fines.—(1) Every person guilty of an offence under this Part of this Act shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding twenty-five pounds, and the court by which he is convicted may order any child in respect of whom the offence was committed to be removed to a place of safety.

(2) All fines recovered by virtue of this Part of this Act shall, subject to the provisions of section five of the Criminal Justice Administration Act, 1914, be paid to the local authority.

NOTE

Local Authority.—For the purposes of this Part of this Act, the local authority are the London County Council (the Children Act, 1948, s. 38 (1)); and see the Introductory Note to this Part of this Act.

266. Evidence of age.—Where, in proceedings for an offence under this Part of this Act, it is alleged that the person in respect of whom the alleged offence was committed was under, or had attained, any specified age, and it appears to the court that, at the date of the commission of the alleged offence, the said person was under, or had attained, the specified age, as the case may be, he shall, for the purposes of this Part of this Act, be deemed at that date to have been under, or to have attained that age, as the case may be, unless the contrary is proved.

267. Provisions as to notices.—(1) If any person required to give a notice under this Part of this Act knowingly makes, or causes or procures any other person to make, any false or misleading statement in the notice, he shall be guilty of an offence.

(2) Any notice to be given under this Part of this Act may be sent by post in a registered letter addressed—

(a) where the person to be notified is a local authority, to the authority or their clerk at their offices or to some other officer of the authority duly authorised in that behalf, or

(b) where the person to be notified is a coroner, to the coroner at his office or at his residence, or

(c) in any other case, to the person to be notified, at his last known place of abode or permanent residence.

NOTE

In sub-s. (2), para. (a) was repealed by the London Government Act, 1939, s. 207 and Sched. VIII (32 Halsbury's Statutes 353, 386).

268. Enforcement of Part III.—(1) It shall be the duty of every local authority to provide for the enforcement of this Part of this Act within their district, *and, for the purpose of enforcing the provisions of this Part of this Act and of defraying the expenses of so doing, a local authority may combine with any other local authority for the purposes of this Part of this Act or with any local authority for the purposes of Part I of the Children Act, 1908, and in relation to any such combination which includes any such local authority as is last-mentioned, the second reference in this section to this Part of this Act shall be construed as including a reference to Part I of the Children Act, 1908.*

(2) A local authority or the county council may institute proceedings for an offence under this Part of this Act.

NOTES

The words in italics were deleted by the National Health Service Act, 1946, s. 76 and Sched. X, Part I (39 Halsbury's Statutes 570, 589).

Local Authority.—For the purposes of this Act, the local authority are the London County Council (the Children Act, 1948, s. 38 (1)); and see the Introductory Note to this Part of this Act.

269. Variation of trusts for maintenance of children.—(1) Where, by virtue of an order of any court made under this Part of this Act, a child is removed from the care of any person, and that person is entitled under a trust to receive any sum of money in respect of the maintenance of the child, the court may order the whole or any part of that sum to be paid to the person to whose care the child is committed, to be applied by that person for the benefit of the child in such manner as the court, having regard to the terms of the trust, may direct.

(2) An appeal shall lie to quarter sessions from any order made under this section.

270. Application of Summary Jurisdiction Acts.—All orders which may be made under this Part of this Act by a court of summary jurisdiction (whether a petty sessional court or not) shall be made, and all proceedings in relation to such orders shall be taken, in manner provided by the Summary Jurisdiction Acts, and the power to make rules under section twenty-nine of the Summary Jurisdiction Act, 1879, shall extend to the making of rules for regulating the procedure of courts of summary jurisdiction under this Part of this Act, and matters incidental thereto.

271. Exemption of certain institutions.—(1) The provisions of this Part of this Act shall not apply in relation to any hospital, convalescent home or institution—

- (a) which is maintained by a Government department or a local authority (whether or not a local authority for the purposes of this Part of this Act), or by any other authority or body constituted by special Act of Parliament or Royal Charter, or
- (b) of which particulars are required to be, and are, transmitted annually to the Secretary of State under the provisions of Part V of the Children and Young Persons Act, 1933, or
- (c) which is an institution, house or home certified or approved by the [Minister] under the Mental Deficiency Acts, 1913 to 1927, and in which no child or young person who is not a mental defective within the meaning of those Acts is received.

In this subsection the expression "child" means a person under the age of fourteen years, and the expression "young person" means a person who has attained the age of fourteen years and is under the age of seventeen years.

(2) A local authority may grant in respect of any hospital, convalescent home or institution within their district a certificate exempting it from the

operation of the provisions of this Part of this Act, and thereupon the said provisions shall cease to extend thereto.

NOTES

The word in square brackets in sub-s. (1) (c) was substituted for the words "Board of Control" by the National Health Service Act, 1946, s. 76 and Sched. X, Part I (39 Halsbury's Statutes 570, 589), on the appointed day, *i.e.*, July 1, 1947; see the National Health Service Act (Appointed Day) Order, 1947, S. R. & O. 1947 No. 983. The same schedule substituted in this section for references to "a local authority" references to "a local health authority", within the meaning of that Act; and for references to the district of a local authority references to the area of a local health authority, though it is arguable on the wording of Art. 3 of the Order that these general amendments were not effective.

By the Children Act, 1948, s. 60 and Sched. III, references to "a local authority" throughout Part XIII, *supra*, are to be construed as references to "the local authority" and "not in accordance with the provisions of Part I of the Tenth Schedule to the National Health Service Act, 1946." The result of this is that, as from July 5, 1948, references to "a local authority" are in effect restored, though the actual wording of the amended section is not altered; but in sub-s. (2) the reference to district remains, strictly, a reference to the district of the local health authority. It is thought, however, that the intention of the amendment by the Children Act, 1948, is, in effect, that this section shall refer to the local authority and the district of the local authority, rather than to the district of the local health authority, and accordingly reference to a local health authority is not made in the text as printed above.

Local Authority.—*i.e.*, the London County Council; see the Children Act, 1948, s. 38 (1).

Child.—See the Introductory Note to this Part of this Act.

Hospitals maintained by a Government department.—Includes references to hospitals maintained by Regional Hospital Boards on behalf of the Minister of Health or the Secretary of State (the Children Act, 1948, s. 37 (6)).

272. Interpretation.—(1) In this Part of this Act the expression "foster child" means a child under the age of nine years in respect of whom a notice has been, or ought to have been, given under this Part of this Act or under section one of the Children Act, 1908, and who is still living apart from his parents (if any) with the person by whom the notice was, or ought to have been, so given.

(2) A mental defective who is, with the consent of the Board of Control, under care elsewhere than in an institution, a certified house or an approved home, shall be deemed not to be a foster child.

(3) Nothing in this Part of this Act shall apply in relation to any undertaking to nurse and maintain a child, being an undertaking entered into—

(a) by any relative or legal guardian of the child; or

[(b) in pursuance of any arrangement for the boarding out of a child by the Minister of Pensions, by a local authority under Part II of the Children Act, 1948, or by a voluntary organisation within the meaning of that Act; or

(c) with respect to a child on whom a requirement as to residence is imposed by a supervision order or probation order;]

and in this subsection, the expression "relative" means, in relation to a child, any person being a grandparent, brother, sister, uncle or aunt of the child by consanguinity or affinity, or, in the case of an illegitimate child, the persons who would be so related to the child if he were legitimate, and the expression "legal guardian" means, in relation to a child, a person duly appointed to be the guardian of the child, by deed or will or by order of a court of competent jurisdiction.

NOTES

The words in square brackets in sub-s. (3) were substituted by the Children Act, 1948, s. 60 and Sched. III, as from July 5, 1948, for the former para. "(b) in pursuance of any Act relating to the relief of the poor or any Order made under such an Act".

Child.—See the Introductory Note to this Part of this Act.

Local authority.—*I.e.*, the London County Council; see the Children Act, 1948, s. 38 (1), and the Introductory Note to this Part of this Act.

PART XIV
MISCELLANEOUS AND GENERAL

* * * * *

309. Short title, commencement and extent.—(1) . . .

(2) . . .

(3) Save as otherwise expressly provided therein, this Act shall extend to the county and no further : . . .

Provided that the provisions of this Act . . . shall extend to places outside the county so far as is necessary for giving effect to the said provisions of this Act in their application to the county . . .

NOTE

The County.—This means the administrative County of London (the Public Health (London) Act, 1936, s. 304 (1) ; 30 Halsbury's Statutes 602).

* * * * *

CHILDREN AND YOUNG PERSONS (SCOTLAND) ACT, 1937

[1 Edw. 8 & 1 Geo. 6, c. 37]

(Ss. I-II)

PART I

CHILD LIFE PROTECTION

INTRODUCTORY NOTE.—For the extension of Part I of this Act to children of compulsory school age who are over the age of nine, see the Children Act, 1948, ss. 35 (a), 36. Nothing in this Part of this Act is to apply in relation to any undertaking given by a person with whom a child is boarded-out by the Minister of Pensions, a local authority under Part II of the Children Act, 1948, or by a voluntary organisation (see s. 37 (3) of that Act).

The children for whom accommodation is being provided under Defence (General) Regulations, 1939 (S. R. & O. 1939 No. 927), reg. 22, or under an evacuation plan are excluded from the application of ss. I-II of the Children and Young Persons (Scotland) Act, 1937. Regulation 22 is continued in force until December 10, 1950 ; see Emergency Laws (Miscellaneous Provisions) Act, 1947, s. 1, and Sched. I, Part III, and Emergency Laws (Transitional Provisions) Act, 1946, s. 1, and Sched. I, Part I.

1. Notices to be given by persons receiving children for reward.—

(1) Where a person undertakes for reward the nursing and maintenance of a child under the age of nine years apart from his parents, or having no parents, he shall give notice in writing thereof to the local authority—

- (a) in the case of a child not already in his care, being the first child proposed to be received by him for reward in the dwelling occupied or proposed to be occupied for the purpose, not less than seven days before he receives the child ;
- (b) in the case of any other child not already in his care, not less than forty-eight hours before he receives the child ;⁴ and
- (c) in the case of a child already in his care without reward, within forty-eight hours after entering into the undertaking :

Provided that, in any proceedings in respect of a failure to give such notice as aforesaid, it shall be a defence for the accused person to prove that the child was received by him upon an emergency and that notice was given by him within twelve hours thereafter.

For the purposes of this subsection, an undertaking shall be deemed to be an undertaking for reward if there is any payment or gift of money or money's worth, or any promise to pay or give money or money's worth, irrespective of whether there is any intention of making profit.

(2) The notice required by the preceding subsection shall state the name and sex of the child, the date and place of his birth, the name of the person undertaking his nursing and maintenance, the dwelling within which he is to be, or is being, kept and the name of the person from whom he is to be, or was, received.

(3) Any reference in the following provisions of this Part of this Act to a child in respect of whom such a notice as aforesaid is required to be given shall be construed as including a reference to a child under the age of nine years in

respect of whom such a notice has been given and who is still living apart from his parents, if any, with the person by whom the notice was given.

(4) If a person who is maintaining a child in respect of whom notice is required to be given under this Part of this Act changes his residence, he shall at least seven days before so doing give to the local authority notice in writing of the change, and, where the residence to which he moves is situate in the area of another local authority, he shall at least seven days before so moving give to that local authority the like notice as respects each child in his care as is by this section required to be given on the first reception of a child :

Provided that, where an immediate change of residence is necessitated by any emergency, a notice under this subsection may be given at any time within forty-eight hours after the change of residence.

(5) If any such child dies or is removed [or removes himself] from the care of the person who has undertaken his nursing and maintenance, that person shall, within twenty-four hours thereof, give to the local authority and to the person from whom the child was received notice in writing of the death or removal, and in a case of removal the notice shall also state the name and address of the person [(if any)] to whose care the child has been transferred.

(6) If any person required to give a notice under this section fails to give the notice before the latest time specified for giving the notice, he shall be guilty of an offence under this Part of this Act, and, if the consideration for the nursing and maintenance of the child in respect of which notice ought to have been given consisted in whole or in part of a lump sum, the person failing to give the notice shall, in addition to any other penalty under this Part of this Act, be liable to forfeit that sum or such less sum as the court having cognisance of the case may deem just, and the sum forfeited shall be applied for the benefit of the child in such manner as the court may direct.

For the purposes of any enactment by which the time for taking proceedings is limited, an offence under this subsection shall be deemed to continue so long as the child in respect of whom a notice ought to have been given remains in the care of the offender without any notice having been given.

(7) Any reference in this Part of this Act to a notice required to be given thereunder or by or under any provision thereof shall be construed as including a reference to a notice required to be given under any enactment relating to infant life protection repealed by this Act, and any person who at the commencement of this Act is nursing and maintaining for reward a child in respect of whom a notice required to be given under any such enactment so repealed has not been given before the latest time specified for giving such notice shall be deemed to be guilty of an offence under the last foregoing subsection.

NOTE

The words in square brackets in sub-s. (5) were added by the Children Act, 1948, s. 60 and Sched. III, as from July 5, 1948.

2. Appointment and powers of inspectors, &c.—(1) It shall be the duty of every local authority to provide for the execution of this Part of this Act within their area, and for that purpose they shall from time to time make inquiry whether there are any persons residing therein who undertake the nursing and maintenance of children in respect of whom notice is required to be given under this Part of this Act.

(2) If in the area of any local authority any persons are found to undertake the nursing and maintenance of such children as aforesaid, the local authority shall appoint one or more persons to be child protection visitors, whose duty it shall be from time to time to visit any children in respect of whom notice is required to be given under this Part of this Act, and the premises in which they are kept, in order to satisfy themselves as to the health and well-being of the children or to give any necessary advice or directions as to the care of their health and their maintenance :

Provided that the local authority may, either in addition to or in lieu of appointing child protection visitors, authorise in writing one or more suitable persons to exercise the powers of such visitors, subject to such terms and conditions as may be stated in the authorisation, and, where any children have been placed out to nurse in the area of the authority by any philanthropic society, may, if satisfied that the interests of the children are properly safeguarded, so authorise the society to exercise those powers as respects those children, subject, however, to the obligation to furnish periodical reports to the local authority.

Where a local authority appoint or authorise one person only to act under this subsection, that person and, where they so appoint or authorise two or more persons, one at least of those persons, shall be a woman.

(3) A local authority may exempt from being visited, either unconditionally or subject to such conditions as they think fit, any particular premises within their area which appear to them to be so conducted that it is unnecessary that they should be visited.

(4) If any person undertaking the nursing and maintenance of any such children as aforesaid refuses to allow any such visitor or other person to visit or examine the children or the premises in which they are kept, he shall be guilty of an offence under this Part of this Act.

(5) If any such visitor or other person is refused admittance to any premises in contravention of this Part of this Act, or has reason to believe that any children under the age of nine years are being kept in premises in contravention of this Part of this Act, he may apply to a justice, who, on being satisfied, on information on oath, that there is reasonable ground for believing that an offence under this Part of this Act has been committed, may grant a warrant authorising the visitor or other person to enter the premises for the purpose of ascertaining whether any offence under this Part of this Act has been committed, and if the occupier of the premises or any other person obstructs or causes or procures to be obstructed any visitor or other person acting in pursuance of such a warrant, he shall be guilty of an offence under this Part of this Act.

3. Persons prohibited from receiving children for reward.—A child in respect of whom notice is required to be given under this Part of this Act, shall not, without the written sanction of the local authority, be kept—

(a) by a person from whose care any child has been removed under this Part of this Act, or Part I of the Children Act, 1908, or the Infant Life Protection Act, 1897; or

(b) in any premises from which any child has been removed under this Part of this Act, or Part I of the Children Act, 1908, by reason of the premises being dangerous or insanitary, or has been removed under the Infant Life Protection Act, 1897, by reason of the premises being so unfit as to endanger his health; or

(c) by any person who has been convicted of any offence under sections twelve, thirteen, fourteen, fifteen, or twenty-two of this Act or under Part II of the Children Act, 1908, or of any offence of cruelty under the Prevention of Cruelty to Children Act, 1904;

and any person keeping a child contrary to this section, or causing a child to be so kept, shall be guilty of an offence under this Part of this Act.

4. Powers of local authority to prevent overcrowding.—The local authority may fix the maximum number of children under the age of [eighteen] years who may be kept in any dwelling in which there is any child in respect of whom notice is required to be given under this Part of this Act and may also impose conditions to be complied with so long as the number of children kept in the dwelling exceeds a specified number.

If the maximum number so fixed is exceeded, or if any condition so imposed is not complied with, a person who keeps in that dwelling a child with respect to whom such a notice is required to be given as aforesaid, shall be guilty of an offence under this Part of this Act.

NOTE

The word in square brackets was substituted by the word " nine " by the Children Act, 1948, s. 60 and Sched. III, as from July 5, 1948; *cf.* the Introductory Note to this Part of this Act.

5. Removal of children kept in unsuitable premises, or by unsuitable persons.—(1) If a child in respect of whom notice is required to be given under this Part of this Act is about to be received or is being kept—

- (a) in any premises which are overcrowded, insanitary or dangerous; or
- (b) by any person who, by reason of old age, infirmity, ill-health, ignorance, negligence, inebriety, immorality or criminal conduct, or for any other reason, is unfit to have care of him; or
- (c) in any premises or by any person in contravention of any of the provisions of this Part of this Act; or
- (d) in an environment which is detrimental to the child;

the sheriff may, on the application of the local authority, make an order directing the removal of the child to a place of safety until he can be restored to his relatives, or until other arrangements can be made with respect to him; and, upon proof that there is imminent danger to the health or well-being of the child concerned, a justice may exercise the like power on the application of a visitor or other person appointed or authorised to execute the provisions of this Part of this Act, and, if need be, may exercise that power *ex parte*.

(2) An order made under the foregoing subsection may be enforced by a constable, or by a visitor or other person appointed or authorised as aforesaid; and any person who refuses to comply with such an order upon its being produced, or who obstructs any such constable, visitor or person as aforesaid in the enforcement of the order, shall be guilty of an offence under this Part of this Act.

6. Notice to procurator fiscal.—(1) In the case of the death of a child in respect of whom notice is required to be given under this Part of this Act, the person who had the care of the child shall, within twenty-four hours of the death, give notice in writing thereof to the procurator fiscal of the district within which the body of the child lies, and the procurator fiscal shall hold an inquiry into the cause of death, unless there is produced to him a certificate under the hand of a duly qualified medical practitioner certifying that that practitioner has personally attended the child during his last illness, and specifying the cause of death, and the procurator fiscal is satisfied that there is no ground for holding an inquiry.

(2) If any person required to give a notice under this section fails to give the notice within the time specified for the purpose, he shall be guilty of an offence under this Part of this Act.

7. Avoidance of policies of life insurance of children kept for reward.—A person who keeps a child in respect of whom notice is required to be given under this Part of this Act shall be deemed to have no interest in the life of the child for the purposes of the Life Assurance Act, 1774, and, if any such person directly or indirectly insures or attempts to insure the life of such a child, he shall be guilty of an offence under this Part of this Act, and, if any company, society, or person knowingly issues, or procures or attempts to procure to be issued, to or for the benefit of such a person as aforesaid or to any person on his behalf, a policy on the life of such a child, the company, society, or person shall be guilty of an offence under this Part of this Act.

8. Provisions as to notices.—(1) If any person required to give a notice under this Part of this Act knowingly or wilfully makes, or causes or procures

any other person to make, any false or misleading statement in any such notice, he shall be guilty of an offence under this Part of this Act.

(2) Any notice by this Part of this Act required to be given to a local authority may be sent by post in a registered letter addressed to them or their clerk at their offices or to some other officer of the local authority, duly authorised in that behalf: any notice so required to be given to a procurator fiscal may be sent by post in a registered letter addressed to him at his office or at his residence, and any notice so required to be given to any other person may be sent by post in a registered letter addressed to him at his last known place of abode or permanent address.

9. Prohibition of anonymous advertisements offering to undertake care of children.—(1) No advertisement indicating that a person or society will undertake, or will arrange for, the nursing and maintenance of a child under the age of nine years shall be published unless that person's name and residence, or, as the case may be, that society's name and office, are truly stated in the advertisement.

(2) Every person who knowingly publishes any advertisement in contravention of the provisions of this section shall be guilty of an offence under this Part of this Act.

10. Prosecution of offences.—Every person guilty of an offence under this Part of this Act shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding twenty-five pounds, and the court may order any child in respect of whom the offence was committed to be removed to a place of safety.

11. Exemptions.—(1) The foregoing provisions of this Part of this Act shall not extend to any relative or legal guardian of a child who undertakes the nursing and maintenance of the child, *or to any person who undertakes the nursing or maintenance of a child under the provisions of any Act for the relief of the poor*; [or to any person who undertakes the nursing or maintenance of a child on whom a requirement as to residence is imposed by a probation order or who is boarded out by the Minister of Pensions, by a local authority under Part II of the Children Act, 1948, or by a voluntary organisation as defined in that Act, or to any hospital], convalescent home, or institution—

- (a) which is maintained by a Government department, local authority, or any other authority or body constituted by special Act of Parliament or Royal Charter; or
- (b) to which a certificate of exemption from the said provisions has been granted by the local authority; or
- (c) of which particulars are required to be, and are, transmitted annually to the Secretary of State under the provisions of the Part of this Act relating to voluntary homes; or
- (d) which is an institution or house certified by the General Board of Control for Scotland under the Mental Deficiency and Lunacy (Scotland) Act, 1913, and in which no children or young persons who are not mental defectives within the meaning of that Act are received;

nor shall the said provisions apply in relation to any mental defective who is under guardianship in pursuance of an order under the Mental Deficiency and Lunacy (Scotland) Act, 1913.

(2) For the purposes of this section, the expression "relatives" means grandparents, brothers, sisters, uncles, and aunts, by consanguinity or affinity,

and in the case of illegitimate children the persons who would be so related if the child were legitimate.

NOTES

The words in italics in sub-s. (1) were repealed by the National Assistance Act, 1948, s. 62 and Sched. VII, Part III, as from the appointed day, July 5, 1948; see S.I. 1948 No. 1218. The words in square brackets in sub-s. (1) were substituted by the Children Act, 1948, s. 60 and Sched. III.

References to hospitals maintained by a Government department include references to hospitals maintained by Regional Hospital Boards on behalf of the Minister of Health or the Secretary of State (the Children Act, 1948, s. 37 (6)).

* * * * *

ADOPTION OF CHILDREN (REGULATION) ACT, 1939

(2 & 3 Geo. 6, c. 27)

(s. 7)

* * * * *

Protection of Adopted Children by Welfare Authorities

INTRODUCTORY NOTE.—For the extension of this section to children of compulsory school age who are over the age of nine, see the Children Act, 1948, ss. 35 (b), 36. The above section is not to apply in relation to any arrangements for the boarding-out of a child by a voluntary organisation or in which the Minister of Pensions participates (see s. 37 (3) of the Children Act, 1948).

7. Certain adopted children to be supervised by welfare authorities.

—(1) The provisions of this section shall, subject as hereinafter provided, have effect where arrangements for the placing of a child under the age of nine years in the care and possession of a person who is resident in Great Britain and who is not the parent or guardian or a relative of the child are made, and any person not being the parent or guardian of the child, or the person in whose care and possession he is to be placed participates in the making of the arrangements:

Provided that the said provisions shall not have effect where the person so participating is a registered adoption society or a local authority.

(2) Where the provisions of this section have taken effect in relation to a child, they shall cease to have effect on the child attaining the age of nine years or on the making of an adoption order in respect of the child whichever event first happens.

(3) Not less than seven days before possession is taken pursuant to such arrangements as aforesaid of a child in relation to whom the provisions of this section have effect (hereinafter in this section referred to as an "adopted child"), any person, not being the parent or guardian of the child, or the person in whose care and possession he is to be placed, who participates in the arrangements shall, unless an adoption order has been made in respect of the child upon the application of the person who is to have the care and possession of the child thereunder (hereinafter in this section referred to as an "adopter"), give notice in writing of the arrangements to the welfare authority for the area in which the adopter resides.

(4) The notice required by the last preceding subsection shall state the name and sex of the adopted child, the name and address of the adopter, and the date and place of the child's birth.

(5) Where a child is in the care and possession of an adopter, the adopter shall—

(a) if he changes his residence, give to the welfare authority notice of the change at least seven days before so doing and, where the residence to which he moves is situate in the area of another welfare authority, at least seven days before so moving, give to that welfare

authority the like notice as respects the child as is required to be given under subsection (3) of this section, so, however, that where an immediate change of residence is necessitated by any emergency, the provisions of this paragraph shall be deemed to have been complied with if notice is given at any time within forty-eight hours after the change of residence ;

(b) if the child dies, within twenty-four hours of the death, give notice in writing thereof to the welfare authority and to the coroner of the district within which the body of the child lies, and the coroner shall hold an inquest thereon, unless there is produced to him a certificate of a registered medical practitioner certifying that that practitioner has personally attended the child during his last illness, and certifying also the cause of death, and the coroner is satisfied that there is no ground for holding an inquest.

(6) If an adopted child—

(a) is about to be received or is being kept by any person in any premises which are overcrowded, insanitary or dangerous, or in an environment which is detrimental to the child ; or

(b) is in the care and possession of an adopter who, by reason of old age, infirmity, ill-health, ignorance, negligence, inebriety, immorality or criminal conduct, or for any other reason, is unfit to have the care of the child ;

a court of summary jurisdiction may, on the application of the welfare authority, make an order for the removal of the child to a place of safety until he can be restored to his parents or guardian, or until other arrangements can be made with respect to him ; and, upon proof that there is imminent danger to the health or well-being of the child concerned, a justice (acting, if he deems it necessary *ex parte*) may exercise the like power on the application of a child protection visitor.

An order made under this subsection may be enforced by a child protection visitor ; and any person who refuses to comply with such an order upon its being produced, or who obstructs any such visitor in the enforcement of the order, shall be guilty of an offence under this section.

(7) It shall be the duty of child protection visitors to visit and examine adopted children in the care and possession of adopters residing in the area of the welfare authority by which they were appointed to be visitors and the premises in which those children are being kept, and any person who refuses to allow any such visitor to make such a visit or examination as aforesaid shall be guilty of an offence under this section.

If any such visitor is refused admission to any premises in which he has reason to believe that an adopted child is being kept, he may apply to a justice of the peace, and the justice, if satisfied on sworn information in writing that admission has been refused and that there is reasonable ground for believing that an adopted child is being kept in the premises, may grant a warrant authorising the visitor to enter the premises, and any person who obstructs any visitor acting in pursuance of such a warrant shall be guilty of an offence.

(8) The provisions of subsections (3) to (7) of this section shall not have effect where possession of an adopted child is proposed to be taken, or has been taken—

(a) for a temporary purpose only ; or

(b) by a person who has undertaken the nursing and maintenance of the child under Part VII of the Public Health Act, 1936, or Part XIII of the Public Health (London) Act, 1936, or under the provisions of any Act for the relief of the poor, or of any order made under such Act, or a person who undertakes the nursing and maintenance of children boarded out [by a local authority under Part II of the Children Act, 1948] ; or

- (c) by a registered adoption society, school, hospital, convalescent home, voluntary home within the meaning of the Children and Young Persons Act, 1933, or other similar institution, or an institution, house, or home certified or approved by the [Minister of Health] under the Mental Deficiency Acts, 1913 to 1938, and in which no children under the age of nine years who are not mental defectives within the meaning of those Acts are received ;

nor shall the said provisions apply in relation to an adopted child who is a mental defective under care elsewhere than in a certified institution, certified house or approved home, if he is so under care with the consent of the Board of Control under the Mental Deficiency Acts, 1913 to 1938, or if notice with respect to him has been given to the Board in accordance with subsection (2) of section fifty-one of the Mental Deficiency Act, 1913.

(9) If an adopter or any other person, in connection with any arrangements by virtue of which the provisions of subsections (3) to (7) of this section have effect, gives or agrees to give, or receives or agrees to receive, any remuneration or reward whatsoever, he shall be guilty of an offence.

(10) Any person who fails to comply with the requirements of this section, or who commits an offence under this section, shall be liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding fifty pounds, or to both such imprisonment and such fine, and the court may order any child in respect of whom the offence was committed to be removed to a place of safety, until he can be returned to his parents or guardian, or until other arrangements can be made with respect to him.

(11) For the purposes of this section, a person shall be deemed to participate in the making of arrangements for the placing of a child in the care and possession of another person, if he enters into or makes any agreement or arrangement for, or for facilitating, the placing of the child in the care and possession of that other person, or if he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangements therefor, or if he causes another so to do.

NOTES

The words in square brackets in sub-s. (8) (b) were substituted by the Children Act, 1948, s. 60 and Sched. III, as from July 5, 1948.

The words in square brackets in sub-s. (8) (c) were substituted by the National Health Service Act, 1946, s. 76 and Sched. X, Part I (39 Halsbury's Statutes 570, 589), as from the appointed day, July 1, 1947, see the National Health Service Act (Appointed Day) Order, 1947, S. R. & O. 1947 No. 983.

* * * * *

APPENDIX C

BOARDING OUT RULES

CHILDREN AND YOUNG PERSONS (BOARDING OUT) RULES, 1946

[S.R. & O. 1946 No. 2083]

NOTE.—For the continuance of these rules, notwithstanding the modification of s. 84 (2) of the Children and Young Persons Act, 1933, by the Children Act, 1948, s. 60 and Sched. III, see that Act, Sched. II, para. 4 (1).

In pursuance of the power conferred upon me by subsection (2) of section 84 of the Children and Young Persons Act, 1933, I hereby make the following Rules :—

1. These Rules may be cited as the Children and Young Persons (Boarding Out) Rules, 1946.

2. These Rules shall come into operation on the first day of January, 1947.

3.—(1) In these Rules the following expressions have the meanings hereby respectively assigned to them, that is to say :—

“ boarding out ” means the placing of a foster child with a foster parent ;

“ foster child ” means a child or young person committed to the care of a local authority as a fit person under the provisions of the Act ;

“ foster parent ” means a husband and wife, or a woman, with whom a foster child is boarded out ;

“ local authority ” means, except where the context otherwise requires, the local authority to whose care as a fit person a foster child has been committed in accordance with the Act ;

“ the Act ” means the Children and Young Persons Act, 1933 ;

“ visitor ” means an officer, or a member of a committee of the local authority, who is appointed by the local authority for the purpose of assisting the authority in the performance of their functions under these Rules and, in particular, of exercising supervision over foster children and arranging for boarding them out.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

4. The local authority shall, except as hereinafter provided, make arrangements for every person committed to their care to be boarded out as soon as possible with a suitable foster parent and, where within three months of the committal of any person to their care he has not been boarded out, the authority shall report forthwith to the Secretary of State the reasons therefor and apply for his consent to the alternative arrangements made.

5. A foster child shall not be boarded out, or be allowed to remain boarded out.

(a) with a person who has at any time been convicted of an offence which renders him unfit to be a foster parent, or

(b) in any environment which is likely to be detrimental to the child.

6. A foster child shall not be boarded out, or be allowed to remain boarded out, in a home where more than four other children or young persons are

resident unless all the children and young persons resident in the home are brothers or sisters of the foster child.

7. Before a foster child is boarded out, the local authority shall arrange for him to be examined by a medical officer and shall obtain from that officer a certificate as to the physical health and mental condition of the child and his suitability for boarding out.

8.—(1) A foster parent shall, on receiving a foster child to be boarded out with him, be required by the local authority to sign in duplicate an agreement in the form set out in the Schedule to these Rules or in a form to the like effect.

(2) One copy of the agreement shall be retained by the foster parent and the other shall be kept by the local authority.

9. A foster child shall not be boarded out, or be allowed to remain boarded out, with a foster parent who is a party to any contract for the purpose of insuring the payment to him of a sum of money upon the illness or death of the child.

10. The local authority in selecting a person with whom a foster child is to be boarded out shall, if possible, select a person who is of the same religious persuasion as the foster child or who gives an undertaking that the foster child will be brought up in accordance with that religious persuasion.

11. No foster child shall be boarded out unless the proposed foster parent and home have been visited by a visitor who, having been given full information about the child, has made due inquiry and furnished a report in writing to the local authority stating in particular whether—

- (a) the proposed foster parent is of good reputation ;
- (b) he is in a position to take proper care of the child ;
- (c) the sleeping and living accommodation and other domestic conditions are satisfactory ; and
- (d) the home is likely to suit the particular needs of the child.

12.—(1) The local authority shall arrange for a visitor to visit and see the foster child and the home where he is boarding out—

- (a) within one month of his being placed in the home and thereafter as often as may be necessary, not being less often than once in every six weeks ; and
- (b) if a foster parent changes his address, within one month of the receipt by the local authority of notice of the new address :

Provided that where a foster child is over nine years of age and has been for not less than two years in the same foster home, which is proving suitable to his needs, the authority may decide to reduce the number of periodical visits to not less than one in every three months.

(2) The local authority shall require the visitor to make to them, after every visit to a foster child, a report in writing as to the health, welfare and conduct of the child, the condition of the home (including the sleeping and living accommodation), any complaint made by or concerning the child and whether the home appears suitable for the child.

13.—(1) The local authority shall remove a foster child from his foster home if he is no longer suitably placed in that home.

(2) Where conditions in the home are found to be seriously detrimental to the health or safety of a foster child, the visitor shall have the power immediately to withdraw the child from the home.

14.—(1) The local authority shall appoint a doctor to attend the foster child, and the name and address of the doctor shall be furnished to the foster parent.

(2) The local authority shall arrange with the doctor to examine the foster child within a month of their boarding him out and to make a report to them, and thereafter to examine the child at least once a year.

(3) The local authority shall arrange for the provision of all medical treatment ordered by the doctor and all necessary dental treatment.

(4) The local authority shall require the foster parent to report to them all cases of serious illness or accident to the foster child and to summon a doctor at once in all such cases.

15. In the event of the death of the foster child the local authority shall arrange for the decent and proper burial of the child.

16.—(1) In the case of a foster child over compulsory school age as defined in section 114 of the Education Act, 1944, the local authority shall make arrangements in consultation with the foster parent and the child for placing him in suitable employment and, where the child cannot conveniently continue to be boarded out with the foster parent, shall arrange for him to reside in a suitable hostel or lodgings except where he is placed in residential employment.

(2) Where a foster child has been placed in employment, the local authority shall arrange that a visitor shall visit him within one month of his taking employment and not less often thereafter than once in every three months and, if he continues to be boarded out with the foster parent, so much of Rule 12 of these Rules as requires a visit once in every six weeks shall cease to apply.

17. The local authority may, and when required by the Secretary of State shall, appoint an officer to act as a visitor for the purpose of assisting the authority in the performance of their functions under these Rules and, in particular, of visiting foster children.

18. Before the local authority boards out a foster child at a home outside the authority's area, the authority shall notify to the local authority in whose area the house is situated—

(a) the address of the proposed home at which the child will be boarded out, and

(b) unless they have made administrative arrangements with that other authority, that they will exercise supervision over the child; and any such administrative arrangements shall include arrangements for visiting the child, exercising supervision over the boarding out arrangements and over the welfare of the child, medical examination and medical care and the furnishing of all reports upon the child.

19.—(1) The local authority shall keep a record of all foster children committed to their care and of any with respect to whom they have undertaken supervision under arrangements made under the last foregoing Rule.

(2) The local authority actually exercising supervision over a foster child and the home shall cause the date of every visit to, and examination of, the child and the effect of every report made under these Rules to be entered in their record.

20.—(1) The local authority to whose care a foster child has been committed shall arrange for a review by an appropriate committee of the progress of the child, and such review shall be made at the expiration of three months from the date on which the child was committed to their care and thereafter at intervals of not more than six months.

(2) A note of the committee's consideration shall be made in the record of each foster child.

21.—(1) The local authority shall furnish to the Secretary of State or to any of his officers, when so required, information regarding foster children committed to their care or under their supervision.

(2) Any foster child may be visited at any time by an inspector appointed under the Act by the Secretary of State and all records of the authority referring to the foster child shall be made available by them for the inspector's inspection.

22. Where in the opinion of the local authority it is desirable in the special circumstances of any case that the provisions of one or more of the foregoing Rules should not apply, a special arrangement may be made with the prior consent of the Secretary of State.

23. It shall not be necessary that arrangements under these Rules shall be entered into by foster parents in respect of foster children who are boarded out with them at the date when the Rules come into operation.

24. The Children and Young Persons (Boarding Out) Rules, 1933, are hereby revoked.

J. Chuter Ede,
One of His Majesty's Principal
Secretaries of State.

Home Office,
Whitehall.

10th December, 1946.

SCHEDULE

Rule 8

AGREEMENT OF FOSTER PARENT

1. I, A.B. of, do hereby agree with the Council of the County [County Borough] of that—

- (a) I will receive C.D. into my home and feed, clothe and look after him and bring him up as carefully and kindly as I would a child of my own ;
- (b) I will help him to become a good citizen, send him to school [work]† and to his church [chapel]†, and arrange for recreation suited to his age ;
- (c) I will look after his health and consult the doctor whenever the child is ill, and in the event of his serious illness or accident I will also notify the Council immediately ;
- (d) I will provide for the cleaning, mending and renewal of his clothing and its proper care ;
- (e) I will at all times permit any person authorised by the Home Office or by the Council to see the child, and his home and clothing, and I will attend to the advice of any such person ;
- (f) I will allow him to be removed from my home when required by any person so authorized ; and
- (g) I will notify the Council within two weeks if I change my address.

2. I make this agreement with the Council in consideration of my receiving the sum of

3. I acknowledge having received C.D. into my home on and agree that he brought with him the following articles of clothing and personal possessions :—

Signature of foster parent

Address

.....

Date

† Delete if not applicable.



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