

SCHEDULES

SCHEDULE 3

Section 19(5).

STAY OF PROCEEDINGS

Introductory

- 1 Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 (which relates to the staying of matrimonial proceedings) is amended as follows.

Interpretation

- 2 In paragraph 1, for “The following five paragraphs” substitute “Paragraphs 2 to 6 below”.

- 3 For paragraph 2 substitute—

- “2 (1) “Matrimonial proceedings” means—
- (a) marital proceedings;
 - (b) proceedings for nullity of marriage;
 - (c) proceedings for a declaration as to the validity of a marriage of the petitioner; or
 - (d) proceedings for a declaration as to the subsistence of such a marriage.
- (2) “Marital proceedings” has the meaning given by section 20 of the Family Law Act 1996.
- (3) “Divorce proceedings” means marital proceedings that are divorce proceedings by virtue of that section.”

- 4 Insert, after paragraph 4—

“4A (1) “Statement of marital breakdown” has the same meaning as in the Family Law Act 1996.

- (2) “Relevant statement” in relation to any marital proceedings, means—
- (a) the statement of marital breakdown with which the proceedings commenced; or
 - (b) if the proceedings are for the conversion of a separation order into a divorce order under section 4 of the Family Law Act 1996, the statement of marital breakdown by reference to which the separation order was made.”

Duty to furnish particulars of concurrent proceedings

- 5 For paragraph 7 substitute—

Status: This is the original version (as it was originally enacted).

- “7 (1) While marital proceedings are pending in the court with respect to a marriage, this paragraph applies—
- (a) to the party or parties to the marriage who made the relevant statement; and
 - (b) in prescribed circumstances where the statement was made by only one party, to the other party.
- (2) While matrimonial proceedings of any other kind are pending in the court with respect to a marriage and the trial or first trial in those proceedings has not begun, this paragraph applies—
- (a) to the petitioner; and
 - (b) if the respondent has included a prayer for relief in his answer, to the respondent.
- (3) A person to whom this paragraph applies must give prescribed information about any proceedings which—
- (a) he knows to be continuing in another jurisdiction; and
 - (b) are in respect of the marriage or capable of affecting its validity or subsistence.
- (4) The information must be given in such manner, to such persons and on such occasions as may be prescribed.”

Obligatory stays in divorce cases

- 6 (1) Paragraph 8 is amended as follows.
- (2) For the words before paragraph (a) of sub-paragraph (1) substitute—
- “(1) This paragraph applies where divorce proceedings are continuing in the court with respect to a marriage.
- (2) Where it appears to the court, on the application of a party to the marriage—”.
- (3) In sub-paragraph (1), in the words after paragraph (d), for “proceedings” substitute “divorce proceedings”.
- (4) For sub-paragraph (2) substitute—
- “(3) The effect of such an order is that, while it is in force—
- (a) no application for a divorce order in relation to the marriage may be made either by reference to the relevant statement or by reference to any subsequent statement of marital breakdown; and
 - (b) if such an application has been made, no divorce order may be made on that application.”

Discretionary stays

- 7 (1) Paragraph 9 is amended as follows.
- (2) For sub-paragraph (1), substitute—
- “(1) Sub-paragraph (1A) below applies where—

Status: This is the original version (as it was originally enacted).

- (a) marital proceedings are continuing in the court; or
 - (b) matrimonial proceedings of any other kind are continuing in the court, if the trial or first trial in the proceedings has not begun.
- (1A) The court may make an order staying the proceedings if it appears to the court—
- (a) that proceedings in respect of the marriage, or capable of affecting its validity or subsistence, are continuing in another jurisdiction; and
 - (b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for proceedings in that jurisdiction to be disposed of before further steps are taken in the proceedings to which the order relates.”
- (3) For sub-paragraph (3) substitute—
- “(3) Where an application for a stay is pending under paragraph 8 above, the court shall not make an order under sub-paragraph (1A) staying marital proceedings in relation to the marriage.”
- (4) In sub-paragraph 4, after “pending in the court,” insert “other than marital proceedings,”.
- (5) After sub-paragraph (4), insert—
- “(5) The effect of an order under sub-paragraph (1A) for a stay of marital proceedings is that, while it is in force—
- (a) no application for a divorce order or separation order in relation to the marriage may be made either by reference to the relevant statement or by reference to any subsequent statement of marital breakdown; and
 - (b) if such an application has been made, no divorce order or separation order shall be made on that application.”

Discharge of orders

- 8 In paragraph 10, for sub-paragraph (2), substitute—
- “(1A) Where the court discharges an order staying any proceedings, it may direct that the whole or a specified part of any period while the order has been in force—
- (a) is not to count towards any period specified in section 5(3) or 7(9) of the Family Law Act 1996; or
 - (b) is to count towards any such period only for specified purposes.
- (2) Where the court discharges an order under paragraph 8 above, it shall not again make such an order in relation to the marriage except in a case where the obligation to do so arises under that paragraph following receipt by the court of a statement of marital breakdown after the discharge of the order.”

Ancillary matters

- 9 (1) Paragraph 11 is amended as follows.

Status: This is the original version (as it was originally enacted).

(2) For sub-paragraph (1) substitute—

“(1) Sub-paragraphs (2) and (3) below apply where a stay of marital proceedings or proceedings for nullity of marriage—

- (a) has been imposed by reference to proceedings in a related jurisdiction for divorce, separation or nullity of marriage, and
- (b) is in force.

(1A) In this paragraph—

“lump sum order”, in relation to a stay, means an order—

- (a) under section 22A or 23, 31 or 31A of the Matrimonial Causes Act 1973 which is an order for the payment of a lump sum for the purposes of Part II of that Act, or
- (b) made in any equivalent circumstances under Schedule 1 to the Children Act 1989 and of a kind mentioned in paragraph 1(2)(a) or (b) of that Schedule,

so far as it satisfies the condition mentioned in sub-paragraph (1C) below;

“the other proceedings”, in relation to a stay, means the proceedings in another jurisdiction by reference to which the stay was imposed;

“relevant order”, in relation to a stay, means—

- (a) any financial provision order (including an interim order), other than a lump sum order;
- (b) any order made in equivalent circumstances under Schedule 1 to the Children Act 1989 and of a kind mentioned in paragraph 1(2)(a) or (b) of that Schedule;
- (c) any section 8 order under the Act of 1989; and
- (d) except for the purposes of sub-paragraph (3) below, any order restraining a person from removing a child out of England and Wales or out of the care of another person,

so far as it satisfies the condition mentioned in sub-paragraph (1C) below.

(1C) The condition is that the order is, or (apart from this paragraph) could be, made in connection with the proceedings to which the stay applies.”

(3) In sub-paragraph (2)—

- (a) for “any proceedings are stayed” substitute “this paragraph applies in relation to a stay”;
- (b) in paragraph (a), and in the first place in paragraph (c), omit “in connection with the stayed proceedings”; and
- (c) in paragraphs (b) and (c), for “made in connection with the stayed proceedings” substitute “already made”.

(4) In sub-paragraph (3)—

- (a) for “any proceedings are stayed” substitute “this paragraph applies in relation to a stay”;
- (b) in paragraph (a), for “made in connection with the stayed proceedings” substitute “already made”;

Status: This is the original version (as it was originally enacted).

- (c) in paragraphs (b) and (c), omit “in connection with the stayed proceedings”.
- (5) In sub-paragraph (3A), for the words before “any order made” substitute—
 - “Where a secured periodical payments order within the meaning of the Matrimonial Causes Act 1973—
 - (a) has been made under section 22A(1)(b) or 23(1)(b) or (2)(b) of that Act, but
 - (b) ceases to have effect by virtue of sub-paragraph (2) or (3) above.”
- (6) For sub-paragraph (4), substitute—
 - “(4) Nothing in sub-paragraphs (2) and (3) above affects any relevant order or lump sum order or any power to make such an order in so far as—
 - (a) where the stay applies to matrimonial proceedings other than marital proceedings, the order has been made or the power may be exercised following the receipt by the court of a statement of marital breakdown;
 - (b) where the stay is of marital proceedings, the order has been made or the power may be exercised in matrimonial proceedings of any other kind; or
 - (c) where the stay is of divorce proceedings only, the order has been made or the power may be exercised—
 - (i) in matrimonial proceedings which are not marital proceedings, or
 - (ii) in marital proceedings in which an application has been made for a separation order.”
- (7) In sub-paragraph (5)(c), for the words from “in connection” onwards substitute “where a stay no longer applies”.