



Matrimonial Causes Act 1973

1973 CHAPTER 18

U.K.

F1

An Act to consolidate certain enactments relating to matrimonial proceedings, maintenance agreements, and declarations of legitimacy, validity of marriage and British nationality, with amendments to give effect to recommendations of the Law Commission. [23rd May 1973]

Textual Amendments

- F1** Act: for the words "Supreme Court Act 1981" wherever they occur there is substituted (prosp.) the words "Senior Courts Act 1981" by virtue of [Constitutional Reform Act 2005 \(c. 4\), ss. 59, 148\(1\), Sch. 11 para. 1\(2\)](#) [Editorial Note: this amendment will be carried through into the text of the Act at the same time as any other effects on the Act for the year in which the relevant commencement order (or first such order) is made]

Commencement Information

- II** Act not in force at Royal Assent, see s. 55(2); Act wholly in force at 1.1.1974

PART I **E+W**

DIVORCE, NULLITY AND OTHER MATRIMONIAL SUITS

Divorce

1 Divorce on breakdown of marriage. **E+W**

- (1) Subject to section 3 below, a petition for divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably.

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- (2) The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say—
- (a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
 - (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
 - (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
 - (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (hereafter in this Act referred to as “two years’ separation”) and the respondent consents to a decree being granted;
 - (e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (hereafter in this Act referred to as “five years’ separation”).
- (3) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent.
- (4) If the court is satisfied on the evidence of any such fact as is mentioned in subsection (2) above, then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to [F2section 5] below, grant a decree of divorce.
- (5) Every decree of divorce shall in the first instance be a decree nisi and shall not be made absolute before the expiration of six months from its grant unless the High Court by general order from time to time fixes a shorter period, or unless in any particular case the court in which the proceedings are for the time being pending from time to time by special order fixes a shorter period than the period otherwise applicable for the time being by virtue of this subsection.

Textual Amendments

F2 Words substituted (with saving) by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 46(1), 48(3), Sch. 1, **Sch. 2 para. 10**

2 Supplemental provisions as to facts raising presumption of breakdown. **E+W**

- (1) One party to a marriage shall not be entitled to rely for the purposes of section 1(2) (a) above on adultery committed by the other if, after it became known to him that the other had committed that adultery, the parties have lived with each other for a period exceeding, or periods together exceeding, six months.
- (2) Where the parties to a marriage have lived with each other after it became known to one party that the other had committed adultery, but subsection (1) above does not apply, in any proceedings for divorce in which the petitioner relies on that adultery the fact that the parties have lived with each other after that time shall be disregarded in determining for the purposes of section 1(2)(a) above whether the petitioner finds it intolerable to live with the respondent.

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- (3) Where in any proceedings for divorce the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the court to support his allegation, that fact shall be disregarded in determining for the purposes of section 1(2)(b) above whether the petitioner cannot reasonably be expected to live with the respondent if the length of that period or of those periods together was six months or less.
- (4) For the purposes of section 1(2)(c) above the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that his desertion continued at that time.
- (5) In considering for the purposes of section 1(2) above whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding six months) or of any two or more periods (not exceeding six months in all) during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage lived apart, as the case may be.
- (6) For the purposes of section 1(2)(d) and (e) above and this section a husband and wife shall be treated as living apart unless they are living with each other in the same household, and references in this section to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.
- (7) Provision shall be made by rules of court for the purpose of ensuring that where in pursuance of section 1(2)(d) above the petitioner alleges that the respondent consents to a decree being granted the respondent has been given such information as will enable him to understand the consequences to him of his consenting to a decree being granted and the steps which he must take to indicate that he consents to the grant of a decree.

[^{F3} **Bar on petitions for divorce within one year of marriage.** **E+W**

- (1) No petition for divorce shall be presented to the court before the expiration of the period of one year from the date of the marriage.
- (2) Nothing in this section shall prohibit the presentation of a petition based on matters which occurred before the expiration of that period.]

Textual Amendments

- F3** S. 3 substituted (with saving) by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 1, 46(1), 48(2), [Sch. 2](#)

4 Divorce not precluded by previous judicial separation. **E+W**

- (1) A person shall not be prevented from presenting a petition for divorce, or the court from granting a decree of divorce, by reason only that the petitioner or respondent has at any time, on the same facts or substantially the same facts as those proved

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in support of the petition, been granted a decree of judicial separation or an order under, or having effect as if made under, the ^{M1}Matrimonial Proceedings (Magistrates' Courts) Act 1960 [^{F4}or Part I of the ^{M2}Domestic Proceedings and Magistrates' Courts Act 1978] or any corresponding enactments in force in Northern Ireland, the Isle of Man or any of the Channel Islands.

- (2) On a petition for divorce in such a case as is mentioned in subsection (1) above, the court may treat the decree or order as sufficient proof of any adultery, desertion or other fact by reference to which it was granted, but shall not grant a decree of divorce without receiving evidence from the petitioner.
- (3) Where a petition for divorce in such a case follows a decree of judicial separation or [^{F5}(subject to sub-section (5) below)] an order containing a provision exempting one party to the marriage from the obligation to cohabit with the other, for the purposes of that petition a period of desertion immediately preceding the institution of the proceedings for the decree or order shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since it was granted, be deemed immediately to precede the presentation of the petition.
- [^{F6}(4) For the purposes of section 1(2)(c) above the court may treat as a period during which the respondent has deserted the petitioner any of the following periods, that is to say—
- (a) any period during which there is in force an injunction granted by the High Court or a county court which excludes the respondent from the matrimonial home;
 - (b) any period during which there is in force an order made by the High Court or a county court under [^{F7}section 1 or 9 of the Matrimonial Homes Act 1983]
 - (c) any period during which there is in force an order made by a magistrates' court under section 16(3) of the ^{M3}Domestic Proceedings and Magistrates' Courts Act 1978 which requires the respondent to leave the matrimonial home or prohibits the respondent from entering the matrimonial home.
- (5) Where—
- (a) a petition for divorce is presented after the date on which Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 comes into force, and
 - (b) an order made under the Matrimonial Proceedings (Magistrates' Courts) Act 1960 containing a provision exempting the petitioner from the obligation to cohabit with the respondent is in force on that date,
- then, for the purposes of section 1(2)(c) above, the court may treat a period during which such a provision was included in that order (whether before or after that date) as a period during which the respondent has deserted the petitioner.]

Textual Amendments

- F4** Words inserted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\), s. 89\(2\), Sch. 2 para. 38](#)
- F5** Words inserted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\), ss. 62\(a\), 89\(2\)](#)
- F6** [S. 4\(4\)\(5\)](#) added by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\), ss. 62\(b\), 89\(2\)](#)
- F7** Words substituted for [s. 4\(4\)\(b\)\(i\) and \(ii\)](#) by [Matrimonial Homes Act 1983 \(c. 19, SIF 49:5\), ss. 12, 13, Sch. 2](#)

Marginal Citations

- M1** [1960 c. 48.](#)
- M2** [1978 c. 22](#)

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M3 1978 c. 22.

5 Refusal of decree in five year separation cases on grounds of grave hardship to respondent. **E+W**

- (1) The respondent to a petition for divorce in which the petitioner alleges five years' separation may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial or other hardship to him and that it would in all the circumstances be wrong to dissolve the marriage.
- (2) Where the grant of a decree is opposed by virtue of this section, then—
 - (a) if the court finds that the petitioner is entitled to rely in support of his petition on the fact of five years' separation and makes no such finding as to any other fact mentioned in section 1(2) above, and
 - (b) if apart from this section the court would grant a decree on the petition,the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if of opinion that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition.
- (3) For the purposes of this section hardship shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved.

6 Attempts at reconciliation of parties to marriage. **E+W**

- (1) Provision shall be made by rules of court for requiring the solicitor acting for a petitioner for divorce to certify whether he has discussed with the petitioner the possibility of a reconciliation and given him the names and addresses of persons qualified to help effect a reconciliation between parties to a marriage who have become estranged.
- (2) If at any stage of proceedings for divorce it appears to the court that there is a reasonable possibility of a reconciliation between the parties to the marriage, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a reconciliation.

The power conferred by the foregoing provision is additional to any other power of the court to adjourn proceedings.

7 Consideration by the court of certain agreements or arrangements. **E+W**

Provision may be made by rules of court for enabling the parties to a marriage, or either of them, on application made either before or after the presentation of a petition for divorce, to refer to the court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun, and for enabling the court to express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit.

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8 Intervention of Queen's Proctor. **E+W**

- (1) In the case of a petition for divorce—
 - (a) the court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Queen's Proctor, who shall under the directions of the Attorney-General instruct counsel to argue before the court any question in relation to the matter which the court considers it necessary or expedient to have fully argued;
 - (b) any person may at any time during the progress of the proceedings or before the decree nisi is made absolute give information to the Queen's Proctor on any matter material to the due decision of the case, and the Queen's Proctor may thereupon take such steps as the Attorney-General considers necessary or expedient.
- (2) Where the Queen's Proctor intervenes or shows cause against a decree nisi in any proceedings for divorce, the court may make such order as may be just as to the payment by other parties to the proceedings of the costs incurred by him in so doing or as to the payment by him of any costs incurred by any of those parties by reason of his so doing.
- (3) The Queen's Proctor shall be entitled to charge as part of the expenses of his office—
 - (a) the costs of any proceedings under subsection (1)(a) above;
 - (b) where his reasonable costs of intervening or showing cause as mentioned in subsection (2) above are not fully satisfied by any order under that subsection, the amount of the difference;
 - (c) if the Treasury so directs, any costs which he pays to any parties under an order made under subsection (2).

9 Proceedings after decree nisi: general powers of court. **E+W**

- (1) Where a decree of divorce has been granted but not made absolute, then, without prejudice to section 8 above, any person (excluding a party to the proceedings other than the Queen's Proctor) may show cause why the decree should not be made absolute by reason of material facts not having been brought before the court; and in such a case the court may—
 - (a) notwithstanding anything in section 1(5) above (but subject to sections 10(2) to (4) and 41 below) make the decree absolute; or
 - (b) rescind the decree; or
 - (c) require further inquiry; or
 - (d) otherwise deal with the case as it thinks fit.
- (2) Where a decree of divorce has been granted and no application for it to be made absolute has been made by the party to whom it was granted, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the court, and on that application the court may exercise any of the powers mentioned in paragraphs (a) to (d) of subsection (1) above.

10 Proceedings after decree nisi: special protection for respondent in separation cases. **E+W**

- (1) Where in any case the court has granted a decree of divorce on the basis of a finding that the petitioner was entitled to rely in support of his petition on the fact of two years'

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separation coupled with the respondent's consent to a decree being granted and has made no such finding as to any other fact mentioned in section 1(2) above, the court may, on an application made by the respondent at any time before the decree is made absolute, rescind the decree if it is satisfied that the petitioner misled the respondent (whether intentionally or unintentionally) about any matter which the respondent took into account in deciding to give his consent.

- (2) The following provisions of this section apply where—
- (a) the respondent to a petition for divorce in which the petitioner alleged two years' or five years' separation coupled, in the former case, with the respondent's consent to a decree being granted, has applied to the court for consideration under subsection (3) below of his financial position after the divorce; and
 - (b) the court has granted a decree on the petition on the basis of a finding that the petitioner was entitled to rely in support of his petition on the fact of two years' or five years' separation (as the case may be) and has made no such finding as to any other fact mentioned in section 1(2) above.
- (3) The court hearing an application by the respondent under subsection (2) above shall consider all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and the financial position of the respondent, as having regard to the divorce, it is likely to be after the death of the petitioner should the petitioner die first; and, subject to subsection (4) below, the court shall not make the decree absolute unless it is satisfied—
- (a) that the petitioner should not be required to make any financial provision for the respondent, or
 - (b) that the financial provision made by the petitioner for the respondent is reasonable and fair or the best that can be made in the circumstances.
- (4) The court may if it thinks fit make the decree absolute notwithstanding the requirements of subsection (3) above if—
- (a) it appears that there are circumstances making it desirable that the decree should be made absolute without delay, and
 - (b) the court has obtained a satisfactory undertaking from the petitioner that he will make such financial provision for the respondent as the court may approve.

VALID FROM 24/02/2003

[^{F8}10A Proceedings after decree nisi: religious marriage E+W

- (1) This section applies if a decree of divorce has been granted but not made absolute and the parties to the marriage concerned—
- (a) were married in accordance with—
 - (i) the usages of the Jews, or
 - (ii) any other prescribed religious usages; and
 - (b) must co-operate if the marriage is to be dissolved in accordance with those usages.
- (2) On the application of either party, the court may order that a decree of divorce is not to be made absolute until a declaration made by both parties that they have taken

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such steps as are required to dissolve the marriage in accordance with those usages is produced to the court.

- (3) An order under subsection (2)—
 - (a) may be made only if the court is satisfied that in all the circumstances of the case it is just and reasonable to do so; and
 - (b) may be revoked at any time.
- (4) A declaration of a kind mentioned in subsection (2)—
 - (a) must be in a specified form;
 - (b) must, in specified cases, be accompanied by such documents as may be specified; and
 - (c) must, in specified cases, satisfy such other requirements as may be specified.
- (5) The validity of a decree of divorce made by reference to such a declaration is not to be affected by any inaccuracy in that declaration.
- (6) “Prescribed” means prescribed in an order made by the Lord Chancellor and such an order—
 - (a) must be made by statutory instrument;
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) “Specified” means specified in rules of court.]

Textual Amendments

- F8** S. 10A inserted (24.2.2003) by [Divorce \(Religious Marriages\) Act 2002 \(c. 27\)](#), **ss. 1(1), 2(2)**; S.I. 2003/186, **art. 2**

Nullity

11 Grounds on which a marriage is void. **E+W**

A marriage celebrated after 31st July 1971 shall be void on the following grounds only, that is to say—

- (a) that it is not a valid marriage under the provisions of [^{F9}the [^{F10}Marriage Acts 1949 to 1986]] (that is to say where—
 - (i) the parties are within the prohibited degrees of relationship;
 - (ii) either party is under the age of sixteen; or
 - (iii) the parties have intermarried in disregard of certain requirements as to the formation of marriage);
- (b) that at the time of the marriage either party was already lawfully married;
- (c) that the parties are not respectively male and female;
- (d) in the case of a polygamous marriage entered into outside England and Wales, that either party was at the time of the marriage domiciled in England and Wales.

For the purposes of paragraph (d) of this subsection a marriage may be polygamous although at its inception neither party has any spouse additional to the other.

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Textual Amendments

- F9** Words substituted by virtue of [Marriage Act 1983 \(c. 32, SIF 49:1\)](#), s. **12(1)**
F10 Words substituted by [Marriage \(Prohibited Degrees of Relationship\) Act 1986 \(c. 16, SIF 49:1\)](#), s. **6(4)**

12 Grounds on which a marriage is voidable. **E+W**

A marriage celebrated after 31st July 1971 shall be voidable on the following grounds only, that is to say—

- (a) that the marriage has not been consummated owing to the incapacity of either party to consummate it;
- (b) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;
- (c) that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;
- (d) that at the time of the marriage either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder within the meaning of [^{F11}the Mental Health Act 1983] of such a kind or to such an extent as to be unfitted for marriage;
- (e) that at the time of the marriage the respondent was suffering from venereal disease in a communicable form;
- (f) that at the time of the marriage the respondent was pregnant by some person other than the petitioner.

Textual Amendments

- F11** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), ss. 146, 147, 148, [Sch. 4 para. 34](#)

13 Bars to relief where marriage is voidable. **E+W**

- (1) The court shall not, in proceedings instituted after 31st July 1971, grant a decree of nullity on the ground that a marriage is voidable if the respondent satisfies the court—
- (a) that the petitioner, with knowledge that it was open to him to have the marriage avoided, so conducted himself in relation to the respondent as to lead the respondent reasonably to believe that he would not seek to do so; and
 - (b) that it would be unjust to the respondent to grant the decree.

[^{F12}(2) Without prejudice to subsection (1) above, the court shall not grant a decree of nullity by virtue of section 12 above on the grounds mentioned in paragraph (c), (d), (e) or (f) of that section unless—

- (a) it is satisfied that proceedings were instituted within the period of three years from the date of the marriage, or
- (b) leave for the institution of proceedings after the expiration of that period has been granted under subsection (4) below.]

- (3) Without prejudice to subsections (1) and (2) above, the court shall not grant a decree of nullity by virtue of section 12 above on the grounds mentioned in paragraph (e) or (f) of that section unless it is satisfied that the petitioner was at the time of the marriage ignorant of the facts alleged.

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- [^{F13}(4) In the case of proceedings for the grant of a decree of nullity by virtue of section 12 above on the grounds mentioned in paragraph (c), (d), (e) or (f) of that section, a judge of the court may, on an application made to him, grant leave for the institution of proceedings after the expiration of the period of three years from the date of the marriage if—
- (a) he is satisfied that the petitioner has at some time during that period suffered from mental disorder within the meaning of the Mental Health Act 1983, and
 - (b) he considers that in all the circumstances of the case it would be just to grant leave for the institution of proceedings.
- (5) An application for leave under subsection (4) above may be made after the expiration of the period of three years from the date of the marriage.]

Textual Amendments

F12 S. 13(2) substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 2(2), 48(2)

F13 S. 13(4)(5) added by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 2(3), 48(2)

Modifications etc. (not altering text)

C1 S. 13(4) modified by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 46(2), 47(1), 48(2), [Sch. 2 para. 2](#)

14 **Marriages governed by foreign law or celebrated abroad under English law.** E +W

- (1) Where, apart from this Act, any matter affecting the validity of a marriage would fall to be determined (in accordance with the rules of private international law) by reference to the law of a country outside England and Wales, nothing in section 11, 12 or 13(1) above shall—
 - (a) preclude the determination of that matter as aforesaid; or
 - (b) require the application to the marriage of the grounds or bar there mentioned except so far as applicable in accordance with those rules.
- (2) In the case of a marriage which purports to have been celebrated under the Foreign Marriage Acts 1892 to 1947 or has taken place outside England and Wales and purports to be a marriage under common law, section 11 above is without prejudice to any ground on which the marriage may be void under those Acts or, as the case may be, by virtue of the rules governing the celebration of marriages outside England and Wales under common law.

15 **Application of ss. 1(5), 8 and 9 to nullity proceedings.** E+W

Sections 1(5), 8 and 9 above shall apply in relation to proceedings for nullity of marriage as if for any reference in those provisions to divorce there were substituted a reference to nullity of marriage.

16 **Effect of decree of nullity in case of voidable marriage.** E+W

A decree of nullity granted after 31st July 1971 in respect of a voidable marriage shall operate to annul the marriage only as respects any time after the decree has been made

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absolute, and the marriage shall, notwithstanding the decree, be treated as if it had existed up to that time.

Other matrimonial suits

17 Judicial separation. E+W

- (1) A petition for judicial separation may be presented to the court by either party to a marriage on the ground that any such fact as is mentioned in section 1(2) above exists, and the provisions of section 2 above shall apply accordingly for the purposes of a petition for judicial separation alleging any such fact, as they apply in relation to a petition for divorce alleging that fact.
- (2) On a petition for judicial separation it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent, but the court shall not be concerned to consider whether the marriage has broken down irretrievably, and if it is satisfied on the evidence of any such fact as is mentioned in section 1(2) above it shall, subject to section 41 below, grant a decree of judicial separation.
- (3) Sections 6 and 7 above shall apply for the purpose of encouraging the reconciliation of parties to proceedings for judicial separation and of enabling the parties to a marriage to refer to the court for its opinion an agreement or arrangement relevant to actual or contemplated proceedings for judicial separation, as they apply in relation to proceedings for divorce.

18 Effects of judicial separation. E+W

- (1) Where the court grants a decree of judicial separation it shall no longer be obligatory for the petitioner to cohabit with the respondent.
- (2) If while a decree of judicial separation is in force and the separation is continuing either of the parties to the marriage dies intestate as respects all or any of his or her real or personal property, the property as respects which he or she died intestate shall devolve as if the other party to the marriage had then been dead.
- (3) Notwithstanding anything in section 2(1)(a) of the ^{M4}Matrimonial Proceedings (Magistrates' Courts) Act 1960, a provision in force under an order made, or having effect as if made, under that section exempting one party to a marriage from the obligation to cohabit with the other shall not have effect as a decree of judicial separation for the purposes of subsection (2) above.

Marginal Citations

M4 1960 c. 48.

19 Presumption of death and dissolution of marriage. E+W

- (1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may, ^{F14} . . . present a petition to the court to have it presumed that the other party is dead and to have the marriage dissolved, and the court

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may, if satisfied that such reasonable grounds exist, grant a decree of presumption of death and dissolution of the marriage.

^{F15}(2)

(3) In any proceedings under this section the fact that for a period of seven years or more the other party to the marriage has been continually absent from the petitioner and the petitioner has no reason to believe that the other party has been living within that time shall be evidence that the other party is dead until the contrary is proved.

(4) Sections 1(5), 8 and 9 above shall apply to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.

^{F15}(5)

(6) It is hereby declared that neither collusion nor any other conduct on the part of the petitioner which has at any time been a bar to relief in matrimonial proceedings constitutes a bar to the grant of a decree under this section.

Textual Amendments
F14 Words repealed by [Domicile and Matrimonial Proceedings Act 1973 \(c. 45\), s. 17\(2\), Sch. 6](#)
F15 [S. 19\(2\)\(5\)](#) repealed by [Domicile and Matrimonial Proceedings Act 1973 \(c. 45\), s. 17\(2\), Sch. 6](#)

General

20 Relief for respondent in divorce proceedings. E+W

If in any proceedings for divorce the respondent alleges and proves any such fact as is mentioned in subsection (2) of section 1 above (treating the respondent as the petitioner and the petitioner as the respondent for the purposes of that subsection) the court may give to the respondent the relief to which he would have been entitled if he had presented a petition seeking that relief.

PART II E+W

FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY

Financial provision and property adjustment orders

21 Financial provision and property adjustment orders. E+W

(1) The financial provision orders for the purposes of this Act are the orders for periodical or lump sum provision available (subject to the provisions of this Act) under section 23 below for the purpose of adjusting the financial position of the parties to a marriage and any children of the family in connection with proceedings for divorce, nullity of marriage or judicial separation and under section 27(6) below on proof of neglect by one party to a marriage to provide, or to make a proper contribution towards, reasonable maintenance for the other or a child of the family, that is to say—

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- (a) any order for periodical payments in favour of a party to a marriage under section 23(1)(a) or 27(6)(a) or in favour of a child of the family under section 23(1)(d), (2) or (4) or 27(6)(d);
- (b) any order for secured periodical payments in favour of a party to a marriage under section 23(1)(b) or 27(6)(b) or in favour of a child of the family under section 23(1)(e), (2) or (4) or 27(6)(e); and
- (c) any order for lump sum provision in favour of a party to a marriage under section 23(1)(c) or 27(6)(c) or in favour of a child of the family under section 23(1)(f), (2) or (4) or 27(6)(f);

and references in this Act (except in paragraphs 17(1) and 23 of Schedule 1 below) to periodical payments orders, secured periodical payments orders, and orders for the payment of a lump sum are references to all or some of the financial provision orders requiring the sort of financial provision in question according as the context of each reference may require.

- (2) The property adjustment orders for the purposes of this Act are the orders dealing with property rights available (subject to the provisions of this Act) under section 24 below for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation, that is to say—
 - (a) any order under subsection (1)(a) of that section for a transfer of property;
 - (b) any order under subsection (1)(b) of that section for a settlement of property; and
 - (c) any order under subsection (1)(c) or (d) of that section for a variation of settlement.

VALID FROM 11/11/1999

[^{F16}21A Pension sharing orders. E+W]

- (1) For the purposes of this Act, a pension sharing order is an order which—
 - (a) provides that one party's—
 - (i) shareable rights under a specified pension arrangement, or
 - (ii) shareable state scheme rights,be subject to pension sharing for the benefit of the other party, and
 - (b) specifies the percentage value to be transferred.
- (2) In subsection (1) above—
 - (a) the reference to shareable rights under a pension arrangement is to rights in relation to which pension sharing is available under Chapter I of Part IV of the Welfare Reform and Pensions Act 1999, or under corresponding Northern Ireland legislation,
 - (b) the reference to shareable state scheme rights is to rights in relation to which pension sharing is available under Chapter II of Part IV of the Welfare Reform and Pensions Act 1999, or under corresponding Northern Ireland legislation, and
 - (c) “party” means a party to a marriage.]

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Textual Amendments

F16 S. 21A and sidenote inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, Sch. 3 para. 2; S.I. 2000/1116, art. 2

Modifications etc. (not altering text)

C2 S. 21A modified (8.8.2006) by The Divorce etc. (Pension Protection Fund) Regulations 2006 (S.I. 2006/1932), reg. 4(2)(a)

Ancillary relief in connection with divorce proceedings, etc.

22 Maintenance pending suit. **E+W**

On a petition for divorce, nullity of marriage or judicial separation, the court may make an order for maintenance pending suit, that is to say, an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.

23 Financial provision orders in connection with divorce proceedings, etc. **E+W**

(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say—

- (a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;
- (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court such periodical payments, for such term, as may be so specified;
- (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified;
- (d) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments, for such term, as may be so specified;
- (e) an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
- (f) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified;

subject, however, in the case of an order under paragraph (d), (e) or (f) above, to the restrictions imposed by section 29(1) and (3) below on the making of financial provision orders in favour of children who have attained the age of eighteen.

(2) The court may also, subject to those restrictions, make any one or more of the orders mentioned in subsection (1)(d), (e) and (f) above—

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before granting a decree; and

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- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.
- (3) Without prejudice to the generality of subsection (1)(c) or (f) above—
- (a) an order under this section that a party to a marriage shall pay a lump sum to the other party may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section in his or her favour;
- (b) an order under this section for the payment of a lump sum to or for the benefit of a child of the family may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this section in his favour to be met; and
- (c) an order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.
- (4) The power of the court under subsection (1) or (2)(a) above to make an order in favour of a child of the family shall be exercisable from time to time; and where the court makes an order in favour of a child under subsection (2)(b) above, it may from time to time, subject to the restrictions mentioned in subsection (1) above, make a further order in his favour of any of the kinds mentioned in subsection (1)(d), (e) or (f) above.
- (5) Without prejudice to the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel, where an order is made under subsection (1)(a), (b) or (c) above on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.
- [^{F17}(6) Where the court—
- (a) makes an order under this section for the payment of a lump sum; and
- (b) directs—
- (i) that payment of that sum or any part of it shall be deferred; or
- (ii) that that sum or any part of it shall be paid by instalments,
- the court may order that the amount deferred or the instalments shall carry interest at such rate as may be specified by the order from such date, not earlier than the date of the order, as may be so specified, until the date when payment of it is due.]

Textual Amendments

F17 S. 23(6) added by [Administration of Justice Act 1982 \(c. 53, SIF 37\)](#), **ss. 16**, 77(1)

Modifications etc. (not altering text)

C3 S. 23(3) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(a)**, 48(2)

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24 Property adjustment orders in connection with divorce proceedings, etc. E+W

- (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say—
- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;
 - (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
 - (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage;
 - (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement;
- subject, however, in the case of an order under paragraph (a) above, to the restrictions imposed by section 29(1) and (3) below on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.
- (2) The court may make an order under subsection (1)(c) above notwithstanding that there are no children of the family.
- (3) Without prejudice to the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel, where an order is made under this section on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

[^{F18}24A Orders for sale of property E+W

- (1) Where the court makes under section 23 or 24 of this Act a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order, then, on making that order or at any time thereafter, the court may make a further order for the sale of such property as may be specified in the order, being property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.
- (2) Any order made under subsection (1) above may contain such consequential or supplementary provisions as the court thinks fit and, without prejudice to the generality of the foregoing provision, may include—
- (a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates, and
 - (b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order.
- (3) Where an order is made under subsection (1) above on or after the grant of a decree of divorce or nullity of marriage, the order shall not take effect unless the decree has been made absolute.

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- (4) Where an order is made under subsection (1) above, the court may direct that the order, or such provision thereof as the court may specify, shall not take effect until the occurrence of an event specified by the court or the expiration of a period so specified.
 - (5) Where an order under subsection (1) above contains a provision requiring the proceeds of sale of the property to which the order relates to be used to secure periodical payments to a party to the marriage, the order shall cease to have effect on the death or re-marriage of that person.
- [Where a party to a marriage has a beneficial interest in any property, or in the proceeds
- ^{F19}(6) of sale thereof, and some other person who is not a party to the marriage also has a beneficial interest in that property or in the proceeds of sale thereof, then, before deciding whether to make an order under this section in relation to that property, it shall be the duty of the court to give that other person an opportunity to make representations with respect to the order; and any representations made by that other person shall be included among the circumstances to which the court is required to have regard under section 25(1) below.]]

Textual Amendments

F18 S. 24A inserted by [Matrimonial Homes and Property Act 1981 \(c. 24, SIF 49:5\)](#), s. 7

F19 S. 24A(6) added by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 46(1), 48(3), [Sch. 1 para. 11](#)

Modifications etc. (not altering text)

C4 S. 24A(2)(4)(5)(6) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. [21\(b\)](#), 48(2)

VALID FROM 11/11/1999

[^{F20}24B Pension sharing orders in connection with divorce proceedings etc. **E+W**

- (1) On granting a decree of divorce or a decree of nullity of marriage or at any time thereafter (whether before or after the decree is made absolute), the court may, on an application made under this section, make one or more pension sharing orders in relation to the marriage.
- (2) A pension sharing order under this section is not to take effect unless the decree on or after which it is made has been made absolute.
- (3) A pension sharing order under this section may not be made in relation to a pension arrangement which—
 - (a) is the subject of a pension sharing order in relation to the marriage, or
 - (b) has been the subject of pension sharing between the parties to the marriage.
- (4) A pension sharing order under this section may not be made in relation to shareable state scheme rights if—
 - (a) such rights are the subject of a pension sharing order in relation to the marriage, or
 - (b) such rights have been the subject of pension sharing between the parties to the marriage.

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- (5) A pension sharing order under this section may not be made in relation to the rights of a person under a pension arrangement if there is in force a requirement imposed by virtue of section 25B or 25C below which relates to benefits or future benefits to which he is entitled under the pension arrangement.]

Textual Amendments

F20 S. 24B and sidenote inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, **Sch. 3 para. 4**; S.I. 2000/1116, **art. 2**

VALID FROM 11/11/1999

[^{F21}24C Pension sharing orders: duty to stay. **E+W**

- (1) No pension sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Lord Chancellor.
- (2) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F21 S. 24C and sidenote inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, **Sch. 3 para. 4**; S.I. 2000/1116, **art. 2**

VALID FROM 11/11/1999

[^{F22}24D Pension sharing orders: apportionment of charges. **E+W**

If a pension sharing order relates to rights under a pension arrangement, the court may include in the order provision about the apportionment between the parties of any charge under section 41 of the Welfare Reform and Pensions Act 1999 (charges in respect of pension sharing costs), or under corresponding Northern Ireland legislation.]

Textual Amendments

F22 S. 24D and sidenote inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by 1999 c. 30, s. 19, **Sch. 3 para. 4**; S.I. 2000/1116, **art. 2**

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[^{F23}25] **Matters to which court is to have regard in deciding how to exercise its powers under ss. 23, 24 and 24A. E+W**

- (1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24 or 24A above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.
- (2) As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24 or 24A above in relation to a party to the marriage, the court shall in particular have regard to the following matters—
 - (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (c) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (d) the age of each party to the marriage and the duration of the marriage;
 - (e) any physical or mental disability of either of the parties to the marriage;
 - (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
 - (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
 - (h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.
- (3) As regards the exercise of the powers of the court under section 23(1)(d), (e) or (f), (2) or (4), 24 or 24A above in relation to a child of the family, the court shall in particular have regard to the following matters—
 - (a) the financial needs of the child;
 - (b) the income, earning capacity (if any), property and other financial resources of the child;
 - (c) any physical or mental disability of the child;
 - (d) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;
 - (e) the considerations mentioned in relation to the parties to the marriage in paragraphs (a), (b), (c) and (e) of subsection (2) above.
- (4) As regards the exercise of the powers of the court under section 23(1)(d), (e) or (f), (2) or (4), 24 or 24A above against a party to a marriage in favour of a child of the family who is not the child of that party, the court shall also have regard—
 - (a) to whether that party assumed any responsibility for the child's maintenance, and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;

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- (b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;
- (c) to the liability of any other person to maintain the child.]

Textual Amendments

F23 Ss. 25, 25A substituted for s. 25 by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 3, 48(2)

[^{F24}25A Exercise of court's powers in favour of party to marriage on decree of divorce or nullity of marriage. **E+W**

- (1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under section 23(1)(a), (b) or (c), 24 or 24A above in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.
- (2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.
- (3) Where on or after the grant of a decree of divorce or nullity of marriage an application is made by a party to the marriage for a periodical payments or secured periodical payments order in his or her favour, then, if the court considers that no continuing obligation should be imposed on either party to make or secure periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be entitled to make any further application in relation to that marriage for an order under section 23(1)(a) or (b) above.]

Textual Amendments

F24 Ss. 25, 25A substituted for s. 25 by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 3, 48(2)

VALID FROM 01/08/1996

[^{F25}25B Pensions. **E+W**

- (1) The matters to which the court is to have regard under section 25(2) above include—
 - (a) in the case of paragraph (a), any benefits under a pension scheme which a party to the marriage has or is likely to have, and
 - (b) in the case of paragraph (h), any benefits under a pension scheme which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring,

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and, accordingly, in relation to benefits under a pension scheme, section 25(2)(a) above shall have effect as if “in the foreseeable future” were omitted.

- (2) In any proceedings for a financial provision order under section 23 above in a case where a party to the marriage has, or is likely to have, any benefit under a pension scheme, the court shall, in addition to considering any other matter which it is required to consider apart from this subsection, consider—
 - (a) whether, having regard to any matter to which it is required to have regard in the proceedings by virtue of subsection (1) above, such an order (whether deferred or not) should be made, and
 - (b) where the court determines to make such an order, how the terms of the order should be affected, having regard to any such matter.
- (3) The following provisions apply where, having regard to any benefits under a pension scheme, the court determines to make an order under section 23 above.
- (4) To the extent to which the order is made having regard to any benefits under a pension scheme, the order may require the trustees or managers of the pension scheme in question, if at any time any payment in respect of any benefits under the scheme becomes due to the party with pension rights, to make a payment for the benefit of the other party.
- (5) The amount of any payment which, by virtue of subsection (4) above, the trustees or managers are required to make under the order at any time shall not exceed the amount of the payment which is due at that time to the party with pension rights.
- (6) Any such payment by the trustees or managers—
 - (a) shall discharge so much of the trustees or managers liability to the party with pension rights as corresponds to the amount of the payment, and
 - (b) shall be treated for all purposes as a payment made by the party with pension rights in or towards the discharge of his liability under the order.
- (7) Where the party with pension rights may require any benefits which he has or is likely to have under the scheme to be commuted, the order may require him to commute the whole or part of those benefits; and this section applies to the payment of any amount commuted in pursuance of the order as it applies to other payments in respect of benefits under the scheme.]

Textual Amendments

F25 S. 25B inserted (1.8.1996 with effect as mentioned in S.I. 1996/1675, art. 4) by 1995 c. 26, s. 166(1); S.I. 1996/1675, art. 3(b)

VALID FROM 01/08/1996

[^{F26}25C Pensions: lump sums. E+W

- (1) The power of the court under section 23 above to order a party to a marriage to pay a lump sum to the other party includes, where the benefits which the party with pension rights has or is likely to have under a pension scheme include any lump sum payable in respect of his death, power to make any of the following provision by the order.

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(2) The court may—

- (a) if the trustees or managers of the pension scheme in question have power to determine the person to whom the sum, or any part of it, is to be paid, require them to pay the whole or part of that sum, when it becomes due, to the other party,
- (b) if the party with pension rights has power to nominate the person to whom the sum, or any part of it, is to be paid, require the party with pension rights to nominate the other party in respect of the whole or part of that sum,
- (c) in any other case, require the trustees or managers of the pension scheme in question to pay the whole or part of that sum, when it becomes due, for the benefit of the other party instead of to the person to whom, apart from the order, it would be paid.

(3) Any payment by the trustees or managers under an order made under section 23 above by virtue of this section shall discharge so much of the trustees, or managers, liability in respect of the party with pension rights as corresponds to the amount of the payment.]

Textual Amendments

F26 S. 25C inserted (1.8.1996 with effect as mentioned in S.I. 1996/1675, art. 4) by 1995 c. 26, s. 166(1); S.I. 1996/1675, art. 3(b)

VALID FROM 27/06/1996

[^{F27}25D Pensions: supplementary. **E+W**

(1) Where—

- (a) an order made under section 23 above by virtue of section 25B or 25C above imposes any requirement on the trustees or managers of a pension scheme (“the first scheme”) and the party with pension rights acquires transfer credits under another pension scheme (“the new scheme”) which are derived (directly or indirectly) from a transfer from the first scheme of all his accrued rights under that scheme (including transfer credits allowed by that scheme), and
- (b) the trustees or managers of the new scheme have been given notice in accordance with regulations,

the order shall have effect as if it has been made instead in respect of the trustees or managers of the new scheme; and in this subsection “transfer credits” has the same meaning as in the Pension Schemes Act 1993.

(2) Regulations may—

- (a) in relation to any provision of sections 25B or 25C above which authorises the court making an order under section 23 above to require the trustees or managers of a pension scheme to make a payment for the benefit of the other party, make provision as to the person to whom, and the terms on which, the payment is to be made,

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- (b) require notices to be given in respect of changes of circumstances relevant to such orders which include provision made by virtue of sections 25B and 25C above,
- (c) make provision for the trustees or managers of any pension scheme to provide, for the purposes of orders under section 23 above, information as to the value of any benefits under the scheme,
- (d) make provision for the recovery of the administrative expenses of—
 - (i) complying with such orders, so far as they include provision made by virtue of sections 25B and 25C above, and
 - (ii) providing such information,from the party with pension rights or the other party,
- (e) make provision for the value of any benefits under a pension scheme to be calculated and verified, for the purposes of orders under section 23 above, in a prescribed manner,

and regulations made by virtue of paragraph (e) above may provide for that value to be calculated and verified in accordance with guidance which is prepared and from time to time revised by a prescribed person and approved by the Secretary of State.

(3) In this section and sections 25B and 25C above—

- (a) references to a pension scheme include—
 - (i) a retirement annuity contract, or
 - (ii) an annuity, or insurance policy, purchased or transferred for the purpose of giving effect to rights under a pension scheme,
- (b) in relation to such a contract or annuity, references to the trustees or managers shall be read as references to the provider of the annuity,
- (c) in relation to such a policy, references to the trustees or managers shall be read as references to the insurer,

and in section 25B(1) and (2) above, references to benefits under a pension scheme include any benefits by way of pension, whether under a pension scheme or not.

(4) In this section and sections 25B and 25C above—

“the party with pension rights” means the party to the marriage who has or is likely to have benefits under a pension scheme and “the other party” means the other party to the marriage,

“pension scheme” means an occupational pension scheme or a personal pension scheme (applying the definitions in section 1 of the Pension Schemes Act 1993, but as if the reference to employed earners in the definition of “personal pension scheme” were to any earners),

“prescribed” means prescribed by regulations, and

“regulations” means regulations made by the Lord Chancellor;

and the power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F27 S. 25D inserted (27.6.1996 in relation to the insertion of s. 25D(2)(3)(4) and 1.8.1996 otherwise) by 1995 c. 26, s. 166(1); S.I. 1995/1675, art. 3

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VALID FROM 01/01/2006

[^{F28}25E The Pension Protection Fund E+W

- (1) The matters to which the court is to have regard under section 25(2) include—
- (a) in the case of paragraph (a), any PPF compensation to which a party to the marriage is or is likely to be entitled, and
 - (b) in the case of paragraph (h), any PPF compensation which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring entitlement to,
- and, accordingly, in relation to PPF compensation, section 25(2)(a) shall have effect as if “in the foreseeable future” were omitted.
- (2) Subsection (3) applies in relation to an order under section 23 so far as it includes provision made by virtue of section 25B(4) which—
- (a) imposed requirements on the trustees or managers of an occupational pension scheme for which the Board has assumed responsibility in accordance with Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) or any provision in force in Northern Ireland corresponding to that Chapter, and
 - (b) was made before the trustees or managers of the scheme received the transfer notice in relation to the scheme.
- (3) The order is to have effect from the time when the trustees or managers of the scheme receive the transfer notice—
- (a) as if, except in prescribed descriptions of case—
 - (i) references in the order to the trustees or managers of the scheme were references to the Board, and
 - (ii) references in the order to any pension or lump sum to which the party with pension rights is or may become entitled under the scheme were references to any PPF compensation to which that person is or may become entitled in respect of the pension or lump sum, and
 - (b) subject to such other modifications as may be prescribed.
- (4) Subsection (5) applies to an order under section 23 if—
- (a) it includes provision made by virtue of section 25B(7) which requires the party with pension rights to exercise his right of commutation under an occupational pension scheme to any extent, and
 - (b) before the requirement is complied with the Board has assumed responsibility for the scheme as mentioned in subsection (2)(a).
- (5) From the time the trustees or managers of the scheme receive the transfer notice, the order is to have effect with such modifications as may be prescribed.
- (6) Regulations may modify section 25C as it applies in relation to an occupational pension scheme at any time when there is an assessment period in relation to the scheme.
- (7) Where the court makes a pension sharing order in respect of a person’s shareable rights under an occupational pension scheme, or an order which includes provision made by virtue of section 25B(4) or (7) in relation to such a scheme, the Board

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- subsequently assuming responsibility for the scheme as mentioned in subsection (2)
- (a) does not affect—
- (a) the powers of the court under section 31 to vary or discharge the order or to suspend or revive any provision of it, or
- (b) on an appeal, the powers of the appeal court to affirm, reinstate, set aside or vary the order.
- (8) Regulations may make such consequential modifications of any provision of, or made by virtue of, this Part as appear to the Lord Chancellor necessary or expedient to give effect to the provisions of this section.
- (9) In this section—
- “assessment period” means an assessment period within the meaning of Part 2 of the Pensions Act 2004 (pension protection) (see sections 132 and 159 of that Act) or an equivalent period under any provision in force in Northern Ireland corresponding to that Part;
- “the Board” means the Board of the Pension Protection Fund;
- “occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993;
- “prescribed” means prescribed by regulations;
- “PPF compensation” means compensation payable under Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) or any provision in force in Northern Ireland corresponding to that Chapter;
- “regulations” means regulations made by the Lord Chancellor;
- “shareable rights” are rights in relation to which pension sharing is available under Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 or any provision in force in Northern Ireland corresponding to that Chapter;
- “transfer notice” has the same meaning as in section 160 of the Pensions Act 2004 or any corresponding provision in force in Northern Ireland.
- (10) Any power to make regulations under this section is exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F28 S. 25E inserted (1.1.2006) by [Pensions Act 2004 \(c. 35\)](#), ss. 319(1), 322, [Sch. 12 para. 3](#); [S.I. 2005/3331](#), [art. 2\(3\)](#), [Sch. Pt. 3](#) (subject to [art. 3](#))

26 Commencement of proceedings for ancillary relief, etc. **E+W**

- (1) Where a petition for divorce, nullity of marriage or judicial separation has been presented, then, subject to subsection (2) below, proceedings for maintenance pending suit under section 22 above, for a financial provision order under section 23 above, or for a property adjustment order may be begun, subject to and in accordance with rules of court, at any time after the presentation of the petition.
- (2) Rules of court may provide, in such cases as may be prescribed by the rules—
- (a) that applications for any such relief as is mentioned in subsection (1) above shall be made in the petition or answer; and

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- (b) that applications for any such relief which are not so made, or are not made until after the expiration of such period following the presentation of the petition or filing of the answer as may be so prescribed, shall be made only with the leave of the court.

Financial provision in case of neglect to maintain

27 Financial provision orders, etc., in case of neglect by party to marriage to maintain other party or child of the family. E+W

^{F29}(1) Either party to a marriage may apply to the court for an order under this section on the ground that the other party to the marriage (in this section referred to as the respondent)

- (a) has failed to provide reasonable maintenance for the applicant, or
 (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family.]

(2) The court shall not entertain an application under this section ^{F30}unless—

- (a) the applicant or the respondent is domiciled in England and Wales on the date of the application; or
 (b) the applicant has been habitually resident there throughout the period of one year ending with that date; or
 (c) the respondent is resident there on that date.]

^{F31}[Where an application under this section is made on the ground mentioned in ^{F32}(3) subsection (1)(a) above, then, in deciding—

- (a) whether the respondent has failed to provide reasonable maintenance for the applicant, and
 (b) what order, if any, to make under this section in favour of the applicant,

the court shall have regard to all the circumstances of the case including the matters mentioned in section 25(2) above, and where an application is also made under this section in respect of a child of the family who has not attained the age of eighteen, first consideration shall be given to the welfare of the child while a minor.]

(3A) Where an application under this section is made on the ground mentioned in subsection (1)(b) above then, in deciding—

- (a) whether the respondent has failed to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates, and
 (b) what order, if any, to make under this section in favour of the child,

the court shall have regard to all the circumstances of the case including the matters mentioned in ^{F33}section 25(3)(a) to (e) above, and where the child of the family to whom the application relates is not the child of the respondent, including also the matters mentioned in ^{F33}section 25(4) above.

(3B) In relation to an application under this section on the ground mentioned in subsection (1)(a) above, ^{F34}section 25(2)(c) above shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide reasonable maintenance for the applicant, and in relation to an application under this section on the ground mentioned in subsection (1)(b) above, ^{F34}section 25(2)(c) above (as it applies by virtue of section 25(3)(e) above) shall

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have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates.]

(5) Where on an application under this section it appears to the court that the applicant or any child of the family to whom the application relates is in immediate need of financial assistance, but it is not yet possible to determine what order, if any, should be made on the application, the court may make an interim order for maintenance, that is to say, an order requiring the respondent to make to the applicant until the determination of the application such periodical payments as the court thinks reasonable.

(6) Where on an application under this section the applicant satisfies the court of any ground mentioned in subsection (1) above, the court may make [^{F35}any one or more of the following orders], that is to say—

- (a) an order that the respondent shall make to the applicant such periodical payments, for such term, as may be specified in the order;
- (b) an order that the respondent shall secure to the applicant, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
- (c) an order that the respondent shall pay to the applicant such lump sum as may be so specified;
- (d) an order that the respondent shall make to such person as may be specified in the order for the benefit of the child to whom the application relates, or to that child, such periodical payments, for such term, as may be so specified;
- (e) an order that the respondent shall secure to such person as may be so specified for the benefit of that child, or to that child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
- (f) an order that the respondent shall pay to such person as may be so specified for the benefit of that child, or to that child, such lump sum as may be so specified;

subject, however, in the case of an order under paragraph(d), (e)or (f) above, to the restrictions imposed by section 29(1) and (3) below on the making of financial provision orders in favour of children who have attained the age of eighteen.

[^{F36}(6A) An application for the variation under section 31 of this Act of a periodical payments order or secured periodical payments order made under this section in favour of a child may, if the child has attained the age of sixteen, be made by the child himself.

[^{F37}(6B) Where a periodical payments order made in favour of a child under this section ceases to have effect on the date on which the child attains the age of sixteen or at any time after that date but before or on the date on which he attains the age of eighteen, then if, on an application made to the court for an order under this subsection, it appears to the court that—

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

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

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application, and to exercise its power under section 31 of this Act in relation to any order so revived.]]

- (7) Without prejudice to the generality of subsection (6)(c) or (f) above, an order under this section for the payment of a lump sum—
- (a) may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application to be met;
 - (b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

^{F38}(8)

Textual Amendments

- F29** S. 27(1) substituted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), ss. 63(1), 89(2)
- F30** Words substituted by Domicile and Matrimonial Proceedings Act 1973 (c. 45), s. 6(1)
- F31** S. 27(3)(3A)(3B) substituted for s. 27(3)(4) by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), ss. 63(2), 89(2)
- F32** S. 27(3) substituted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 4, 48(2)
- F33** Words substituted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(1), 48(3), Sch. 1 para. 12(a)
- F34** Words substituted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(1), 48(2), Sch. 1 para. 12(b)
- F35** Words substituted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), ss. 63(3), 89(2)
- F36** S. 27(6A)(6B) inserted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), ss. 63(4), 89(2)
- F37** S. 27(6B) substituted by Family Law Reform Act 1987 (c. 42, SIF 49:7), ss. 33(1), Sch. 2 para. 52
- F38** S. 27(8) repealed by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), s. 89(2), Sch. 3

Additional provisions with respect to financial provision and property adjustment orders

28 Duration of continuing financial provision orders in favour of party to marriage, and effect of remarriage. **E+W**

- (1) [^{F39}Subject in the case of an order made on or after the grant of a decree of divorce or nullity of marriage to the provisions of sections 25A(2) above and 31(7) below, the term to be specified in a periodical payments or secured periodical payments order in favour of a party to a marriage shall be such term as the court thinks fit, except that the term shall not begin before or extend beyond the following limits], that is to say—
- (a) in the case of a periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death of either of the parties to the marriage or, where the order is made on or after the grant of a decree of divorce or nullity of marriage, the remarriage of the party in whose favour the order is made; and
 - (b) in the case of a secured periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death or, where the order is made

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on or after the grant of such a decree, the remarriage of the party in whose favour the order is made.

- [^{F40}(1A) Where a periodical payments or secured periodical payments order in favour of a party to a marriage is made on or after the grant of a decree of divorce or nullity of marriage, the court may direct that that party shall not be entitled to apply under section 31 below for the extension of the term specified in the order]
- (2) Where a periodical payments or secured periodical payments order in favour of a party to a marriage is made otherwise than on or after the grant of a decree of divorce or nullity of marriage, and the marriage in question is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it, cease to have effect on the remarriage of that party, except in relation to any arrears due under it on the date of the remarriage.
- (3) If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries [^{F41}whether at any time before or after the commencement of this Act], that party shall not be entitled to apply, by reference to the grant of that decree, for a financial provision order in his or her favour, or for a property adjustment order, against the other party to that marriage.

Textual Amendments

- F39** Words substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 5(1)**, 48(2)
F40 [S. 28\(1A\)](#) inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 5(2)**, 48(2)
F41 Words inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 5(3)**, 48(2)

Modifications etc. (not altering text)

- C5** [S. 28\(1\)](#) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(c)**, 48(2)
C6 [S. 28\(2\)](#) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(c)**, 48(2)

29 Duration of continuing financial provision orders in favour of children, and age limit on making certain orders in their favour. **E+W**

- (1) Subject to subsection (3) below, no financial provision order and no order for a transfer of property under section 24(1)(a) above shall be made in favour of a child who has attained the age of eighteen.
- (2) The term to be specified in a periodical payments or secured periodical payments order in favour of a child may begin with the date of the making of an application for the order in question or any later date but—
- (a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age (that is to say, the age that is for the time being that limit by virtue of section 35 of the ^{M5}Education Act 1944 together with any Order in Council made under that section) [^{F42}unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date]; and
- (b) shall not in any event, subject to subsection (3) below, extend beyond the date of the child's eighteenth birthday.
- (3) Subsection (1) above, and paragraph (b) of subsection (2), shall not apply in the case of a child, if it appears to the court that—

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- (a) the child is, or will be, or if an order were made without complying with either or both of those provisions would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
 - (b) there are special circumstances which justify the making of an order without complying with either or both of those provisions.
- (4) Any periodical payments order in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order, except in relation to any arrears due under the order on the date of the death.

Textual Amendments

F42 Words substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 5(4), 48(2)**

Modifications etc. (not altering text)

C7 [S. 29](#) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(d), 48(2)**

Marginal Citations

M5 [1944 c. 31.](#)

30 **Direction for settlement of instrument for securing payments or effecting property adjustment.** **E+W**

Where the court decides to make a financial provision order requiring any payments to be secured or a property adjustment order—

- (a) it may direct that the matter be referred to one of the conveyancing counsel of the court for him to settle a proper instrument to be executed by all necessary parties; and
- (b) where the order is to be made in proceedings for divorce, nullity of marriage or judicial separation it may, if it thinks fit, defer the grant of the decree in question until the instrument has been duly executed.

Modifications etc. (not altering text)

C8 [S. 30](#) extended except para. (b), by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(e), 48(2)**

Variation, discharge and enforcement of certain orders, etc.

31 **Variation, discharge, etc., of certain orders for financial relief.** **E+W**

- (1) Where the court has made an order to which this section applies, then, subject to the provisions of this section [^{F43}and of section 28(1A) above], the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.
- (2) This section applies to the following orders, that is to say—
 - (a) any order for maintenance pending suit and any interim order for maintenance;
 - (b) any periodical payments order;

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- (c) any secured periodical payments order;
 - (d) any order made by virtue of section 23(3)(c) or 27(7)(b) above (provision for payment of a lump sum by instalments);
 - (e) any order for a settlement of property under section 24(1)(b) or for a variation of settlement under section 24(1)(c) or (d) above, being an order made on or after the grant of a decree of judicial separation.
 - [^{F44}(f) any order made under section 24A(1) above for the sale of property]
- [^{F45}(2A) Where the court has made an order referred to in subsection (2)(a), (b) or (c) above, then, subject to the provisions of this section, the court shall have power to remit the payment of any arrears due under the order or of any part thereof.]
- (3) The powers exercisable by the court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.
 - (4) The court shall not exercise the powers conferred by this section in relation to an order for a settlement under section 24(1)(b) or for a variation of settlement under section 24(1)(c) or (d) above except on an application made in proceedings—
 - (a) for the rescission of the decree of judicial separation by reference to which the order was made, or
 - (b) for the dissolution of the marriage in question.
 - (5) No property adjustment order shall be made on an application for the variation of a periodical payments or secured periodical payments order made (whether in favour of a party to a marriage or in favour of a child of the family) under section 23 above, and no order for the payment of a lump sum shall be made on an application for the variation of a periodical payments or secured periodical payments order in favour of a party to a marriage (whether made under section 23 or under section 27 above).
 - (6) Where the person liable to make payments under a secured periodical payments order has died, an application under this section relating to that order [^{F46}(and to any order made under section 24A(1) above which requires the proceeds of sale of property to be used for securing those payments) may be made by the person entitled to payments under the periodical payments order.] or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.
 - [^{F47}(7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen, and the circumstances of the case shall include any change in any of the matters to which the court was required to have regard when making the order to which the application relates, and—
 - (a) in the case of a periodical payments or secured periodical payments order made on or after the grant of a decree of divorce or nullity of marriage, the court shall consider whether in all the circumstances and after having regard to any such change it would be appropriate to vary the order so that payments under the order are required to be made or secured only for such further period as will in the opinion of the court be sufficient to enable the party in whose favour the order was made to adjust without undue hardship to the termination of those payments;

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- (b) in a case where the party against whom the order was made has died, the circumstances of the case shall also include the changed circumstances resulting from his or her death.]
- (8) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (6) above on the ground that they ought to have taken into account the possibility that the court might permit an application under this section to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.
- (9) In considering for the purposes of subsection (6) above the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.
- [^{F48}(10) Where the court, in exercise of its powers under this section, decides to vary or discharge a periodical payments or secured periodical payments order, then, subject to section 28(1) and (2) above, the court shall have power to direct that the variation or discharge shall not take effect until the expiration of such period as may be specified in the order.]

Textual Amendments

- F43** Words inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 6(2)**, 48(2)
- F44** [S. 31\(2\)\(f\)](#) inserted by [Matrimonial Homes and Property Act 1981 \(c. 24, SIF 49:5\)](#), **s. 8(2)(a)**
- F45** [S. 31\(2A\)](#) inserted by [Administration of Justice Act 1982 \(c. 53, SIF 37\)](#), ss, 51, 77(1)
- F46** Words substituted by [Matrimonial Homes and Property Act 1981 \(c. 24, SIF 49:5\)](#), **s. 8(2)(b)**
- F47** [S. 31\(7\)](#) substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 6(3)**, 48(2)
- F48** [S. 31\(10\)](#) inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 6(4)**, 48(2)

Modifications etc. (not altering text)

- C9** [S. 31\(1\)](#) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)
- C10** [S. 31\(2\)\(a\)–\(d\)](#) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)
- C11** [S. 31\(2\)\(f\)](#) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)
- C12** [S. 31\(3\)\(5\)](#) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)
- C13** [S. 31\(6\)](#) amended by [Forfeiture Act 1982 \(c. 34, SIF 116:1, 2\)](#), **ss. 3(2)(b)**, 7(3)
- C14** [S. 31\(6\)](#) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)
- C15** [S. 31\(6\)](#) amended by [Inheritance \(Provisions for Family and Dependants\) Act 1975 \(c. 63\)](#), **s. 18**
- C16** [S. 31\(7\)–\(10\)](#) extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(f)**, 48(2)

32 Payment of certain arrears unenforceable without the leave of the court. **E+W**

- (1) A person shall not be entitled to enforce through the High Court or any county court the payment of any arrears due under an order for maintenance pending suit, an interim order for maintenance or any financial provision order without the leave of that court

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if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.

- (2) The court hearing an application for the grant of leave under this section may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as that court thinks proper, or may remit the payment of the arrears or of any part thereof.
- (3) An application for the grant of leave under this section shall be made in such manner as may be prescribed by rules of court.

Modifications etc. (not altering text)

C17 S. 32 extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), [ss. 21\(g\)](#), 48(2)

33 Orders for repayment in certain cases of sums paid under certain orders. E

+W

- (1) Where on an application made under this section in relation to an order to which this section applies it appears to the court that by reason of—
 - (a) a change in the circumstances of the person entitled to, or liable to make, payments under the order since the order was made, or
 - (b) the changed circumstances resulting from the death of the person so liable, the amount received by the person entitled to payments under the order in respect of a period after those circumstances changed or after the death of the person liable to make payments under the order, as the case may be, exceeds the amount which the person so liable or his or her personal representatives should have been required to pay, the court may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as the court thinks just.
- (2) This section applies to the following orders, that is to say—
 - (a) any order for maintenance pending suit and any interim order for maintenance;
 - (b) any periodical payments order; and
 - (c) any secured periodical payments order.
- (3) An application under this section may be made by the person liable to make payments under an order to which this section applies or his or her personal representatives and may be made against the person entitled to payments under the order or her or his personal representatives.
- (4) An application under this section may be made in proceedings in the High Court or a county court for—
 - (a) the variation or discharge of the order to which this section applies, or
 - (b) leave to enforce, or the enforcement of, the payment of arrears under that order;

but when not made in such proceedings shall be made to a county court, and accordingly references in this section to the court are references to the High Court or a county court, as the circumstances require.

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- (5) The jurisdiction conferred on a county court by this section shall be exercisable notwithstanding that by reason of the amount claimed in the application the jurisdiction would not but for this subsection be exercisable by a county court.
- (6) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

Modifications etc. (not altering text)

C18 S. 33 extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(h)**, 48(2)

[^{F49} Consent orders]

Textual Amendments

F49 S. 33(A) and cross heading inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 7**, 48(2)

^{F50}33A Consent orders for financial provision or property adjustment. E+W

- (1) Notwithstanding anything in the preceding provisions of this Part of this Act, on an application for a consent order for financial relief the court may, unless it has reason to think that there are other circumstances into which it ought to inquire, make an order in the terms agreed on the basis only of the prescribed information furnished with the application.
- (2) Subsection (1) above applies to an application for a consent order varying or discharging an order for financial relief as it applies to an application for an order for financial relief.
- (3) In this section—
 - “consent order”, in relation to an application for an order, means an order in the terms applied for to which the respondent agrees;
 - “order for financial relief” means an order under any of sections 23, 24, 24A or 27 above; and
 - “prescribed” means prescribed by rules of court.

Textual Amendments

F50 S. 33A and cross heading inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 7**, 48(2)

Maintenance agreements

34 Validity of maintenance agreements. E+W

- (1) If a maintenance agreement includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements, then—
 - (a) that provision shall be void; but

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- (b) any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable and shall, unless they are void or unenforceable for any other reason (and subject to sections 35 and 36 below), be binding on the parties to the agreement.

(2) In this section and in section 35 below—

“maintenance agreement” means any agreement in writing made, whether before or after the commencement of this Act, between the parties to a marriage, being—

- (a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage; or
- (b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements;

“financial arrangements” means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the family.

35 Alteration of agreements by court during lives of parties. E+W

(1) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in England and Wales, then, subject to subsection (3) below, either party may apply to the court or to a magistrates’ court for an order under this section.

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

- (a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different, or, as the case may be, so as to contain, financial arrangements, or
- (b) that the agreement does not contain proper financial arrangements with respect to any child of the family,

then subject to subsections (3), (4) and (5) below, that court may by order make such alterations in the agreement—

- (i) by varying or revoking any financial arrangements contained in it, or
- (ii) by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the family,

as may appear to that court to be just having regard to all the circumstances, including, if relevant, the matters mentioned in [F51section 25(4)] above; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(3) A magistrates’ court shall not entertain an application under subsection (1) above unless both the parties to the agreement are resident in England and Wales and at least one of the parties is resident [F52within the commission area (within the meaning of

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the Justices of the Peace Act ^{M6}1979) for which the court is appointed;], and shall not have power to make any order on such an application except—

- (a) in a case where the agreement includes no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the other party or for the maintenance of any child of the family;
 - (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.
- (4) Where a court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the other party or by increasing the rate of the periodical payments which the agreement provides shall be made by one of the parties for the maintenance of the other, the term for which the payments or, as the case may be, the additional payments attributable to the increase are to be made under the agreement as altered by the order shall be such term as the court may specify, subject to the following limits, that is to say—
- (a) where the payments will not be secured, the term shall be so defined as not to extend beyond the death of either of the parties to the agreement or the remarriage of the party to whom the payments are to be made;
 - (b) where the payments will be secured, the term shall be so defined as not to extend beyond the death or remarriage of that party.
- (5) Where a court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family or by increasing the rate of the periodical payments which the agreement provides shall be made or secured by one of the parties for the maintenance of such a child, then, in deciding the term for which under the agreement as altered by the order the payments, or as the case may be, the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of section 29(2) and (3) above as to age limits as if the order in question were a periodical payments or secured periodical payments order in favour of the child.
- (6) For the avoidance of doubt it is hereby declared that nothing in this section or in section 34 above affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment (including a provision of this Act) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

Textual Amendments

- F51** Words substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 46(1), 48(3), [Sch. 1 para. 13\(a\)](#)
- F52** Words substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 46(1), 48(3), [Sch. 1 para. 13\(b\)](#)

Marginal Citations

- M6** [1979 c.55\(82\)](#).

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36 Alteration of agreements by court after death of one party. **E+W**

- (1) Where a maintenance agreement within the meaning of section 34 above provides for the continuation of payments under the agreement after the death of one of the parties and that party dies domiciled in England and Wales, the surviving party or the personal representatives of the deceased party may, subject to subsections (2) and (3) below, apply to the High Court or a county court for an order under section 35 above.
- (2) An application under this section shall not, except with the permission of the High Court or a county court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out.
- (3) A county court shall not entertain an application under this section, or an application for permission to make an application under this section, unless it would have jurisdiction by virtue of [F53section 22 of the M7Inheritance (Provision for Family and Dependants) Act 1975] (which confers jurisdiction on county courts in proceedings under [F53that Act if the value of the property mentioned in that section] does not exceed £5,000 or such larger sum as may be fixed by order of the Lord Chancellor) to hear and determine proceedings for an order under [F53section 2 of that Act] in relation to the deceased's estate.
- (4) If a maintenance agreement is altered by a court on an application made in pursuance of subsection (1) above, the like consequences shall ensue as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.
- (5) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (2) above on the ground that they ought to have taken into account the possibility that a court might permit an application by virtue of this section to be made by the surviving party after that period; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.
- (6) Section 31(9) above shall apply for the purposes of subsection (2) above as it applies for the purposes of subsection (6) of section 31.
- (7) Subsection (3) of [F54section 22 of the M8Inheritance (Provision for Family and Dependants) Act 1975 (which enables rules of court to provide for the transfer from a county court to the High Court or from the High Court to a county court of proceedings for an order under section 2 of that Act) and paragraphs (a) and (b) of subsection (4)] of that section (provisions relating to proceedings commenced in county court before coming into force of order of the Lord Chancellor under that section) shall apply in relation to proceedings consisting of any such application as is referred to in subsection (3) above as they apply in relation to [F54proceedings for an order under section 2 of that Act].

Textual Amendments

F53 Words substituted by [Inheritance \(Provision for Family and Dependants\) Act 1975 \(c. 63\), s. 26\(1\)\(a\)](#)

F54 Words substituted by [Inheritance \(Provision for Family and Dependants\) Act 1975 \(c. 63\), s. 26\(1\)\(b\)](#)

Modifications etc. (not altering text)

C19 [S. 36\(1\)](#) amended by [Inheritance \(Provision for Family and Dependants\) Act 1975 \(c. 63\), s. 18](#)

C20 [S. 36\(1\)](#) amended by [Forfeiture Act 1982 \(c. 34, SIF 116:1, 2\), ss. 3\(2\)\(b\), 7\(3\)](#)

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Marginal Citations

M7 1975 c. 63.

M8 1975 c. 63.

Miscellaneous and supplemental

37 Avoidance of transactions intended to prevent or reduce financial relief. E+W

- (1) For the purposes of this section “financial relief” means relief under any of the provisions of sections 22, 23, 24, 27, 31 (except subsection (6)) and 35 above, and any reference in this section to defeating a person’s claim for financial relief is a reference to preventing financial relief from being granted to that person, or to that person for the benefit of a child of the family, or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at his instance under any of those provisions.
- (2) Where proceedings for financial relief are brought by one person against another, the court may, on the application of the first-mentioned person—
 - (a) if it is satisfied that the other party to the proceedings is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;
 - (b) if it is satisfied that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition;
 - (c) if it is satisfied, in a case where an order has been obtained under any of the provisions mentioned in subsection (1) above by the applicant against the other party, that the other party has, with that intention, made a reviewable disposition, make an order setting aside the disposition;
 and an application for the purposes of paragraph (b) above shall be made in the proceedings for the financial relief in question.
- (3) Where the court makes an order under subsection (2)(b) or (c) above setting aside a disposition it shall give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).
- (4) Any disposition made by the other party to the proceedings for financial relief in question (whether before or after the commencement of those proceedings) as is reviewable disposition for the purposes of subsection (2)(b) and (c) above unless it was made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of the other party to defeat the applicant’s claim for financial relief.
- (5) Where an application is made under this section with respect to a disposition which took place less than three years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the court is satisfied—

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- (a) in a case falling within subsection (2)(a) or (b) above, that the disposition or other dealing would (apart from this section) have the consequence, or
- (b) in a case falling within subsection (2)(c) above, that the disposition has had the consequence,

of defeating the applicant's claim for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of defeating the applicant's claim for financial relief.

- (6) In this section "disposition" does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise.
- (7) This section does not apply to a disposition made before 1st January 1968.

38 Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage. E+W

- (1) Where—
 - (a) a periodical payments or secured periodical payments order in favour of a party to a marriage (hereafter in this section referred to as "a payments order") has ceased to have effect by reason of the remarriage of that party, and
 - (b) the person liable to make payments under the order or his or her personal representatives made payments in accordance with it in respect of a period after the date of the remarriage in the mistaken belief that the order was still subsisting,

the person so liable or his or her personal representatives shall not be entitled to bring proceedings in respect of a cause of action arising out of the circumstances mentioned in paragraphs (a) and (b) above against the person entitled to payments under the order or her or his personal representatives, but may instead make an application against that person or her or his personal representatives under this section.

- (2) On an application under this section the court may order the respondent to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in subsection (1)(b) above or, if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.
- (3) An application under this section may be made in proceedings in the High Court or a county court for leave to enforce, or the enforcement of, payment of arrears under the order in question, but when not made in such proceedings shall be made to a county court; and accordingly references in this section to the court are references to the High Court or a county court, as the circumstances require.
- (4) The jurisdiction conferred on a county court by this section shall be exercisable notwithstanding that by reason of the amount claimed in the application the jurisdiction would not but for this subsection be exercisable by a county court.
- (5) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.
- (6) The clerk of a magistrates' court to whom any payments under a payments order are required to be made, and the collecting officer under an attachment of earnings order made to secure payments under a payments order, shall not be liable—

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- (a) in the case of the clerk, for any act done by him in pursuance of the payments order after the date on which that order ceased to have effect by reason of the remarriage of the person entitled to payments under it, and
- (b) in the case of the collecting officer, for any act done by him after that date in accordance with any enactment or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with,

if, but only if, the act was one which he would have been under a duty to do had the payments order not so ceased to have effect and the act was done before notice in writing of the fact that the person so entitled had remarried was given to him by or on behalf of that person, the person liable to make payments under the payments order or the personal representatives of either of those persons.

- (7) In this section “collecting officer”, in relation to an attachment of earnings order, means the officer of the High Court, the registrar of a county court or the clerk of a magistrates’ court to whom a person makes payments in compliance with the order.

Modifications etc. (not altering text)

C21 S. 38 extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(i)**, 48(2)

39 Settlement, etc. made in compliance with a property adjustment order may be avoided on bankruptcy of settlor. E+W

The fact that a settlement or transfer of property had to be made in order to comply with a property adjustment order shall not prevent that settlement or transfer from being [^{F55}a transaction in respect of which an order may be made under [^{F56}section 339 or 340 of the ^{M9}Insolvency Act 1986] (transactions at an undervalue and preferences.)]

Textual Amendments

F55 Words substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), ss. 235, 236, Sch. 8 para. 23, **Sch. 9 para. 11(2)**

F56 Words substituted by virtue of [Insolvency Act 1986 \(c. 45, SIF 66\)](#), ss. 439(2), 440, 441, **Sch 14**

Modifications etc. (not altering text)

C22 S. 39 extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(j)**, 48(2)

Marginal Citations

M9 [1986 c.45\(66\)](#).

40 Payments, etc., under order made in favour of person suffering from mental disorder. E+W

Where the court makes an order under this Part of this Act requiring payments (including a lump sum payment) to be made, or property to be transferred, to a party to a marriage and the court is satisfied that the person in whose favour the order is made is incapable, by reason of mental disorder within the meaning of the ^{M10}Mental Health Act 1959, of managing and administering his or her property and affairs then, subject to any order, direction or authority made or given in relation to that person under Part

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VIII of that Act, the court may order the payments to be made, or as the case may be, the property to be transferred, to such persons having charge of that person as the court may direct.

Modifications etc. (not altering text)

C23 S. 40 extended by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 21(k)**, 48(2)

Marginal Citations

M10 1959 c. 72.

VALID FROM 11/11/1999

[^{F57} 40A Appeals relating to pension sharing orders which have taken effect. **E+W**

- (1) Subsections (2) and (3) below apply where an appeal against a pension sharing order is begun on or after the day on which the order takes effect.
- (2) If the pension sharing order relates to a person's rights under a pension arrangement, the appeal court may not set aside or vary the order if the person responsible for the pension arrangement has acted to his detriment in reliance on the taking effect of the order.
- (3) If the pension sharing order relates to a person's shareable state scheme rights, the appeal court may not set aside or vary the order if the Secretary of State has acted to his detriment in reliance on the taking effect of the order.
- (4) In determining for the purposes of subsection (2) or (3) above whether a person has acted to his detriment in reliance on the taking effect of the order, the appeal court may disregard any detriment which in its opinion is insignificant.
- (5) Where subsection (2) or (3) above applies, the appeal court may make such further orders (including one or more pension sharing orders) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.
- (6) Section 24C above only applies to a pension sharing order under this section if the decision of the appeal court can itself be the subject of an appeal.
- (7) In subsection (2) above, the reference to the person responsible for the pension arrangement is to be read in accordance with section 25D(4) above.]

Textual Amendments

F57 S. 40A inserted (11.11.1999 for certain purposes and otherwise 1.12.2000) by [1999 c. 30, s. 19, Sch. 3 para. 10](#); [S.I. 2000/1116, art. 2](#)

Status: Point in time view as at 07/03/1991. This version of this Act contains provisions that are not valid for this point in time.

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PART III **E+W**

PROTECTION, CUSTODY, ETC., OF CHILDREN

[^{X1}41 **Restrictions on decrees for dissolution, annulment or separation affecting children.** **E+W**

- (1) The Court shall not make absolute a decree of divorce or of nullity of marriage, or grant a decree of judicial separation, unless the court, by order, has declared that it is satisfied—
 - (a) that for the purposes of this section there are no children of the family to whom this section applies; or
 - (b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that—
 - (i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances; or
 - (ii) it is impracticable for the party or parties appearing before the court to make any such arrangements; or
 - [^{F58}(iii) such arrangements have been made in respect of every child named in the order except any child with respect to whom the court has made an order under section 4(5) or 5(2) of the Family Law Act 1986 (orders precluding or staying proceedings for a custody order), or]]
 - (c) that there are circumstances making it desirable that the decree should be made absolute or should be granted, as the case may be, without delay notwithstanding that there are or may be children of the family to whom this section applies and that the court is unable to make a declaration in accordance with paragraph (b) above.
- (2) The court shall not make an order declaring that it is satisfied as mentioned in subsection (1)(c) above unless it has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children named in the order before the court within a specified time.
- (3) If the court makes absolute a decree of divorce or of nullity of marriage, or grants a decree of judicial separation, without having made an order under subsection (1) above the decree shall be void but, if such an order was made, no person shall be entitled to challenge the validity of the decree on the ground that the conditions prescribed by subsections (1) and (2) above were not fulfilled.
- (4) If the court refuses to make an order under subsection (1) above in any proceedings for divorce, nullity of marriage or judicial separation, it shall, on an application by either party to the proceedings, make an order declaring that it is not satisfied as mentioned in that subsection.
- (5) This section applies to the following children of the family, that is to say—
 - (a) any minor child of the family who at the date of the order under subsection (1) above is—
 - (i) under the age of sixteen, or
 - (ii) receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also in gainful employment; and

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(b) any other child of the family to whom the court by an order under that subsection directs that this section shall apply;

and the court may give such a direction if it is of opinion that there are special circumstances which make it desirable in the interest of the child that this section should apply to him.

(6) In this section “welfare”, in relation to a child, includes the custody and education of the child and financial provision for him.

Editorial Information

X1 S. 41 commencing '(1) In any proceedings' substituted (*prosp.*) for s. 41 commencing '(1) The Court shall not' by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 12 para. 31](#) (with [Sch. 14 para. 1\(1\)](#))

Textual Amendments

F58 S. 41(1)(b)(iii) inserted by [Family Law Act 1986 \(c. 55, SIF 49:3\)](#), ss. 68(1), 69(5), [Sch. 1 para. 13](#)

[^{F59X2} 41 **Restrictions on decrees for dissolution, annulment or separation affecting children.** **E+W**

(1) In any proceedings for a decree of divorce or nullity of marriage, or a decree of judicial separation, the court shall consider—

- (a) whether there are any children of the family to whom this section applies; and
- (b) where there are any such children, whether (in the light of the arrangements which have been, or are proposed to be, made for their upbringing and welfare) it should exercise any of its powers under the Children Act 1989 with respect to any of them.

(2) Where, in any case to which this section applies, it appears to the court that—

- (a) the circumstances of the case require it, or are likely to require it, to exercise any of its powers under the Act of 1989 with respect to any such child;
- (b) it is not in a position to exercise that power or (as the case may be) those powers without giving further consideration to the case; and
- (c) there are exceptional circumstances which make it desirable in the interests of the child that the court should give a direction under this section,

it may direct that the decree of divorce or nullity is not to be made absolute, or that the decree of judicial separation is not to be granted, until the court orders otherwise.

(3) This section applies to—

- (a) any child of the family who has not reached the age of sixteen at the date when the court considers the case in accordance with the requirements of this section; and
- (b) any child of the family who has reached that age at that date and in relation to whom the court directs that this section shall apply.]

Editorial Information

X2 S. 41 commencing '(1) In any proceedings' substituted (*prosp.*) for s. 41 commencing '(1) The Court shall not' by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 12 para. 31](#) (with [Sch. 14 para. 1\(1\)](#))

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Textual Amendments

F59 S. 41 commencing (1) 'In any proceedings' substituted (*prosp.*) for s. 41 commencing '(1) The Court shall not' by **Children Act 1989 (c. 41, SIF 20)**, s. 108, **Sch. 12 para. 31** (with **Sch. 14 para. 1(1)**)

[^{F60}42 **Orders for custody and education of children in cases of divorce, etc., and for custody in cases of neglect.** **E+W**]

- (1) The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen—
 - (a) in any proceedings for divorce, nullity of marriage or judicial separation, before or on granting a decree or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute);
 - (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or [^{F61}(if an application for the order is made on or before the dismissal)] after the dismissal;

and in any case in which the court has power by virtue of this subsection to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for making the child a ward of court.
- (2) Where the court makes an order under section 27 above, the court shall also have power to make such order as it thinks fit with respect to the custody of any child of the family who is for the time being under the age of eighteen; but the power conferred by this subsection and any order made in exercise of that power shall have effect only as respects any period when an order is in force under that section and the child is under that age.
- (3) Where the court grants or makes absolute a decree of divorce or grants a decree of judicial separation, it may include in the decree a declaration that either party to the marriage in question is unfit to have the custody of the children of the family.
- (4) Where a decree of divorce or of judicial separation contains such a declaration as is mentioned in subsection (3) above, then, if the party to whom the declaration relates is a parent of any child of the family, that party shall not, on the death of the other parent, be entitled as of right to the custody or the guardianship of that child.
- (5) Where an order in respect of a child is made under this section, the order shall not affect the rights over or with respect to the child of any person, other than a party to the marriage in question, unless the child is the child of one or both of the parties to that marriage and that person was a party to the proceedings on the application for an order under this section.
- (6) The power of the court under subsection (1)(a) or (2) above to make an order with respect to a child shall be exercisable from time to time; and where the court makes an order under subsection (1)(b) above with respect to a child it may from time to time until that child attains the age of eighteen make a further order with respect to his custody and education.
- (7) The court shall have power to vary or discharge an order made under this section or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.]

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Textual Amendments

F60 S. 42 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 12 para. 32, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

F61 Words substituted by Family Law Act 1986 (c. 55, SIF 49:3), ss. 4(1)(2), 69(5)

Modifications etc. (not altering text)

C24 S. 42(1) restricted by Family Law Act 1986 (c. 55, SIF 49:3), ss. 4(5), 69(5)

C25 S. 42(1)(a) restricted by Family Law Act 1986 (c. 55, SIF 49:3), ss. 4(1)(3)(4), 69(5)

[^{F62} 43 Power to commit children to care of local authority. **E+W**

(1) Where the court has jurisdiction by virtue of this Part of this Act to make an order for the custody of a child and it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parties to the marriage or to any other individual, the court may if it thinks fit make an order committing the care of the child to the council of a county . . .^{F63}, or of a metropolitan district or London borough or the Common Council of the City of London (hereafter in this section referred to as “the local authority”); [^{F64} and thereupon—

- (a) Part III of the Child Care Act ^{M11}1980 (which relates to the treatment of children in the care of a local authority); and
- (b) for the purposes only of contributions by the child himself at a time when he has attained the age of 16, Part V of that Act (which relates to contributions towards the maintenance of children in the care of a local authority),

shall apply, subject to the provisions of this section, as if the child had been received by the local authority into their care under section 2 of that Act].

(2) The authority specified in an order under this section shall be the local authority for the area in which the child was, in the opinion of the court, resident before the order was made to commit the child to the care of a local authority, and the court shall before making an order under this section hear any representations from the local authority, including any representations as to the making of a financial provision order in favour of the child.

(3) While an order made by virtue of this section is in force with respect to a child, the child shall continue in the care of the local authority notwithstanding any claim by a parent or other person.

(4) An order made by virtue of this section shall cease to have effect as respects any child when he becomes eighteen, and the court shall not make an order committing a child to the care of a local authority under this section after he has become seventeen.

[In the application of Part III of the Child Care Act 1980 by virtue of this section—

- ^{F65}(5) (a) the exercise by the local authority of their powers under sections 18, 21 [^{F66}22 and 22A] of that Act (which among other things relate to the accommodation and welfare of a child in the care of a local authority) shall be subject to any directions given by the court; and
- (b) section 24 of that Act (which relates to arrangements for the emigration of such a child) and section 28 of that Act (which relates to the after-care of a child in the care of a local authority under section 2 of that Act) shall not apply.]

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- (6) It shall be the duty of any parent or guardian of a child committed to the care of a local authority under this section to secure that the local authority are informed of his address for the time being, and a person who knowingly fails to comply with this subsection shall be liable on summary conviction to a fine not exceeding [^{F67}level 1 on the standard scale].
- (7) The court shall have power from time to time by an order under this section to vary or discharge any provision made in pursuance of this section.
- (8) ^{F68}
- (9) ^{F69}]

Textual Amendments

- F62** S. 43 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))
- F63** Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, Sch. 17
- F64** Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), ss. 9, 33(1)(2), Sch. 2, para. 20
- F65** S. 43(5) substituted by Child Care Act 1980 (c. 5), Sch. 5 para. 34(b)
- F66** Words substituted by Children and Young Persons (Amendment) Act 1986 (c. 28, SIF 20), ss. 6, 8(2)
- F67** Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46
- F68** S. 43(8) repealed by Child Care Act 1980 (c. 5), Sch. 6
- F69** S. 43(9) repealed by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3) ss. 46(3), 48(2), Sch. 3 and also expressed to be repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, Sch. 17

Marginal Citations

- M11** 1980 c.5(20).

^{F70}44 Power to provide for supervision of children. **E+W**

- (1) Where the court has jurisdiction by virtue of this Part of this Act to make an order for the custody of a child and it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may, as respects any period during which the child is, in exercise of that jurisdiction, committed to the [^{F71}care of any person], order that the child be under the supervision of an officer appointed under this section as a welfare officer or under the supervision of a local authority.
- (2) Where the court makes an order under this section for supervision by a welfare officer, the officer responsible for carrying out the order shall be such probation officer as may be selected under arrangements made by the Secretary of State; and where the order is for supervision by a local authority, that authority shall be the council of a county . . . ^{F72}, or of a metropolitan district or London borough selected by the court and specified in the order or, if the Common Council of the City of London is so selected and specified, that Council.
- (3) The court shall not have power to make an order under this section as respects a child who in pursuance of an order under section 43 above is in the care of a local authority.

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- (4) Where a child is under the supervision of any person in pursuance of this section the jurisdiction possessed by a court to vary any financial provision order in the child's favour or any order made with respect to his custody or education under this Part of this Act shall, subject to any rules of court, be exercisable at the instance of that court itself.
- (5) The court shall have power from time to time by an order under this section to vary or discharge any provision made in pursuance of this section.
- (6)^{F73}]

Textual Amendments

- F70** S. 44 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))
- F71** Words substituted by Children Act 1975 (c. 72), **Sch. 3 para. 78**
- F72** Words repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**
- F73** S. 44(6) repealed by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(3), 48(2), **Sch. 3**, and also expressed to be repealed by Local Government Act 1985 (c. 51, SIF 81:1), s. 102, **Sch. 17**

PART IV **E+W**

MISCELLANEOUS AND SUPPLEMENTAL

^{F74}**45** **E+W**

Textual Amendments

- F74** S. 45 repealed by Family Law Act 1986 (c. 55, SIF 49:3), ss. 68(2), 69, **Sch. 2**

^{F75}**46** **E+W**

Textual Amendments

- F75** S. 46 repealed by Domicile and Matrimonial Proceedings Act 1973 (c. 45), s. 17(2), **Sch. 6**

47 **Matrimonial relief and declarations of validity in respect of polygamous marriages.** **E+W**

- (1) A court in England and Wales shall not be precluded from granting matrimonial relief or making a declaration concerning the validity of a marriage by reason only that the marriage in question was entered into under a law which permits polygamy.
- (2) In this section “matrimonial relief” means—
 - (a) any decree under Part I of this Act;
 - (b) a financial provision order under section 27 above;

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- (c) an order under section 35 above altering a maintenance agreement;
 - (d) an order under any provision of this Act which confers a power exercisable in connection with, or in connection with proceedings for, any such decree or order as is mentioned in paragraphs (a) to (c) above;
 - [^{F76}(dd) an order under Part III of the Matrimonial and Family Proceedings Act 1984;]
 - (e) an order under [^{F77}Part I of the ^{M12}Domestic Proceedings and Magistrates' Courts Act 1978].
- [^{F78}(3) In this section “a declaration concerning the validity of a marriage” means any declaration under Part III of the Family Law Act 1986 involving a determination as to the validity of a marriage]
- (4) This section has effect whether or not either party to the marriage in question has for the time being any spouse additional to the other party; and provision may be made by rules of court—
- (a) for requiring notice of proceedings brought by virtue of this section to be served on any such other spouse; and
 - (b) for conferring on any such other spouse the right to be heard in any such proceedings,
- in such cases as may be prescribed by the rules.

Textual Amendments

- F76** S. 47(2)(dd) inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 46(1), 48(3), [Sch. 1 para. 15](#)
- F77** Words substituted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), s. 89(2), [Sch. 2 para. 39](#), with saving for an application made before 1.2.1981 under [Matrimonial Proceedings \(Magistrates' Courts\) Act 1960 \(c. 48\)](#): S.I. 1979/731, [Sch. 2 para. 8](#)
- F78** S.47(3) substituted by [Family Law Act 1986 \(c. 55, SIF 49:3\)](#), ss. 68(1), 69(5), [Sch. 1 para. 14](#)

Marginal Citations

- M12** 1978 c. 22.

48 Evidence. **E+W**

- (1) The evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period.
- (2) In any proceedings for nullity of marriage, evidence on the question of sexual capacity shall be heard in camera unless in any case the judge is satisfied that in the interests of justice any such evidence ought to be heard in open court.

49 Parties to proceedings under this Act. **E+W**

- (1) Where in a petition for divorce or judicial separation, or in any other pleading praying for either form of relief, one party to a marriage alleges that the other has committed adultery, he or she shall make the person alleged to have committed adultery with the other party to the marriage a party to the proceedings unless excused by the court on special grounds from doing so.
- (2) Rules of court may, either generally or in such cases as may be prescribed by the rules, exclude the application of subsection (1) above where the person alleged to have

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committed adultery with the other party to the marriage is not named in the petition or other pleading.

- (3) Where in pursuance of subsection (1) above a person is made a party to proceedings for divorce or judicial separation, the court may, if after the close of the evidence on the part of the person making the allegation of adultery it is of opinion that there is not sufficient evidence against the person so made a party, dismiss him or her from the suit.
- (4) Rules of court may make provision, in cases not falling within subsection (1) above, with respect to the joinder as parties to proceedings under this Act of persons involved in allegations of adultery or other improper conduct made in those proceedings, and with respect to the dismissal from such proceedings of any parties so joined; and rules of court made by virtue of this subsection may make different provision for different cases.
- (5) In every case in which adultery with any party to a suit is alleged against any person not made a party to the suit or in which the court considers, in the interest of any person not already a party to the suit, that that person should be made a party to the suit, the court may if it thinks fit allow that person to intervene upon such terms, if any, as the court thinks just.

[^{F79}50 Matrimonial causes rules. E+W

- (1) The authority having power to make rules of court for the purposes of—
 - (a) this Act, the ^{M13}Matrimonial Causes Act 1967 (which confers jurisdiction on county courts in certain matrimonial proceedings), section 45 of the ^{M14}Courts Act 1971 (transfer of matrimonial proceedings between High Court and county court, etc.) . . . ^{F80}[^{F81}and Part III of the Family Law Act 1986],
 - (b) proceedings in the High Court or a divorce county court for an order under [^{F82}Schedule 1 to the Matrimonial Homes Act 1983 (transfer of certain tenancies on divorce, etc.)];
 - (c) certain other proceedings in the High Court, that is to say—
 - (i) proceedings in the High Court under section 17 of the ^{M15}Married Women’s Property Act 1882, not being proceedings in the divorce registry treated by virtue of rules made under this section for the purposes of section 45 of the ^{M16}Courts Act 1971 as pending in a county court; in
 - (ii) proceedings in the High Court under section 1 of the [^{F83}Matrimonial Homes Act 1983] (rights of occupation of matrimonial home for spouse not otherwise entitled);
 - (iii) proceedings in which the only substantive relief sought is a declaration with respect to a person’s matrimonial status; . . . ^{F84}
 - (d) any enactment passed after this Act which relates to any matter dealt with in this Act, the ^{M17}Matrimonial Causes Act 1967 . . . ^{F80}; [^{F85}or
 - (e) any enactment contained in Part II of or Schedule 1 to the ^{M18}Domicile and Matrimonial Proceedings Act 1973 which does not fall within paragraph (d) above;]^{F86}or
 - (f) proceedings to which section 100(7)(d) of the ^{M19}Children Act 1975 applies (certain applications for revocation and variation of custodianship etc. orders).]

shall, subject to the exceptions listed in subsection (2) below, be the Lord Chancellor together with any four or more of the following persons, namely, the President of the

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Family Division, one puisne judge attached to that division, [^{F87}one district judge of the principal registry of the Family Division, two Circuit judges, one district judge appointed under the County Courts Act 1984, two persons who have a Supreme Court qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990), and two persons who have been granted by an authorised body, under Part II of that Act, the right to conduct litigation in relation to all proceedings in the Supreme Court.]

All the members of the authority, other than the Lord Chancellor himself and the President of the Family Division, shall be appointed by the Lord Chancellor for such time as he may think fit.

- (2) The following shall be excepted from the purposes mentioned in subsection (1) above—
- (a) proceedings in a county court in the exercise of a jurisdiction exercisable by any county court whether or not it is a divorce county court, that is to say, proceedings in a county court under section 32, 33, 36, [^{F88}or 38] . . . ^{F80};
 - (b) section 47 above, in so far as it relates to . . . ^{F89} proceedings for an order under [^{F90}Part I of the ^{M20}Domestic Proceedings and Magistrates' Courts Act 1978];
 - (c) any enactment passed after this Act in so far as it relates to proceedings in a county court in the exercise of any such jurisdiction as is mentioned in paragraph (a) above . . . ^{F91}.
- (3) Rules of court made under this section may apply, with or without modification, any rules of court made under the ^{M21}Supreme Court of Judicature (Consolidation) Act 1925, the County Courts Act [^{F92}1984] or any other enactment and—
- (a) may modify or exclude the application of any such rules or of any provision of the County Courts Act [^{F92}1984];
 - (b) may provide for the enforcement in the High Court of orders made in a divorce county court;
- and, without prejudice to the generality of the preceding provisions, may make with respect to proceedings in a divorce county court any provision regarding the Official Solicitor or any solicitor of the Supreme Court which could be made by rules of court with respect to proceedings in the High Court.
- (4) The power to make rules of court by virtue of subsection (1) above shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section “divorce county court” means a county court designated under section 1 of the ^{M22}Matrimonial Causes Act 1967 and “divorce registry” means the principal registry of the Family Division of the High Court.]

Subordinate Legislation Made

P1 [S. 50](#): S. 50 power exercised by [S.I.1991/530](#).

P2 [S. 50](#): for previous exercises of this power see [Index to Government Orders](#).

Textual Amendments

F79 [S. 50](#) repealed (*prosp.*) by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 46(3), 48(2), [Sch. 3](#)

F80 Words repealed by [Inheritance \(Provision for Family and Dependants\) Act 1975 \(c. 63\)](#), s. 26(3), [Sch.](#)

F81 Words inserted by [Family Law Act 1986 \(c. 55, SIF 49:3\)](#), ss. 68(1), 69(5), [Sch. 1 para. 15\(a\)](#)

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- F82** Words substituted by Matrimonial Homes Act 1983 (c. 19, SIF 49:5), ss. 12, 13(3), **Sch. 2**
- F83** Words substituted by Matrimonial Homes Act 1983 (c. 19, SIF 49:5), ss. 12, 13(3), **Sch. 2**
- F84** Word repealed by Domicile and Matrimonial Proceedings Act 1973 (c. 45), **s. 6(2)**
- F85** Words added by Domicile and Matrimonial Proceedings Act 1973 (c. 45), **s. 6(2)**
- F86** Words inserted by Children Act 1975 (c. 72), s. 108(2), **Sch. 3 para. 79**
- F87** Words substituted by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(2), **Sch. 17 para. 3**
- F88** Words substituted by Family Law Act 1986 (c. 55, SIF 49:3), ss. 68(1), 69(5), **Sch. 1 para. 15(b)**
- F89** Words repealed by Family Law Act 1986 (c. 55, SIF 49:3), ss. 68(1)(2), 69(5), **Sch. 1 para. 15(b)**, Sch. 2
- F90** Words substituted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), Sch. 1, **Sch. 2 para. 40**, S.I. 1979/731, Sch. 2 para. 8 with saving for an application made before 1.2.1981 under Matrimonial Proceedings (Magistrates' Courts) Act 1960 (c. 48): S.I. 1979/731, **Sch. 2 para. 8**
- F91** Words repealed by Family Law Act 1986 (c. 55, SIF 49:3), ss. 68(1)(2), 69(5), **Sch. 1 para. 15(b)**, Sch. 2
- F92** Year substituted by County Courts Act 1984 (c. 28, SIF 34), ss. 148(1), 149, **Sch. 2 para. 44(b)**

Marginal Citations

- M13** 1967 c. 56.
M14 1971 c. 23.
M15 1882 c. 75.
M16 1971 c. 23.
M17 1967 c. 56.
M18 1973 c. 45.
M19 1975 c. 72.
M20 1978 c. 22.
M21 1925 c. 49.
M22 1967 c. 56.

51 Fees in matrimonial proceedings. **E+W**

The fees to be taken in any proceedings to which rules under section 50 above apply shall be such as the Lord Chancellor with the concurrence of the Treasury may from time to time by order made by statutory instrument prescribe.

52 Interpretation. **E+W**

(1) In this Act—

^{F93}
...

“child”, in relation to one or both of the parties to a marriage, includes an illegitimate . . . ^{F94}child of that party or, as the case may be, of both parties;

“child of the family”, in relation to the parties to a marriage, means—

- (a) a child of both of those parties; and
- (b) any other child, not being a child who ^{F95}has been boarded-out with those parties][^{F95}is placed with those parties as foster parents] by a local authority or voluntary organisation, who has been treated by both of those parties as a child of their family;

“the court” (except where the context otherwise requires) means the High Court or, where a county court has jurisdiction by virtue of ^{F96}Part V of the Matrimonial and Family Proceedings Act 1984], a county court;

^{F97}“custody”, in relation to a child, includes access to the child;]

“education” includes training.

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(2) In this Act—

- (a) references to financial provision orders, periodical payments and secured periodical payments orders and orders for the payment of a lump sum, and references to property adjustment orders, shall be construed in accordance with section 21 above; and
- (b) references to orders for maintenance pending suit and to interim orders for maintenance shall be construed respectively in accordance with section 22 and section 27(5) above.

(3) For the avoidance of doubt it is hereby declared that references in this Act to remarriage include references to a marriage which is by law void or voidable.

(4) Except where the contrary intention is indicated, references in this Act to any enactment include references to that enactment as amended, extended or applied by or under any subsequent enactment, including this Act.

Textual Amendments

- F93** Definition repealed by [Children Act 1975 \(c. 72\)](#), **Sch. 4 Pt. I** as respects things done, or events occurring, after 31.12.1975
- F94** Words repealed by [Children Act 1975 \(c. 72\)](#), **Sch. 4 Pt. I** as respects things done, or events occurring, after 31.12.1975
- F95** Words commencing “is placed” substituted (*prosp.*) for words commencing “has been boarded-out” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 12 para. 33 (with **Sch. 14 paras. 1(1)**)
- F96** Words substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), **ss. 46(1), 47(1)(e)**, 48(3), Sch. 1 para. 16
- F97** Definition repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 15 (with **Sch. 14 paras. 1(1), 27(4)**)

53 Transitional provisions and savings. E+W

Schedule 1 to this Act shall have effect for the purpose of—

- (a) the transition to the provisions of this Act from the law in force before the commencement of this Act;
- (b) the preservation for limited purposes of certain provisions superseded by provisions of this Act or by enactments repealed and replaced by this Act; and
- (c) the assimilation in certain respects to orders under this Act of orders made, or deemed to have been made, under the ^{M23}Matrimonial Causes Act 1965.

Marginal Citations

- M23** 1965 c. 72.

54 Consequential amendments and repeals. E+W

(1) Subject to the provisions of Schedule 1 to this Act—

- (a) the enactments specified in Schedule 2 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential on the provisions of this Act or on enactments repealed by this Act; and

^{F98}(b)

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- (2) The amendment of any enactment by Schedule 2 to this Act shall not be taken as prejudicing the operation of [F99sections 16(1) and 17(2)(a) of the M24Interpretation Act 1978] (which relates to the effect of repeals).

Textual Amendments

- F98** S. 54(1)(b) repealed by Statute Law (Repeals) Act 1977 (c. 18), Sch. 1 Pt. VII
F99 Words substituted by virtue of Interpretation Act 1978 (c. 30), s. 25(2)

Marginal Citations

- M24** 1978 c. 30.

55 Citation, commencement and extent. E+W

- (1) This Act may be cited as the Matrimonial Causes Act 1973.
- (2) This Act shall come into force on such day as the Lord Chancellor may appoint by order made by statutory instrument.
- (3) Subject to the provisions of paragraphs 3(2) F100 . . . of Schedule 2 below, this Act does not extend to Scotland or Northern Ireland.

Textual Amendments

- F100** Words repealed by Statute Law (Repeals) Act 1977 (c. 18), Sch. 1 Pt. VII

Modifications etc. (not altering text)

- C26** Power of appointment conferred by s. 55(2) fully exercised: 1.1.1974 appointed by SI. 1973/1972, art. 2

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SCHEDULES

SCHEDULE 1 E+W

TRANSITIONAL PROVISIONS AND SAVINGS

PART I E+W

MISCELLANEOUS AND GENERAL

General transitional provisions and savings

- 1 Without prejudice to the provisions of [^{F101}sections 16(1) and 17(2)(a) of the Interpretation Act 1978] (which relates to the effect of repeals)—
- (a) nothing in any repeal made by this Act shall affect any order or rule made, direction given or thing done, or deemed to have been made, given or done, under any enactment repealed by this Act, and every such order, rule, direction or thing shall, if in force at the commencement of this Act, continue in force and, so far as it could have been made, given or done under this Act, be deemed to have been made, given or done under the corresponding provisions of this Act; and
 - (b) any reference in any document (including an enactment) to any enactment repealed by this Act, whether a specific reference or a reference to provisions of a description which includes, or apart from any repeal made by this Act includes, the enactment so repealed, shall be construed as a reference to the corresponding enactment in this Act.

Textual Amendments

F101 Words substituted by virtue of [Interpretation Act 1978 \(c. 30\), s. 25\(2\)](#)

- 2 Without prejudice to paragraph 1 above, but subject to paragraph 3 below, any application made or proceeding begun, or deemed to have been made or begun, under any enactment repealed by this Act, being an application or proceeding which is pending at the commencement of this Act, shall be deemed to have been made or begun under the corresponding provision of this Act.
- 3 Nothing in Part I of this Act shall apply in relation to any petition for divorce or judicial separation presented before 1st January 1971 and notwithstanding any repeal or amendment made by this Act the ^{M25}Matrimonial Causes Act 1965 (hereafter in this Schedule referred to as the Act of 1965) and any rules of court made for the purposes of that Act shall continue to have effect in relation to proceedings on any such petition which are pending at the commencement of this Act as they had effect immediately before the commencement of this Act.

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Marginal Citations

M25 1965 c. 72.

- 4 Notwithstanding any repeal or amendment made by this Act, the Act of 1965 and any rules of court made for the purposes of that Act shall continue to have effect in relation to—
- (a) any proceedings on a petition for damages for adultery or for restitution of conjugal rights presented before 1st January 1971 which are pending at the commencement of this Act, and
 - (b) any proceedings for relief under section 21 or 34(1)(c) of the Act of 1965 brought in connection with proceedings on a petition for restitution of conjugal rights so presented, being proceedings for relief which are themselves pending at the commencement of this Act,
- as they had effect immediately before the commencement of this Act; and nothing in Schedule 2 below shall affect the operation of any other enactment in relation to any such proceedings.
- 5 Nothing in any repeal made by this Act shall affect any order made, or deemed to have been made, under the Act of 1965 which was continued in force by paragraph 1 of Schedule 1 to the ^{M26}Matrimonial Proceedings and Property Act 1970 notwithstanding the repeal by the last-mentioned Act of the provision of the Act of 1965 under which the order had effect, and every such order shall, if in force at the commencement of this Act, continue in force subject to the provisions of this Act.

Marginal Citations

M26 1970 c. 45.

- 6 Nothing in sections 11 to 14 or 16 of this Act affects any law or custom relating to the marriage of members of the Royal Family.
- 7 Nothing in section 50(1)(a) or (c) above affects—
- (a) any rules of court made under the ^{M27}Supreme Court of Judicature (Consolidation) Act 1925 for the purposes of proceedings under section 39 of the Act of 1965 and having effect by virtue of paragraph 1(b) above in relation to proceedings under section 45 above;
 - (b) any rules of court so made for the purposes of proceedings under section 17 of the ^{M28}Married Women's Property Act 1882 or under section 1 of the ^{M29}Matrimonial Homes Act 1967; or
 - (c) any rules of court so made for the purposes of the exercise by the High Court of its jurisdiction to grant declaratory relief in proceedings in which the only substantive relief sought is a declaration with respect to a person's matrimonial status;
- but rules of court made under section 50 may revoke any rules of court made under the said Act of 1925 in so far as they apply for any such purposes.

Marginal Citations

M27 1925 c. 49.

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M28 1882 c. 75.

M29 1967 c. 75.

Transitional provisions derived from the Act of 1965

- 8 Any agreement between the petitioner and the respondent to live separate and apart, whether or not made in writing, shall be disregarded for the purposes of section 1(2)(c) above (including that paragraph as it applies, by virtue of section 17 above, to proceedings for judicial separation) if the agreement was entered into before 1st January 1938 and either—
- (a) at the time when the agreement was made the respondent had deserted the petitioner without cause; or
 - (b) the court is satisfied that the circumstances in which the agreement was made and the parties proceeded to live separate and apart were such as, but for the agreement, to amount to desertion of the petitioner by the respondent.
- 9 Where the party chargeable under a maintenance agreement within the meaning of section 34 above died before 17th August 1957, then—
- (a) subsection (1) of that section shall not apply to the agreement unless there remained undistributed on that date assets of that party's estate (apart from any property in which he had only a life interest) representing not less than four-fifths of the value of that estate for probate after providing for the discharge of the funeral, testamentary and administrative expenses, debts and liabilities payable thereout (other than any liability arising by virtue of that subsection); and
 - (b) nothing in that subsection shall render liable to recovery, or impose any liability upon the personal representatives of that party in respect of, any part of that party's estate which had been distributed before that date.
- 10 No right or liability shall attach by virtue of section 34(1) above in respect of any sum payable under a maintenance agreement within the meaning of that section in respect of a period before 17th August 1957.

PART II **E+W**

PRESERVATION FOR LIMITED PURPOSES OF CERTAIN PROVISIONS OF PREVIOUS ENACTMENTS

Nullity

- 11 (1) Subject to sub-paragraphs (2) and (3) below, a marriage celebrated before 1st August 1971 shall (without prejudice to any other grounds on which a marriage celebrated before that date is by law void or voidable) be voidable on the ground—
- (a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it; or
 - (b) that at the time of the marriage either party to the marriage—
 - (i) was of unsound mind, or

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- (ii) was suffering from mental disorder within the meaning of the ^{M30}Mental Health Act 1959 of such a kind or to such an extent as to be unfitted for marriage and the procreation of children, or
 - (iii) was subject to recurrent attacks of insanity or epilepsy; or
 - (c) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or
 - (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.
- (2) In relation to a marriage celebrated before 1st November 1960, for heads (ii) and (iii) of sub-paragraph (1)(b) above shall be substituted the following heads—
- “(ii) was a mental defective within the meaning of the Mental Deficiency Acts 1913 to 1938, or
 - (iii) was subject to recurrent fits of insanity or epilepsy; or”.
- (3) The court shall not grant a decree of nullity in a case falling within sub-paragraph (1)(b), (c) or (d) above unless it is satisfied that—
- (a) the petitioner was at the time of the marriage ignorant of the facts alleged; and
 - (b) proceedings were instituted within a year from the date of the marriage; and
 - (c) marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of the grounds for a decree;
- and where the proceedings with respect to the marriage are instituted after 31st July 1971 the application of section 13(1) above in relation to the marriage shall be without prejudice to the preceding provisions of this sub-paragraph.
- (4) Nothing in this paragraph shall be construed as validating a marriage which is by law void but with respect to which a decree of nullity has not been granted.

Marginal Citations

M30 1959 c. 72.

- 12 Where a decree of nullity was granted on or before 31st July 1971 in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled shall be deemed to be their legitimate child.

Succession on intestacy in case of judicial separation

- 13 Section 18(2) above shall not apply in a case where the death occurred before 1st August 1970, but section 20(3) of the Act of 1965 (which provides that certain property of a wife judicially separated from her husband shall devolve, on her death intestate, as if her husband had then been dead) shall continue to apply in any such case.

Validation of certain void or voidable decrees

- 14 Any decree of divorce, nullity of marriage or judicial separation which, apart from this paragraph, would be void or voidable on the ground only that the provisions of section 33 of the Act of 1965 (restriction on the making of decrees of dissolution

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or separation where children are affected) or of section 2 of the ^{M31}Matrimonial Proceedings (Children) Act 1958 (corresponding provision replaced by section 33) had not been complied with when the decree was made absolute or granted, as the case may be, shall be deemed always to have been valid unless—

- (a) the court declared the decree to be void before 1st January 1971, or
- (b) in proceedings for the annulment of the decree pending at that date the court has before the commencement of this Act declared or after that commencement declares the decree to be void.

Marginal Citations

M31 1958 c. 40.

PART III E+W

ASSIMILATION IN CERTAIN RESPECTS TO ORDERS UNDER THIS ACT OF ORDERS MADE, ETC., UNDER THE ACT OF 1965, ETC.

Cesser on remarriage of orders made, etc., under the Act of 1965 and recovery of sums mistakenly paid thereafter

- 15 (1) An order made, or deemed to have been made, under section 16(1)(a) or (b) of the Act of 1965 (including either of those paragraphs as applied by section 16(3) or by section 19) shall, notwithstanding anything in the order, cease to have effect on the remarriage after the commencement of this Act of the person in whose favour the order was made, except in relation to any arrears due under it on the date of the remarriage.
- (2) An order for the payment of alimony made, or deemed to have been made, under section 20 of the Act of 1965, and an order made, or deemed to have been made, under section 21 or 22 of that Act shall, if the marriage of the parties to the proceedings in which the order was made was or is subsequently dissolved or annulled but the order continues in force, cease to have effect on the remarriage after the commencement of this Act of the party in whose favour the order was made, except in relation to any arrears due under it on the date of the remarriage.
- 16 Section 38 above shall apply in relation to an order made or deemed to have been made under section 16(1) (including that subsection as applied by section 16(3) and by section 19), 20(1), 21 or 22 of the Act of 1965 as it applies in relation to a periodical payments or secured periodical payments order in favour of a party to a marriage.

Variation, etc., of certain orders made, etc., under the Act of 1965

- 17 (1) Subject to the provisions of this paragraph, section 31 above shall apply, as it applies to the orders mentioned in subsection (2) thereof, to an order (other than an order for the payment of a lump sum) made or deemed to have been made under any of the following provisions of the Act of 1965, that is to say—
- (a) section 15 (except in its application to proceedings for restitution of conjugal rights);

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- (b) section 16(1) (including that subsection as applied by section 16(3) and by section 19);
 - (c) section 20(1) and section 17(2) as applied by section 20(2);
 - (d) section 22;
 - (e) section 34(1)(a) or (b), in so far as it relates to the maintenance of a child, and section 34(3).
- (2) Subject to the provisions of this paragraph, the court hearing an application for the variation of an order made or deemed to have been made under any of the provisions of the Act of 1965 mentioned in sub-paragraph (1) above shall have power to vary that order in any way in which it would have power to vary it had the order been made under the corresponding provision of Part II of this Act.
- (3) Section 31, as it applies by virtue of sub-paragraph (1) above, shall have effect as if for subsections (4), (5) and (6) there were substituted the following subsections—
- “(4) The court shall not exercise the powers conferred by this section in relation to an order made or deemed to have been made under section 17(2) of the Act of 1965, as applied by section 20(2) of that Act, in connection with the grant of a decree of judicial separation except on an application made in proceedings—
- (a) for the rescission of that decree, or
 - (b) for the dissolution of the marriage in question.
- (5) No order for the payment of a lump sum and no property adjustment order shall be made on an application for the variation of any order made or deemed to have been made under section 16(1) (including that subsection as applied by section 16(3) or by section 19), 20(1), 22, 34(1)(a) or (b) or 34(3) of the Act of 1965.
- (6) In the case of an order made or deemed to have been made under section 16(1) (including that subsection as applied by section 16(3) or by section 19), 22 or 34(3) of the Act of 1965 and requiring a party to a marriage to secure an annual sum or periodical payments to any other person, an application under this section relating to that order may be made after the death of the person liable to make payments under the order by the person entitled to the payments or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out”;
- and in that section, as it so applies, the reference in subsection (8) to a secured periodical payments order shall be construed as a reference to any such order as is mentioned in subsection (6).
- (4) In relation to an order made before 16th December 1949 on or after granting a decree of divorce or nullity of marriage and deemed, by virtue of paragraph 1 of Schedule 1 to the Act of 1965, to have been made under section 16(1)(a) of that Act (secured provision), the powers conferred by this paragraph shall not be exercised unless the court is satisfied that the case is one of exceptional hardship which cannot be met by discharge, variation or suspension of any other order made by reference to that decree, being an order made, or deemed by virtue of that paragraph to have been made, under section 16(1)(b) of that Act (unsecured periodical payments).

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- 18 (1) Subsections (1) and (3) of section 31 above shall apply to an order made or deemed to have been made under section 15 of the Act of 1965 in its application to proceedings for restitution of conjugal rights, or under section 21 or 34(1)(c) of that Act, as they apply to the orders mentioned in subsection (2) of section 31.
- (2) In exercising the powers conferred by virtue of this paragraph the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates.
- 19 Section 42(7) above shall apply in relation to an order for the custody or education of a child made or deemed to have been made under section 34 of the Act of 1965, and in relation to an order for the custody of a child made or deemed to have been made under section 35 of that Act, as it applies in relation to an order made under section 42.

Orders made under the Act of 1965 to count as orders under this Act for certain purposes

- 20 The power of the court under section 23(1) or (2)(a) or 42(1)(a) above to make from time to time a financial provision order or, as the case may be, an order for custody or education in relation to a child of the family shall be exercisable notwithstanding the making of a previous order or orders in relation to the child under section 34(1)(a) of the Act of 1965; and where the court has made an order in relation to a child under section 34(1)(b) of that Act sections 23(4) and 42(6) above shall apply respectively in relation to that child as if the order were an order made under section 23(2)(b) or section 42(1)(b), as the case may be.
- 21 Where the court has made an order under section 22 of the Act of 1965 the court shall have the like power to make orders under section 42 above with respect to the custody of any child of the family as it has where it makes an order under section 27 above.

Application of provisions of this Act with respect to enforcement of arrears and recovery of excessive payments to certain orders made, etc., under the Act of 1965

- 22 Section 32 above shall apply in relation to the enforcement, by proceedings begun after 1st January 1971 (whether before or after the commencement of this Act), of the payment of arrears due under an order made, or deemed to have been made, under any of the following provisions of the Act of 1965, that is to say—
- (a) section 15;
 - (b) section 16(1) (including that subsection as applied by section 16(3) and by section 19);
 - (c) section 20(1);
 - (d) section 21;
 - (e) section 22;
 - (f) section 34(1), in so far as it relates to the maintenance of a child, and section 34(3);
- as it applies in relation to the enforcement of the payment of arrears due under any such order as is mentioned in that section.
- 23 Section 33 above shall apply to an order (other than an order for the payment of a lump sum) made or deemed to have been made under any of the provisions of the

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Act of 1965 mentioned in paragraph 22 above as it applies to the orders mentioned in section 33(2).

Avoidance under this Act of transactions intended to defeat claims for relief and relief granted under the Act of 1965

- 24 (1) Section 37 above shall apply in relation to proceedings for relief under section 21 or 34(1)(c) of the Act of 1965 continuing by virtue of paragraph 4(b) above as it applies in relation to proceedings for relief under any of the provisions of this Act specified in section 37(1).
- (2) Without prejudice to sub-paragraph (1) above, section 37 shall also apply where an order has been obtained under any of the following provisions of the Act of 1965, that is to say—
- (a) section 16(1) (including that subsection as applied by section 16(3) and by section 19);
 - (b) section 17(2) (including that subsection as applied by section 20(2));
 - (c) section 20(1);
 - (d) section 21;
 - (e) section 22;
 - (f) section 24;
 - (g) section 31;
 - (h) section 34(1), in so far as it relates to the maintenance of a child, and section 34(3);
 - (i) section 35;
- as it applies where an order has been obtained under any of the provisions of this Act specified in section 37(1).

Care and supervision of children

- 25 (1) Sections 43 and 44 above shall apply where the court has jurisdiction by virtue of paragraph 4(b) above to make an order for the custody of a child under section 34(1)(c) of the Act of 1965 as they apply where the court has jurisdiction to make an order for custody under Part III of this Act, but as if the reference in section 43(2) to a financial provision order in favour of the child were a reference to an order for payments for the maintenance and education of the child.
- (2) Without prejudice to the effect of paragraph 1(a) of this Schedule in relation to an order made under section 36 or 37 of the Act of 1965 which could have been made under section 43 or, as the case may be, section 44 above, any order made under section 36 or 37 of that Act by virtue of the jurisdiction of the court to make an order for the custody of a child under section 34(1)(c) of that Act shall be deemed to have been made under section 43 or 44 above, as the case may require.
- 26 Section 44(4) above shall apply in relation to the jurisdiction possessed by a court to vary an order made or deemed to have been made with respect to a child's custody, maintenance or education under Part III of the Act of 1965 as it applies in relation to the jurisdiction possessed by a court to vary any financial provision order in a child's favour and any order made with respect to a child's custody or education under Part III of this Act.

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X³SCHEDULE 2 U.K.

CONSEQUENTIAL AMENDMENTS

Editorial Information

- X3** The text of Sch. 2 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

F102¹

Textual Amendments

- F102** Sch. 2 para. 1 repealed by Supreme Court Act 1981 (c. 54, SIF 37), s. 152(4), Sch. 7

- 2 In section 2(1) of the ^{M32}Limitation (Enemies and War Prisoners) Act 1945, in the definition of “statute of limitation” for the words “subsection (1) of section seven of the Matrimonial Causes Act 1937” there shall be substituted the words “ section 13(2) of the Matrimonial Causes Act 1973 and paragraph 11(3) of Schedule 1 to that Act ”.

Marginal Citations

- M32** 1945 c. 16.

- 3 (1) In section 16 of the ^{M33}Maintenance Orders Act 1950 (orders enforceable under Part II of that Act)—
- (a) in subsection (2)(a) for sub-paragraph (i) there shall be substituted the following sub-paragraph:—
- “(i) sections 15 to 17, 19 to 22, 30, 34 and 35 of the Matrimonial Causes Act 1965 and sections 22, 23(1), (2) and (4) and 27 of the Matrimonial Causes Act 1973”; and
- (b) in subsection (2)(c), for sub-paragraph (v) there shall be substituted the following sub-paragraph:—
- “(v) any enactment of the Parliament of Northern Ireland containing provisions corresponding with section 22(1), 34 or 35 of the Matrimonial Causes Act 1965, with section 22, 23(1), (2) or (4) or 27 of the Matrimonial Causes Act 1973, or with section 12(2) of the Guardianship of Minors Act 1971”.
- (2) Sub-paragraph (1) above extends to Scotland and Northern Ireland, and the references to section 16(2)(c) of the ^{M34}Maintenance Orders Act 1950 in paragraph 8 of Schedule 8 to the ^{M35}Administration of Justice Act 1970 and paragraph 9 of Schedule 1 to the ^{M36}Attachment of Earnings Act 1971 shall be construed as references to section 16(2)(c) as amended by sub-paragraph (1)(b) above.

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Marginal Citations

- M33 1950 c. 37.
- M34 1950 c. 37.
- M35 1970 c. 31.
- M36 1971 c. 32.

4 In section 109(2) of the ^{M37}County Courts Act 1959 (proceedings in which appeals on questions of fact are to lie) the following paragraph shall be inserted after paragraph (f) (in place of the paragraph inserted by section 34(2) of the ^{M38}Matrimonial Proceedings and Property Act 1970):—

“(g) any proceedings on an application under section 13A of the Matrimonial Proceedings (Magistrates’ Courts) Act 1960 or under section 33, 36 or 38 of the Matrimonial Causes Act 1973”.

Marginal Citations

- M37 1959 c. 22.
- M38 1970 c. 45.

5 ^{F103}(1)

(2) In section 42 of that Act (provisions as to condonation), at the beginning of subsections (1) and (3) there shall be inserted the words “ For the purposes of the Matrimonial Proceedings (Magistrates’ Courts) Act 1960 ”.

Textual Amendments

- F103 Sch. 2 para. 5(1) repealed by [Inheritance \(Provision for Family and Dependents\) Act 1975 \(c. 63\), s. 26\(3\), Sch.](#)

^{F104}6

Textual Amendments

- F104 Sch. 2 para. 6 repealed by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\), ss. 46\(3\), 48\(2\), Sch. 3](#)

7 (1) In subsection (1) of section 2 of the ^{M39}Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 (restriction of publicity for certain proceedings) for the words in paragraph (a) “section 39 of the Matrimonial Causes Act 1965” there shall be substituted the words “ section 45 of the Matrimonial Causes Act 1973 ”, the following paragraph shall be substituted for the paragraph (c) inserted in the subsection by paragraph 3 of Schedule 2 to the Matrimonial Proceedings and Property Act 1970:—

“(c) proceedings under section 27 of the Matrimonial Causes Act 1973 (which relates to proceedings by a wife against her husband, or by a husband against his wife, for financial provision) and any proceedings for the discharge or variation of an order made under that section or for the temporary suspension of any provision of

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any such order or the revival of the operation of any provision so suspended”;

subsection (2) of that section shall be omitted, and the references in subsection (3) of that section to subsection (1) and to subsection (1)(a) thereof shall be construed as references to subsection (1) and to subsection (1)(a) as they respectively have effect by virtue of this sub-paragraph.

F105(2)

Textual Amendments
 F105 Sch. 2 para. 7(2)(3) repealed by Statute Law (Repeals) Act 1977 (c. 18), Sch. 1 Pt. VII

Marginal Citations
 M39 1968 c. 63.

8 In section 7 of the ^{M40}Family Law Reform Act 1969 (committal of wards of court to care of local authority and supervision of wards of court)—

(a) in subsection (3), for the words “section 36 of the Matrimonial Causes Act 1965” there shall be substituted the words “ section 43 of the Matrimonial Causes Act 1973 ”;

(b) in subsection (4), for the words from “subsections (2)” to “1965” there shall be substituted the words “ section 44(2) of the Matrimonial Causes Act 1973 ”.

Marginal Citations
 M40 1969 c. 46.

F106g

Textual Amendments
 F106 Sch. 2 para. 9 repealed by Child Care Act 1980 (c. 5), Sch. 6

10 ^{F107}(1)

(2) In Schedule 8 to that Act (as it applies to define maintenance orders both for the purposes of Part II of that Act and for the purposes of the ^{M41}Maintenance Orders Act 1958) the following paragraph shall be inserted after paragraph 2:—

“2A An order for periodical or other payments made, or having effect as if made, under Part II of the Matrimonial Causes Act 1973”.

Textual Amendments
 F107 Sch. 2 para. 10(1) repealed by Supreme Court Act 1981 (c. 54, SIF 37), s. 152(4), Sch. 7

Marginal Citations
 M41 1958 c. 39.

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[^{F108}11 In Schedule 1 to the ^{M42}Local Authority Social Services Act 1970 the entry relating to section 37 of the ^{M43}Matrimonial Causes Act 1973 shall be omitted, and the following entry shall be added at the end of the Schedule—

“Matrimonial Causes Act 1973 Section 44 Supervision of child subject to court order in matrimonial proceedings”.]

Textual Amendments

F108 Sch. 2 para. 11 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

Marginal Citations

M42 1970 c. 42.

M43 1965 c. 72.

^{F109}12

Textual Amendments

F109 Sch. 2 para. 12 repealed by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(3), 48(2), Sch. 3

13 In Schedule 1 to the ^{M44}Attachment of Earnings Act 1971 (maintenance orders to which the Act applies) for paragraph 3 there shall be substituted the following paragraph—

“3 An order for periodical or other payments made, or having effect as if made, under Part II of the Matrimonial Causes Act 1973”.

Marginal Citations

M44 1971 c. 32

^{F110}SCHEDULE 3 **E+W**

Textual Amendments

F110 Sch. 3 repealed by Statute Law (Repeals) Act 1977 (c. 18), Sch. Pt. VII

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Status:

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